



Shamli dated 08.07.2016, holding that the petitioner's date of birth was 13.06.1954 and not 13.06.1955 and that, therefore, he had served an extra year beyond his age of superannuation. The order on this premise directs recovery of a year's salary that the petitioner had drawn beyond his date of superannuation reckoned on the basis of his date of birth being 13.04.1954.

2. Apart from questioning the recovery, the petitioner also prays that a mandamus be granted, ordering the respondents to pay the petitioner his provident fund, commuted value of pension, leave encashment and further to pay his final pension instead of a provisional pension. The petitioner also claims arrears of pension due on account of regular pension together with interest.

3. The petitioner retired as a Sub-Inspector (Special Category) from the State Police upon attaining the age of superannuation on 30.06.2015. He was last posted at Police Station Jhinhana, District Shamli. He was a Group-C employee. After retirement, the petitioner was sanctioned a provisional pension, paid his gratuity and group insurance, but not the provident fund, commuted pension, leave encashment and final pension.

4. After the petitioner's retirement, a preliminary inquiry was held into his conduct with regard to the interpolation of his date of birth in the character roll. Based on the preliminary inquiry, he was issued with a show cause notice dated 29.03.2016, saying why salary for one year that he served beyond his age of superannuation be not recovered. It is said in the show cause notice that after his retirement on 30.06.2015, upon a perusal of his service records, it was found that his date of birth

in the service record had been changed to 13.06.1955 in place of 13.06.1954. The petitioner was required to submit his explanation to the show cause within fifteen days. The petitioner submitted his reply to the show cause notice on 15.04.2016 before the Superintendent of Police, Shamli. He denied the allegations and categorically said that his date of birth was 13.06.1955. He said that there is no interpolation done by the petitioner in the character roll. It was asserted in his answer to the show cause that in his High School certificate, the petitioner's date of birth is clearly recorded as 13.06.1955, which is his correct and genuine date of birth. The petitioner enclosed a photostat copy of his High School Certificate along with his reply. He further said that he would produce the original High School Certificate issued by the U.P. Board of High School and Intermediate Education, Allahabad (for short, 'the Board') before the Superintendent of Police.

5. The petitioner's case is that he was appointed as a Constable and his appointment has been made on the basis of his High School Marksheet and Certificate earned from the Board. The petitioner's High School Certificate as well as the Marksheet clearly show his date of birth as 13.06.1955. The petitioner passed his High School examination in the year 1973 conducted by the Board with Roll No.624710.

6. The Superintendent of Police, Shamli proceeded to reject the petitioner's explanation to the show cause and, holding his date of birth to be 13.06.1954, directed recovery of salary from the petitioner for the period of one year that he had served extra on account of his incorrect date of birth, to wit, 30.06.1955, which the

Superintendent of Police says was interpolated in the service records by scoring out the earlier date of birth recorded as 13.06.1954.

7. Aggrieved, this writ petition has been instituted.

8. A notice of motion was issued on 05.05.2017 and interim stay of the operation of the impugned order granted. The petitioner has filed a supplementary whereas respondent Nos.2 to 4 have filed a counter affidavit. A short counter affidavit has been filed on behalf of respondent No.1, which is formal.

9. Learned Counsel for the petitioner waived his right to file a rejoinder.

10. The parties having exchanged affidavits, the petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

11. Heard Mr. Devesh Mishra, learned Counsel for the petitioner in support of this petition and Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of the State.

12. Upon hearing learned Counsel for the parties, what this Court finds is that in the preliminary inquiry held by the Circle Officer, Jhijnjhana, District Shamli, it transpired that the petitioner appeared in the High School Examination as a regular candidate from the Gandhi Smarak Inter College, Doghat, District Baghat in the year 1971 and failed the High School Examination conducted by the Board. The petitioner's High School Certificate for the examination of 1973 available on the petitioner's service record when sent for

verification to the Gandhi Smarak Inter College, Doghat, District Baghat, led to the College Principal submitting a report that the petitioner while he sat the High School Examination of 1971 from their institution, had his date of birth recorded as 13.06.1954. The High School Examination of 1973 that the petitioner passed was done not as an institutional candidate, but as a private one. There is a scholar register and transfer certificate form, also available on the service record, where too the petitioner's date of birth recorded is 13.06.1954. In the Head Constable Cadet Form, the petitioner's date of birth recorded is 13.06.1954. In the character roll at Page 2, after the Sub-Inspector's name and address, his date of birth recorded was 13.06.1954, which was later on scored out and changed to 13.06.55. It is also noticed that at the time of recruitment, the petitioner had filled up his application form in his own hand and duly signed it, where too he has mentioned his date of birth as 13.06.1954. It is on all this evidence that the Officer, holding the preliminary inquiry, came to the conclusion that notwithstanding the recorded date of birth in the petitioner's High School Certificate, his date of birth, originally recorded as 13.06.1954, was the correct date of birth, that was scored out and got changed to 13.06.55.

