

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 12.09.2024

Pronounced on: 26.09.2024

SWP No.560/2017

ALI MOHAMMAD DHOBI **... PETITIONER(S)**

Through: - Mr. Mir Firdous, Advocate.

Vs.

STATE OF J&K & OTHERS **...RESPONDENT(S)**

Through: - Mr. Hakeem Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.DULB/Est/255/BS/589 dated 06.02.2015, whereby he has been deemed to have retired on superannuation with effect from 31.10.2013. Challenge has also been thrown to Government Order No.175-HUD of 2015 dated 09.07.2015, whereby a Committee has been constituted for conducting a thorough enquiry into the alleged tampering of date of birth of the petitioner in his service record. The petitioner has also sought a direction upon the respondents to release salary in his favour with effect from February, 2015 till he reaches the age of superannuation in April, 2018 as per his actual date of birth.

2) As per case of the petitioner, he was appointed as a Daily Wager in the respondent Department in the year

1974, whereafter his services were regularized in the year 1981. It has been submitted that the petitioner has studied upto 5th Class in a local school where his date of birth has been recorded as 20.10.1958 and the same has been entered in his service book as well. According to the petitioner, he was to attain the age of superannuation in the month of October 2018. It has been submitted that until the year 2015, the respondents never disputed the date of birth of the petitioner at any point of time but all of a sudden in the year 2015, the respondents passed impugned order dated 06.02.2015, whereby he has been superannuated from service with effect from 31.10.2013. It has been submitted that against this, the petitioner made a representation on 09.02.2015, whereafter impugned order dated 09.07.2015 came to be issued by the respondents thereby constituting a committee to conduct enquiry into the alleged tampering of date birth of the petitioner.

3) The petitioner has challenged the impugned action of the respondents on the ground that he has not been given any opportunity of hearing before passing the impugned order of his retirement and, as such, the same is violative of principles of natural justice. It has been further contended that even pursuant to the impugned order dated

09.07.2015, the enquiry has not been conducted by the respondents. According to the petitioner, under the garb of impugned orders, he has not been allowed to perform his duties from February 2015 onwards, which is illegal and unlawful.

4) The respondents have contested the writ petition by filing reply thereto, wherein they have contended that the date of birth of the petitioner as per the records maintained with them in his service book is 20.10.1955 and the same is within the knowledge of the petitioner. It has been submitted that there is tampering in the date of birth of the petitioner as recorded in his service book, which came to the notice of the respondents in the year 2015 whereafter impugned order dated 06.02.2015 superannuating the petitioner with effect from 31.10.2013 has been passed. It has been contended that in the application dated 07.07.1981 for admission to the General Provident Fund Scheme, the date of birth of the petitioner is recorded as 20.10.1955 and the same is the case in other documents which have been signed by the petitioner during his service career. It has been submitted that the petitioner has managed a Certificate of Birth from Government Girls Middle School, Qazigund, wherein in his date of birth is shown as 20.10.1958.

5) According to the respondents, there is a visible tampering in the service book of the petitioner and the said tampering has been done at the instance of the petitioner. It has been submitted that the petitioner has sworn an affidavit and submitted the same with the respondents wherein he has declared that he has no knowledge about the tampering of his date of birth in the service book and that the tampering has been done without his knowledge. He has further declared that he will abide by the orders/instructions that may be issued by the competent authority. The respondents have submitted that they have followed the rules of natural justice by constituting a committee in terms of the impugned order dated 09.07.2015 and after holding the enquiry, the committee has found that there is tampering in the date birth of the petitioner in his service book and that his actual date of birth is 20.10.1955.

6) I have heard the learned counsel for the parties and perused the documents placed on record by the parties along with their pleadings, as also the record produced by the respondents.

7) From the pleadings of the parties, it emerges that the petitioner was initially engaged as a Daily Wager in the year

1974 whereafter his services were regularised in the year 1981. The original service book, which has been produced by the respondents, shows a visible tampering. It appears that the figure '8' has been tampered with and word 'eight' has also been tampered with. Both figure '8' as well as word 'eight' appear to have been recorded in a different ink.

8) The respondents have produced a copy of the affidavit which the petitioner had submitted when the tampering of service book came to the notice of the respondents in the year 2015. The original of the said affidavit is available in the record. In the said affidavit, the petitioner has expressed his ignorance about the tampering but has undertaken to obey the instructions of the authorities as may be issued in terms of the record of the Municipal Committee, Qazigund, and Directorate of Urban Local Bodies, Kashmir, meaning thereby that the petitioner has admitted that there is a tampering in his service book as regards his date birth and that he would abide by whatever is there in the official records. It is only upon submission of the said affidavit by the petitioner that the respondents issued impugned order dated 06.02.2015 whereby the petitioner is deemed to have retired from service on 31.10.2013 by taking his date of birth as 20.10.1955, which existed in the records of the respondent Department.

