

It is not clear how the petitioner's appointment in the respondents' Establishment is connected to his father's death in a road accident, as neither the petitioner asserts the fact that his father was employed with the respondents and that he was appointed on compassionate grounds, nor does his letter of appointment dated 12.04.1983 issued by the Works Manager, Irrigation Division, Meerut, shows that explicitly. There is no issue about the fact that the petitioner was indeed appointed on 12.04.1983 in the respondent's Establishment as an unskilled labourer. Therefore, we proceed on the edifice of the fact that the petitioner was appointed in the respondents' Establishment on 12.04.1983, as aforesaid.

3. Apparently, the petitioner continued in service and was serving as a Mechanic Grade-I in the Establishment of the Works Manager, respondent No. 3, when he was served with a notice of retirement dated 13.05.2024, saying that he would retire from service on 31.08.2024, upon attaining the age of superannuation, to wit, 60 years. The petitioner appears to have represented the matter before the Works Manager with a case that his date of birth was 20.02.1967, entitling him to continue in service until 28.02.2027. This application was rejected by the order dated 03.07.2024 made by the Works Manager, for reasons indicated, that we would presently detail.

4. It is the petitioner's case that he passed his Class VIII examination in the year 1982 from the Shri Sanjay Gandhi Memorial Vidyalaya, Salarpur, Meerut and according to the school-leaving certificate issued by the Institution aforesaid, the petitioner's date of birth is 20.02.1967. He appeared for his high-school examination in the year 1985, but failed. There is a high-

school marksheet that the petitioner has brought on record, issued by the Uttar Pradesh Board of High School and Intermediate Education, which shows the petitioner's date of birth to be 20.02.1967. The petitioner also cites a document of original probative value about his age. It is a certificate issued by some functionary in the Irrigation Workshop Division, Meerut, called the *Mukhya Samaypal*. A photostat copy of the document is annexed as Annexure No. 7 to the writ petition. This document too shows the petitioner's date of birth to be 20.02.1967, the date of appointment as 01.04.1983 and his date of retirement as 31.03.2025.

5. The petitioner appears to have further represented his cause through a representation dated Nil, again addressed to the Works Manager, Irrigation Workshop Division, Meerut, seeking a restoration of his date of birth in his service records as 20.02.1967 instead of 01.09.1964.

6. This representation was still pending, when the petitioner, realising the futility of the remedy, moved this Court under Article 226 of the Constitution on 24.07.2024, a little over a month ahead of his scheduled retirement, in terms of the orders impugned. This petition came up for admission on 05.08.2024, when this Court summoned the petitioner's service book in original from the custody of the Works Manager, Irrigation Workshop Division, Meerut and the Assistant Engineer-II, Irrigation Workshop Division, Meerut, posting the matter on 08.08.2024. On 08.08.2024, a notice of motion was issued, after a perusal of the petitioner's service book, by a very detailed order, asking the Works Manager and the Superintending Engineer, Irrigation Workshop Circle, Lucknow to show cause in the matter. On

14.08.2024, two personal affidavits were filed, one by the Works Manager, respondent No. 3 and the other, by the Superintending Engineer, respondent No. 2. The affidavits were treated as counter affidavits in the matter. Learned Counsel for the petitioner waived his right to file a rejoinder. The petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

7. It may be remarked here that the petitioner's service book produced earlier, that was directed to be retained in a sealed cover with the learned Registrar General, was perused by the Court, when the matter was heard.

8. In the personal affidavit filed by the Works Manager, the stand taken is that the petitioner was appointed in the respondents' Establishment as an unskilled labourer on 01.04.1983, considering him a major. Later on, the petitioner, after taking permission from the respondents, sat his high-school examination as a private candidate in the academic session 1984-85. The mark-sheet issued to the petitioner shows his date of birth as 20.02.1967, which is, apparently, incorrect, according to the respondents, for the reason that the petitioner was appointed on 01.04.1983, considering him a major. About the Transfer Certificate issued by Shri Sanjay Gandhi Memorial Vidyalaya, Salarpur, Meerut dated 04.07.1982, it is averred in paragraph No. 7 of the Works Manager's affidavit that the document is suspect and its genuineness doubtful. In order to substantiate the respondents' stand about the fidelity of this mark-sheet, it is said in the affidavit under reference that there is overwriting noticeable in the document. It is also said that it is strange that the Transfer Certificate does not mention to

