

CASE NO.:
Appeal (civil) 2798 of 2005

PETITIONER:
U.P. Madhyamik Shiksha Parishad & Ors.

RESPONDENT:
Raj Kumar Agnihotri

DATE OF JUDGMENT: 21/04/2005

BENCH:
Ashok Bhan & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P.(C) No.13097 of 2003)

Dr. AR. Lakshmanan, J.

Leave granted.

This appeal is directed against the final judgment and order dated 10.03.2003 passed by the Allahabad High Court, Lucknow Bench, Lucknow in Second Appeal No. 334 of 1999 whereby the High Court allowed the second appeal filed by the respondent-herein.

Respondent was working as S.D.I. in the Education Department. As per his service book, his date of birth was 30.07.1941. The Governor using the powers under conditional part of Article 309 of the Constitution of India framed the following Notification. The notification dated 28.05.1974 reads thus:-

"State of U.P.
Niyukti Vibhag Anubhag-4
Notification
28th May, 1974

No. 41/269 Niyukti-4 Governor using the powers under conditional part of Article 309 of the Constitution of India, frames following Niyamawali:-

1. Short title and commencement /1/ This Niyamawali will be called date of birth determination Niyamawali, 1974 for the purpose of appointment in service in U.P.

2. It shall be enforced at once.

/2/. Exact date of birth or determination of Age of a Government servant the date of birth or determination of age of a Government servant which has been written in his High School Certificate or equivalent to it after passing the examination or where a Government servant has not passed any such examination, the date of birth or age which has been written in his service book at the time of entering in Government service, in regard to his services, for all the purposes, whether entitled for promotions/supersession/pre-retirement or retirement or retrial benefits, the date of birth or age as mentioned therein. Any application form or application for correction in his date of birth or age will not be accepted in any manner having any circumstances of any cost.

3. The enforcement of this Niyamawali, a relevant service rule or any order which in corporate some reverse matters even shall be effective.

By Order

/Gulam Hussain/
Commissioner & Secretary

\005\005\005"

The respondent-herein, after a gap of 35 years, filed a Regular Suit No. 176 of 1995 with the prayer to correct his date of birth from 30.07.1941 to 16.10.1945 on the ground that his date of birth was wrongly entered in his High School Certificate of the year 1960 issued by the Madhyamik Shiksha Parishad (hereinafter called "the Parishad"), U.P., Allahabad. A written statement was filed by the Secretary of the Parishad in the said suit explaining the facts that the respondent himself filled up the High School examination form for the year 1960, which was duly forwarded by the Principal concerned after going through the relevant records therein and in view of the High School examination form of the year 1960, the High School Certificate was issued by the Secretary of the Parishad wherein the respondent's date of birth was mentioned as 30.07.1941. It is thus seen that the respondent started litigation for the correction of his date of birth after a gap of 35 years and just four years of his retirement.

The Court of Civil Judge [Junior Division], Sitapur delivered its decision dated 17.07.1999 in favour of the respondent with the direction to correct the date of birth from 30.07.1941 to 16.10.1945. Aggrieved by the orders passed in the civil suit, the Parishad filed Civil Appeal No. 73 of 1999 before the Ist Addl. District Judge, Sitapur who by his order dated 07.08.1999 allowed the appeal of the respondent and held that: "\005. It is admitted by the plaintiff that he himself put his signatures on the High School Examination Form. So he is responsible for the entries in this form."

"\005\005\005 The evidence given by plaintiff in this case is not of such nature that may be said to be leading to this irresistible conclusion that his date of birth is 30.10.45 and, which may be said to be conclusive and irrefutable proof of the fact that his date of birth is 30.10.45 and that date of birth in his high school examination certificate i.e. 30.7.41 is incorrect and that it should be corrected. The finding of learned lower court on this point cannot be upheld as the finding is not based on such conclusive and irrefutable proof which may lead to the irresistible conclusion that the date of birth of plaintiff-respondent is 16.10.45 and finding on this point is liable to be set aside. Plaintiff/respondent have failed to prove his allegation that his date of birth is 16.10.45 by any irrefutable conclusive proof. Point for determination No.1 is decided against the plaintiff/respondent and in favour of the defendant-appellant\005\005.."

The appellate Court also held that the respondent's suit was barred by limitation as the relevant rules framed by the U.P. Board of Education had not been followed by the respondent. As per Rule 7 of G.R. any application for correction is to be made within two years of issuing certificate, while in the present case it was made after more than 15 years i.e. on 25.05.1981 and the suit was filed on 07.04.1995.

