

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.49 of 2007.

Date of decision: 26.2.2007

HRTC and another	..Petitioners
-Versus-	
Hukam Chand	..Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.H.S.Rawat, Advocate.

For Respondent: Mr.Vikas Bhardwaj, Advocate.

Deepak Gupta, J.(Oral)

This petition is directed against the order passed by the learned H.P. State Administrative Tribunal directing the petitioners-HRTC to give pecuniary benefits to the respondent for the period 1.6.2003 to 31.1.2006.

Brief facts relevant for the decision of the case are that the respondent herein was employed as driver in the HRTC. At the time when he was given employment the respondent had filed an affidavit stating his date of birth to be 11.1.1948. Later on one Amarjit Singh filed a complaint that the affidavit filed by respondent Hukam Chand was false and his actual date of birth as per the school leaving certificate was 2.5.1945.

On the basis of the complaint lodged by Amarjit Singh, a challan was filed against Hukam Chand and the case was tried by the learned Chief Judicial Magistrate, Dharamshala who convicted Hukam Chand of having committed offences under Sections 420, 468 and 471 of the Indian Penal Code. On the basis of the conviction recorded in criminal case the HRTC changed the date of birth of Hukam Chand in the service record from 11.1.1948 as originally recorded to 2.5.1945. No independent inquiry was conducted by the HRTC with regard to the date of birth and it appears that the change was ordered in the service record solely on the basis of the conviction recorded by the learned CJM.

Hukam Chand challenged the order of the learned CJM, Kangra in appeal. The learned Sessions Judge, Kangra at Dharamshala on 1.9.2003 accepted his appeal and set-aside the order of conviction passed against him. In the meantime Hukam Chand had been retired by taking his date of birth to be 2.5.1945 and he was actually retired w.e.f. 31.5.2003.

The learned Tribunal has come to the conclusion that since the change in the date of birth was made solely on the basis of the order of conviction which order has been set-aside the said change was illegal and not warranted under law and therefore the date of birth as originally recorded i.e. 11.1.1948 had to be taken into consideration for reckoning the age of the respondent Hukam Chand for reckoning the date of his retirement and

consequently he should have been retired in January, 2006. It is on this basis that the Tribunal has directed that the respondent Hukam Chand should be paid financial benefit for the period w.e.f. 1.6.2003 to 31.1.2006.

We have heard learned counsel for the parties. Admittedly the employer did not hold any separate inquiry and the change in the date of birth of the employee was made solely on the basis of the order of conviction. Since this order of conviction has been set-aside, the action changing his date of birth in the service record cannot stand legal scrutiny. We find no error in the order of the Tribunal. The writ petition is accordingly dismissed. No costs.

Caveat Petition No.262 of 2006:

Allowed.

CMP No.105 of 2007:

In view of the dismissal of the writ petition, this application is also dismissed.

(Deepak Gupta),
Judge

February 26, 2007.
PV

(Surinder Singh)
Judge