

PETITIONER:
GENERAL MANAGER (MARKETING) HINDUSTAN FERTILIZER CORPORATION

Vs.

RESPONDENT:
SUBODH CHANDRA DAS & ORS.

DATE OF JUDGMENT 29/01/1988

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
SINGH, K.N. (J)

CITATION:
1988 AIR 701 1988 SCR (2) 862
1988 SCC (1) 594 JT 1988 (1) 241
1988 SCALE (1) 234

ACT:

Constitution of India, 1950: Art. 226-Power of High Court-Scope of Writ Petition filed by employee for altering date of birth-High Court held that date of birth as entered in Service Register not to be interfered but directed reappointment of employee for 3 years after retirement as a special case-Whether High Court justified in passing such order.

HEADNOTE:

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The first respondent, an employee of the appellant-Corporation, who was to retire from his service on 1.6.89 on completion of 58 years of age as per the date of birth recorded in the register maintained by the employer, the appellant-Corporation, filed a writ petition in the High Court claiming that his date of birth should be altered to 20th October, 1938, relying on a certificate issued by the Chief Medical Officer. The petition was contested by the appellant-Corporation.

A Single Judge of the High Court held that it was not possible to accept the case of the first respondent that he was born in the year 1938, and that the date of birth as recorded in the register of the appellant-Corporation should not be interfered with. However, taking into consideration the problems of the respondent, domestic or otherwise he made an order to the effect that the first respondent may be given three more years service after his due date of retirement by reappointing him for that period, as a special case.

Allowing the appeal,

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HELD: The Single Judge of the High Court having found that the date of birth of the first respondent as recorded in the register of the appellant-Corporation should not be interfered with, committed a serious error in making an order directing the appellant-Corporation, as a special case, to reappoint the first respondent for a period of three more years after his due date of retirement, on 1.6.89, on the ground that he had his problems, domestic or otherwise. There was hardly any justification for passing

such an order under Article 226 of the Constitution. [864B-C]
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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1068 of 1987.

From the Judgment and Order dated 16.5.86 of the Patna High Court in Civil Writ Jurisdiction Case No. 2523 of 1981. A.K. Sil and S.K. Sinha for the Appellants.

D.N. Goburdhan for the Respondents.

The following Order of the Court was delivered:

O R D E R

The 1st respondent-Subodh Chandra is working as an operator grade-III under the Hindustan Fertilizer Corporation Ltd. at Sindhri. The date of birth recorded in the register maintained by the Hindustan Fertilizer Corporation Ltd. was 1.6.1931 and in the usual course he has to retire from service on 1.6.1989 on completion of 58 years of age. He, however, filed a writ petition in the High Court of Patna claiming that his date of birth should be altered to 20th October, 1938. In support of his case he relied on a certificate issued by the Chief Medical Officer, Sindhri. The petition was contested by the Hindustan Fertilizer Corporation of India Ltd. After hearing the learned counsel for the parties, the learned Judge who heard the petition held that it was not possible to accept the case of the 1st respondent that he was born in the year 1938 and he further found that the date of birth as recorded in the register of the Corporation should not be interfered with. The learned Judge, however, passed the following order:

"S. Shamsul Hasan, J.: After the matter had been heard at great length and legal and factual pros and cons had been examined it appeared that the year of the birth of the petitioner being 1931 cannot be assailed nor interfered with. Consequently, Mr. Ojha felt that since the petitioner has his problem domestic or otherwise and he in 1971 was in fact given to understand that his year of birth would be 1938, some compassionate endowment may be made in his favour. I am entirely in agreement with Mr. Ojha.

I, therefore, dispose of this application with an expression of my desire, which may be treated as a mandate, that the petitioner may be given three more years of service as a

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special case after his due date of retirement, which could be done by reappointing him for that period. It is made clear that this may not be treated as a precedent for any other employee of the Institution or in any other case."

We are of opinion that the learned Single Judge having found that the date of birth of the 1st respondent as recorded in the register of the appellant-Corporation should not be interfered with, committed a serious error in making an order directing the appellant-Corporation 'as a special case' to reappoint the 1st respondent for a period of three more years after his 'due date of retirement', which is 1.6.1989. There was hardly any justification for passing such an order under Article 226 of the Constitution. The reason given by the High Court is wholly untenable. This appeal filed by the Corporation against the order passed by

the learned Single Judge before this Court has, therefore, to be allowed. We set aside the judgment of the High Court and dismiss the writ petition filed by the 1st respondent. The appeal is disposed of accordingly. No order as to costs.
N.P.V. Appeal allowed.
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JUDIS