13. The Superintendent of Police has apparently acted on these findings of the Officer, conducting the preliminary inquiry, to opine the petitioner's date of birth is 13.06.1954 and not 13.06.1955. It is also true, as we read the impugned order, that the Superintendent of Police has not recorded any reasons for his conclusions, which he ought have done, but the preliminary inquiry that looks into underlying evidence about the petitioner's

date of birth is consistent right up to the application form for recruitment and the Head Constable Cadet Form. The recruitment form carries the date of birth 13.06.1954 in the petitioner's own hand, which he has signed. The scholar register and transfer certificate form, which must be from the school, where the petitioner earlier read, available on record, also shows the petitioner's recorded date of birth as 13.06.1954.

14. It must be remarked here that generally speaking and invariably so, the High School Certificate has to be given precedence over any other evidence about an employee's date of birth. The evidentiary value of a High School Certificate about the employee's date of birth recorded there, is almost unignorable. We too would have followed the date of birth recorded for the petitioner in his High School Certificate, the genuineness of which has not been shown to be doubtful by the respondents, but for some special features in this case.

15. So far as the scoring out of the date in the petitioner's character roll from 13.06.1954 to 13.06.55 is concerned, there was no difficulty in accepting the corrected entry as the true one for that accords with the date of birth recorded in the High School Certificate. So far as the scoring out of the earlier entry is concerned, it is something which the respondents have to explain, because the character roll remains in their custody; not the petitioner's. The chief feature, which makes a distinction in this case is the fact that there is a consistent record of the petitioner's date of birth in his scholar register and transfer certificate available on record from some institution, where he studied and the Gandhi Smarak Inter College, Doghat, District Baghat,

where he sat his High School Examination in the year 1971 and failed. It shows the petitioner's date of birth to be 13.06.1954. Above all is the fact that in the application form that the petitioner filled in his own hand, the petitioner has written his date of birth as 13.06.1954. In his Head Constable Cadet Form-2, the date mentioned is 13.06.1954. This, therefore, is a case, where in our opinion, the respondents have not gone wrong in questioning the petitioner's date of birth, scored out and changed in the character roll from 13.06.1954 to 13.06.55, holding the former to be the correct date of birth and determining his age of superannuation accordingly.

16. The flaw in the S.P.'s order of lacking in reasons is there, but that is amply made up for by the material, on which it is based. We are not inclined to disturb it on that ground, because a remand would only be a waste of time and may lead to the same inference, very reasonably drawn with reasons furnished. In substance, it is a case where no prejudice can be said to have been occasioned to the petitioner by the absence of reasons in the order impugned. No different conclusion, on any view of the matter, can possible be reached.

17. This takes us to the next limb of the matter, which the learned Counsel for the petitioner has again argued with much vehemence. It is said that if the petitioner, for whatever reason, has worked in the establishment of the respondents up to 30.06.2015, treating his date of birth to be 13.06.1955, the respondents cannot recover salary paid to him for the period of time that he has rendered service to them. Mr. Sharad Chandra Upadhyay, learned Standing Counsel, on the other hand, urged on behalf of the State with equal

vehemence that the petitioner's continuance after 30.06.2014 is a nullity and dehors the rules as he superannuated on 30.06.2014, going by his correct date of birth. No remuneration could be paid to him for reason that he was not lawfully holding the post during that period of time. We do not agree with the learned Standing Counsel on this point.

18. It is a well settled principle of law that if an employer takes work from an employee in consequence of a mistake, the employee cannot be denied his remuneration or salary. If denial were permitted on ground that the continuance in office of the employee and the rendering of service by him was without authority of the law, it would amount to the taking of *begar*, prohibited under Article 23 of the Constitution. The respondents here are the State and they certainly cannot take *begar* from the petitioner for the extra year that he has served them. It is not that the petitioner has rendered *pro bono* service. Immediately before 30.06.2014, the petitioner was entitled to work in the employ of the respondents and for the next one year, he was permitted to work, on account of a mistaken date of birth recorded in the character roll. The petitioner is not a wayfarer or a trespasser in office. He was a duly appointed Sub-Inspector, who was permitted to continue discharging his duties with the respondents believing that he had to superannuate after a year, on the foot of his date of birth being 13.06.1955. In these circumstances, it would be a constitutionally prohibited *begar*, if the respondents are permitted to recover the remuneration, which the petitioner received for the period 01.07.2014 to 30.06.2015.