which class the petitioner was admitted in the Institution, while the reason for leaving the Institution is the petitioner passing out Class VIII. It is also mentioned that the sentence "कक्षा आठ उत्तीर्ण" shows clear-cut overwriting done. It is also the respondents' case that likewise, there are several other overwritten words noticeable, that create doubt about the genuineness of the Transfer Certificate issued on 04.07.1982 by the Institution.

9. It is next said that it is on the basis of the aforesaid fabricated Transfer Certificate that the petitioner appeared as a private candidate in his high-school examination, where he got his date of birth recorded as 20.02.1967. It is this date of birth which is shown on his high-school mark-sheet. The Works Managers goes on to say that feeling guilty and remorseful for the manipulation in record that the petitioner had done, he filed a notarial affidavit on 19.01.2012 with the Works Manager at the relevant time, one A.K. Agarwal, where he has said that he was appointed on 01.04.1983, aged 18 years and 7 months. This affidavit was filed, according to the Works Manager, to spare himself of the consequences of the manipulation done about his age by the petitioner. The stand further is that on the basis of the affidavit dated 09.01.2012 filed by the petitioner, his date of birth in the service book has been recorded as 01.09.1964 by the then Assistant Engineer (Time Office), who was the custodian of the service book. The then incumbent Assistant Engineer has also retired from service. It is, nevertheless, averred that it seems to be correct that the petitioner was a major at the time of employment as an unskilled labourer on 01.04.1983.

10. It is finally said on behalf of the respondents by the Works Manager that

considering his date of birth in the notarial affidavit dated 09.01.2012, the petitioner has been superannuated on 31.08.2024. The Superintending Engineer has also taken an identical stand.

11. Heard Mr. Ashwini Kumar Srivastava, learned Counsel for the petitioner and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State.

12. A perusal of the service book shows that the petitioner's date of birth, originally recorded on the 3rd page of the service book in F.R. Form No. 13, is in blue ink. It is written both in words and figures. It is 20.02.1967. It is signed by the petitioner, also in blue ink. The other entries in the service book are in a different hand and by a different pen, all in black ink. The originally recorded date of birth in blue ink is entered in Column No. 5 meant for recording the date of birth. However, in the fourth column relating to the petitioner's father's name and his place of residence, written in brackets are the words "शपत पत्र के अनुसार जन्मतिथि 01.09.1964". This is clearly an alteration in the date of birth originally recorded in the appropriate column i.e. Column No. 5 in blue ink. The altered entry, which shows it to be based on affidavit, is not initialed, nor signed by any official of the Establishment, but, that may not be of much consequence.

13. Despite this fact about alterations in the date of birth in a different hand and ink noticed in the order dated 08.08.2024, by which a notice of motion was issued, the respondents, in their affidavits, do not deny for a fact that the petitioner's date of birth, originally recorded, was 20.02.1967. Even otherwise, the other date of birth recorded against the petitioner's father's name in

Column No. 4 in brackets, is a changed and later entered date of birth. Since it is entered against a column meant for a different purpose and also gives the basis for the said date by employing the words "शपत पत्र के अनुसार", there is no cavil on facts that the petitioner's date of birth was altered by the respondents from 20.02.1967 to 01.09.1964 in his service book. The respondents say that the petitioner gave an affidavit volunteering the change, because he wanted to insulate himself from any possible action about forgery in his Class VIII mark-sheet, which he has utilized to sit in the high-school examination, while in service. This does not appear to be very radical, for the reason that the entries in the service book date back to 01.04.1983 and the petitioner sat his high-school examination during the session 1984-85, after taking permission from the respondents. Therefore, by the apparent tenor of the service book, the earliest entry about the petitioner's date of birth was made before the petitioner sat his high-school examination and failed there. There is also no basis in the earliest entry in the relevant column about the petitioner's date of birth. As such, there was no reason for the petitioner to be driven by any motive of insulating himself against action or even remorse, as the respondents say, about manipulating his date of birth in his Class VIII Transfer Certificate, on the basis of which, the petitioner later on sat in his high-school examination.