9) From the above facts and circumstances, it is clear that it is not a case where the impugned order has been passed by the respondents in violation of the principles of natural justice, but it is a case where the petitioner has admitted that there is a tampering in his service record which relates to his date of birth. In the face of this admission on the part of the petitioner, it was not incumbent upon the respondents to issue show cause notice to him before passing the impugned order directing his superannuation from 31.10.2013.

10) The petitioner has placed on record copy of the certificate issued by Government Girls Middle School, Qazigund, which reflects his date birth as 20.10.1958. The certificate has been issued on 09.04.2015. The certificate in question has been issued after the petitioner was superannuated from service. Therefore, it is obvious that the said certificate could not have been made the basis for recording the date of birth of the petitioner in his service book at the time of his entry into the service. The reliance placed by the petitioner on the said certificate is wholly misconceived.

11) In the instant case, the entry relating to the date of birth of the petitioner in his service book has visible

tampering. The record produced by the respondent shows that the date of birth of the petitioner recorded in his application for allocation of GP Fund Account number is 20.10.1955. Similarly, in various applications which the petitioner has submitted for withdrawal of GP fund from time to time also reflect his date of birth as 20.10.1955. These applications are duly signed by the petitioner. Thus, throughout his service career, the date of birth of the petitioner has been recorded as 20.10.1955 but only in his service book, his date of birth is shown as 20.10.1958, which, as already stated, contains a visible tampering. In the face of this position, it is clear that it is a case where the respondent Department has mentioned the date of birth in the service book of the petitioner as 20.10.1955 which has been tampered and changed to 20.10.1958.

12) Apart from the above, the petitioner, as per his own case, was engaged as a Daily Wager in the year 1974. If his date of birth is taken as 20.10.1958, then at the time of his engagement as Daily Wager, his age was less than 18 years. It is not the case of the petitioner that he was engaged as a Daily Wager in relaxation of rules. Therefore, the age projected by the petitioner is not acceptable because a minor could not have been engaged as a Daily Wager. This throws considerable doubt on the authenticity of the

certificate on which the petitioner is placing reliance for depicting his date of birth as 20.10.1958.

13) Learned counsel for the petitioner has placed much reliance upon communication dated 16.06.2015, addressed by the Director, Urban Local Bodies, Kashmir to the Commissioner/Secretary to Government of J&K, Housing and Urban Development Department, wherein he has recommended withdrawal of impugned order of superannuation of the petitioner pending outcome of the enquiry. In the said communication, the Director has, after referring to the enquiry relating to authenticity of the school leaving certificate dated 9th April 2015 produced by the petitioner, made the aforesaid recommendation.

14) In the above context, it is to be noted that the said certificate has been issued by the Govt. Girls Middle School, Qazigund, on 9th April 2015 after the impugned order had already been passed. So, it is not on the basis of this certificate that the original date of birth of the petitioner was recorded in his service book. Even otherwise, there is a considerable doubt about the authenticity of the said certificate as the record produced by the respondents, which includes the record obtained by them from the concerned school, shows that there are insertions and

corrections in the relevant register of the school, which makes it too suspicious to be relied upon. Otherwise also as indicated above, the date of birth of the petitioner can never be taken as 20.10.1958 because he has entered the service as daily wager in the year 1974 and if his year of birth is taken as 1958, he would not have attained the minimum age for entering into government service on the said date.

15) From the foregoing discussion, it is clear that the present case is not the one relating to change of date of birth of the petitioner but it is a case where, from the very beginning, date of birth of the petitioner has been recorded as 20.10.1955 and his date of birth in the service book has been tampered. In these circumstances, there was no requirement for the respondents to hold an enquiry into the matter before passing the impugned order of retirement against the petitioner, which, by no stretch of imagination, can be termed as premature retirement.

16) It seems that by way of abundant caution, the respondents have held an enquiry relating to the circumstances in which the date birth of the petitioner has been tampered in his service book. The enquiry has been completed and the report of the enquiry is available in the record. As per the said report, the date birth of the

petitioner as recorded in the service book has been found tampered. Keeping in view the facts and circumstances of the instant case, there was no requirement for the respondents to either afford an opportunity of hearing to the petitioner or to hold an enquiry into the matter before passing the impugned order.

17) In view of what has been discussed hereinbefore, the writ petition is dismissed. The respondents are, however, directed to release the retiral benefits in favour of the petitioner in accordance with law. It is further provided that the petitioner shall be paid full salary till the date he has actually worked with the respondent department, notwithstanding his deemed superannuation with effect from 31.10.2013.

18) The record be returned to the learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar,
26.09.2024
“Bhat Altaf-Secy”

Whether the order is reportable: Yes/No