19. In the context of a compassionate appointment, that was secured by playing fraud upon the

employers, in that, that the deceased employee, whose dependent had claimed appointment, was 10 years afterwards discovered to be a temporary hand, who had been dismissed from service. While holding the compassionate appointee's dismissal from service to be valid, the employers were not held entitled to recover the entire salary for the period of ten years that the compassionate appointee had actually worked for them on the basis of his fraudulent appointment. This happened in **Sushil Kumar Pandey v. State of U.P. and others, 2010 (7) ADJ 617 (DB)**, where a Division bench of this Court observed:

“23. Therefore, upon the aforesaid discussions, we are of the view that the judgment of the learned Single Judge does not call for any interference. However, we have our reservation regarding the portion of the order by which the learned Single Judge has directed for recovery of salary that was paid to the appellant. Considering the facts and circumstances of the case, it is undeniably true that fraud has been played in obtaining the appointment by the appellant and it is also true that the said fraud would have remained undetected if the mother of the appellant had not applied for family pension. During this period more than 10 years had elapsed and the authorities continued to take work from the appellant and for the services rendered he was remunerated by salary. Now after 10 years of service as the appellant has been dismissed, in such a case, the recovery of entire salary from the person would be too severe for the acts and omission on his part but also the omission and negligence on the part of the authorities in granting appointment to the appellant, which in the facts of the case cannot be ruled out. Even

otherwise Article 23 of the Constitution of India prohibits taking of 'Begar'. The State-respondents having taken work from the appellant (Sushil Kumar Pandey) for more than 10 years before the fraud was detected, cannot be permitted to ask for refund of the entire salary paid to him as it would amount to taking of 'Begar' which the Constitution of India strictly prohibits.”

20. This Court must notice that in the Bench decision in **Sushil Kumar Pandey (supra)**, what the employers were held not entitled to recover was salary paid on the minimum pay-scale; not the allowances and other emoluments. It has to be borne in mind that **Sushil Kumar Pandey** was a case of an utter fraud in securing employment and thereafter rendering service. In cases where the employee's appointment and principal part of the service is not at all the result of a fraud, but a position validly held under the law until a particular date and the issue being about salary paid for the extra period of time that the employee was permitted to work by the employer beyond the age of superannuation, the protection from recovery cannot be limited to the minimum basic pay-scale.

21. In the case here, the respondents may be right about the petitioner's age, but the petitioner too has not played any fraud or acted *mala fide*. The incorrect entry in the character roll about the petitioner's date of birth cannot be blamed on the petitioner. The respondents have to take responsibility for that entry, whether scored out and corrected or recorded free from blemish. The petitioner too had basis to believe bona fide that he would be entitled to continue until 30.06.2015, because his date of birth recorded in the High School Certificate is

13.06.1955. Therefore, if the respondents permitted the petitioner to continue on the basis that his date of birth was 13.06.1955, they may be right in correcting it to 13.06.1954, but the petitioner is also not utterly wrong in the sense the mind of the one, who was out to play a fraud, would have worked. There is nothing like that in the petitioner's case.

22. About the right to recover, a similar question arose before the Supreme Court in **Man Singh v. State of U.P., 2022 SCC OnLine SC 726**, where the facts and the principle are expressed by their Lordships with inimitable brevity thus:

“3. The appellant was appointed as a principal in the year 1974-1975 when junior High School was upgraded as High School and was recognized by the State Government. Thus, the appellant has worked for almost 24 years before the services came to be cancelled for the reason that he is relative of the member of the Selection Committee.

4. The order dated 24.12.1998 also records that the money be recovered from the appellant which has been paid to him, as a result of his irregular appointment for the post of Principal.

5. We find that the High Court has failed to consider the fact that even if the appointment was irregular, the appellant had discharged the duties and in lieu of duties, he had to be paid. The State cannot take any work from any employee without payment of any salary.”

23. In the circumstances that we have noticed here, this Court is of opinion that no recovery from the petitioner of a sum equivalent to that paid in salary and