14. All this is pure conjecture on the respondents' part. Apparently, the reason why the petitioner gave the affidavit dated 09.01.2012 was that he was either placed in some kind of a fear or faced some kind of a threat about the consequence of being employed in government service as a minor, which would be the case if the

petitioner's date of birth, originally recorded in his service book, were accepted. The petitioner joined as a casual labourer on 01.04.1983, and going by his date of birth originally recorded in his service book, to wit, the 20.02.1967, he would be aged 16 years and 2 months from the date he was employed.

15. There is much misconception about the consequences of this kind of an employment, both with the employers and employees, particularly, in the State employment. Some officers of the Government, who act for the State, believe that the employment of a minor would render his appointment void or make him liable for an offence of cheating etc. The employees also harbour the same belief. It must be acknowledged for a fact that there was quite a long period of time in the yesteryears, when minors above a certain age were employed in government service on Class VI jobs, without much thought being spared to the issue. The legal proposition about such employees and their rights is that the years of service that they put in before attaining the age of majority are to be discounted from their period of service for various purposes. The flaw, however, does not invalidate the appointment. Such service is usually referred to as "Boy Service". It is also to be remarked that for some Class IV posts in yesteryears, the age of eligibility was 16 years, and not 18. But, we do not say anything about that, because none of the parties placed the relevant rules applicable at the relevant time in this case as to eligibility. Thus, notwithstanding the petitioner's age, as originally recorded, making him a minor at the time when he was appointed to the Class IV post of a labourer, there was no reason for the respondents to castigate the petitioner's

conduct about it, or put him under pressure to furnish an affidavit about the fact that at the time when he entered service, he was aged 18 years and 7 months and then, redetermine his date of birth on that basis.

16. Now, what is to be seen is the effect of the affidavit dated 09.01.2012, that the petitioner furnished. The said affidavit acknowledges the fact that the petitioner was aged 18 years and 7 months at the time when he entered the respondents' service. Admittedly, the petitioner's date of birth, originally recorded in the service book, is 20.02.1967. Would this affidavit have the effect of entitling the respondents to alter the petitioner's date of birth? We think not. The answer is to be found in Rules 2 and 3 of The Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974. Rules 2 and 3 of the Rules of 1974 read :

2. Determination of correct date of birth or age.— The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

3. Overriding effect.— These rules shall have effect, notwithstanding anything contrary contained in the relevant service rules or orders.

17. Rule 2 of the Rules of 1974 is unequivocal, in that, that certificates of education below that of the high-school or an equivalent certificate are irrelevant for the purpose of a determination of a person's age. The petitioner's date of birth entered in his high-school mark-sheet, where he failed the examination, is also not a relevant document, as also his Class VIII mark-sheet, under the said Rule. All that is relevant under Rule 2 of the Rules of 1974 for an employee, who is not a matriculate or the holder of an equivalent certificate for the determination of his date of birth is the date of birth or age recorded in his service book at the time of his entry into service, to employ the expression in the Rule. The date of birth recorded in such government servant's service book at the time of entry into service by mandate of Rule 2 has to be deemed as his correct date of birth for all purposes, which include superannuation. The employment of the expression "deemed" in the context of Rule 2 is of profound relevance. Non-matriculate employees in the lower grades of government servants, wherever eligible, may not have very accurate record about their date of birth or even age. It is for the purpose of curtailing controversy related to their age, assuming that there would be no dependable testimonial about it, the statute raises a fiction that the date of birth or age recorded in the service book at the time of entry into service shall be deemed to be correct for all purposes under Rule 2, which includes superannuation. No other evidence about such a non-matriculate employee's date of birth is, therefore, to be let in or examined at all. Reference in this

regard may be made to the decision of this Court in **Smt. Kalyani Devi v. State of U.P. and others**². Since there is no cavil about the issue that the petitioner's date of birth, that was originally recorded, was 20.02.1967, and later on changed on the basis of the notarial affidavit dated 09.01.2012 furnished by the petitioner, the change is clearly in the teeth of Rule 2 of the Rules 1974. Moreover, by virtue of Rule 3, the Rules of 1974 have overriding effect over all other rules.

18. The result would be that the petitioner's date of birth originally recorded in his service book, to wit, 20.02.1967, has to be regarded as his correct and immutable date of birth. The conclusion, to the contrary, reached by the respondents and the orders impugned are, therefore, manifestly illegal.

19. In the result, this petition **succeeds** and is **allowed**. The impugned orders dated 13.05.2024 and 03.07.2024, both passed by the Works Manager, Irrigation Workshop Division, Meerut are hereby **quashed**. A *mandamus* is issued to the Superintending Engineer, Irrigation Workshop Circle, Lucknow, the Works Manager, Irrigation Workshop Division, Meerut and the Assistant Engineer-II, Irrigation Workshop Division, Meerut to ensure, amongst themselves, immediate reinstatement of the petitioner in service, together with all consequential benefits of salary, increment and seniority. The petitioner would be entitled to the arrears of salary for the period that he remained out of employment. It goes without saying that the petitioner would be entitled to continue in service until he attains the age of superannuation according to his originally recorded date of birth in the service book, to wit, 20.02.1967.

20. There shall be no order as to costs.

21. The Registrar (Compliance) is directed to communicate this order to the Superintending Engineer, Irrigation Workshop Circle, Lucknow through the learned Chief Judicial Magistrate, Lucknow, and the Works Manager, Irrigation Workshop Division, Meerut and the Assistant Engineer-II, Irrigation Workshop Division, Meerut, both through the learned Chief Judicial Magistrate, Meerut.

(2025) 2 ILRA 668
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 11.02.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Writ - A No. 12905 of 2024

Dan Bahadur Yadav ...Petitioner
Versus
Managing Director And Ceo Bank of Baroda Corporate Center Mumbai & Ors.
...Respondents

Counsel for the Petitioner:
Salik Ram Yadav

Counsel for the Respondents:
Prashant Kumar Srivastava

(A) Service Law - Pension - Bank of Baroda (Employees') Pension Regulations, 1995 - Regulation 41 - Commutation - The Central Civil Services (Commutation of Pension) Rules, 1981 - Rule 10 A - Restoration of commuted pension - Doctrine of Estoppel - Wednesbury Unreasonableness - Matters related to commutation of pension are complex affairs involving vexed issues traversing diverse fields, requiring

specialized expertise - In such matters, the Court would venture only in cases of manifest and apparent arbitrariness. (Para -13)

Petitioner (retired employee of Bank of Baroda) challenged - validity of a note appended to Regulation 41 of the Bank of Baroda (Employees') Pension Regulations, 1995 - which mandates a 15-year period for the restoration of commuted pension - petitioner argued - commuted amount had already been set off in 9.81 years, making the remaining deductions unjust enrichment. **(Para - 2,3,4)**

HELD: - Petitioner voluntarily accepted the commutation scheme in 2013 and is now estopped from challenging it. 15-year restoration rule is neither arbitrary nor unreasonable and has been upheld by the Hon'ble Supreme Court in *Common Cause case*. Provision does not amount to unjust enrichment, and no interference is warranted. **(Para -13,19)**

Petition dismissed. (E-7)

List of Cases cited:

1. Hari N. Saste & ors. Vs U.O.I. & ors., C.A.T., Mumbai Bench, Mumbai in O.A. No. 860 of 2024
2. Shila Devi & ors. Vs St. of Punj. & ors., C.W.P. No. 9426 of 2023 (O&M)
3. "Common Cause" a registered society & ors. Vs U.O.I., (1987) 1 SCC 142
4. Associated Provincial Picture Houses, Ltd. Vs Wednesbury Corporation, (1948) 1 K.B. 223
5. East India Commercial Co. Ltd. Vs Collector of Customs, AIR 1962 SC 1893

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Salik Ram Yadav, the learned counsel for the petitioner and Sri Prashant Kumar Srivastava for the opposite parties.