Being aggrieved by the aforesaid order, the respondent filed Second Appeal No. 334 of 1999 before the High Court. The High Court passed an interim order dated 15.09.1999 directing the Secretary of the Parishad to enforce the decision dated 17.07.1999 passed by the trial Court with the condition that if the second appeal is dismissed benefit given by the judgment and decree of the trial Court would not be available to the respondent herein. The High Court also stayed the operation of the judgment dated 07.08.1999 passed in Civil Appeal No. 73 of 1999. The High Court again passed another order dated 27.07.2000 to comply with the interim order dated 24.05.2000. The High Court heard the second appeal and passed an order directing the Secretary of the U.P. Board to be present before the Court on 10.08.2000 to inform the Court whether the order dated 24.05.2000 had been complied with or not. The notice was not conveyed to the Secretary till 09.08.2000. The Secretary could not be present and the High Court issued a non-bailable warrant and fixed the date of hearing on 28.08.2000. Aggrieved by the orders dated 24.05.2000 and 27.07.2000, the appellant filed the above special leave petition No. 16375-77 of 2000 before this Court. This Court stayed the operation of the impugned orders on 02.03.2001. This Court

allowed the appeals and set aside the impugned orders and directed the High Court to dispose of the second appeal as expeditiously as possible. The High Court, by the impugned judgment dated 10.03.2003, allowed the second appeal filed by the respondent. Being aggrieved, the above appeal was filed by the appellant in this Court.

We heard Dr. R.G. Padia, learned senior counsel for the appellants and Mr. B.B. Singh, learned counsel for the respondent and carefully perused the judgments and other annexures filed along with the appeal.

Dr. R.G. Padia, learned senior counsel appearing for the appellants, made the following submissions at the time of hearing:-

1. The High Court has failed to appreciate that this Court in several cases has held that correction in entries made in government records on the basis of which the government servant got the service, cannot be allowed to be changed, just a few years before retirement;
2. The High Court has failed to appreciate that the respondent had himself admitted that the signature in the High School Examination form was signed by him and, therefore, his plea that the form was filled by his teacher is not at all sustainable and has been taken just to seek extension of service;
3. The High Court on an erroneous appreciation of facts and law held that there was a continuing cause of action;
4. The High Court failed to appreciate that since the first appellate Court held that the evidence produced by the respondent could not be said to lead to irresistible conclusion that the correct date of birth of the respondent is 16.10.1945 and there was no question of law involved in the case and the High Court ought not to have interfered in the matter by re-appreciating the evidence;
5. The respondent's claim regarding the correction of his date of birth could not be entertained after several decades, specially on the eve of superannuation.

Mr. B.B. Singh, learned counsel for the respondent, per contra submitted that the first appellate Court ignored the vital documents and oral evidence which had been adduced before the trial Court and that the trial Court after examining the documents came to the conclusion that the date of birth of the petitioner was 16.10.1945. He has invited our attention to some of the annexures filed along with the appeal.

Mr. B.B. Singh further submitted that from the mere perusal of the documentary and oral evidence led by the parties, it is established that the respondent has agitated the matter of correction of date of birth in High School Certificate as back as in the year 1967 and it is also established from the records that the respondent had moved an application on 27.07.1991 clearly stating that his date of birth was 16.10.1945 and the date of birth in the High School Certificate has been wrongly mentioned as 30.07.1941 without any basis and against the school records. Concluding his arguments, Mr. B.B. Singh submitted that various documents and correspondences between the respondent and the Education Department and with various others would clearly show that the date of birth of the respondent was only on 16.10.1945 and that the lower appellate Court had proceeded on altogether perverse approach without considering the oral documentary evidence led by the respondent/plaintiff and reversed the finding of the trial Court which was based upon proper appreciation of the evidence.

From the above background of facts, the following questions of law arise for consideration:

- a) Whether the respondent's claim for change in date of birth from 30.07.1941 to 16.10.1945 is time barred;
- b) Whether the High Court committed an error in not appreciating the Government Notification and the law laid down by this Court that the suit was barred by limitation;
- c) Whether even on the evidence on record, it could be said that the evidence was of such a nature as to lead to conclusive proof of the date of birth of the respondent;
- d) Whether Rule 2 of the U.P. Recruitment Service (Determination of the

Date of Birth) Rules, 1974 stipulate that no application or representation shall be entertained for correcting any date or age record and the entry made in the service book shall be deemed to be the correct date of birth.

For the sake of convenience, Rule 2 of the above Rules, 1974 is reproduced hereunder:-

"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 High School or equivalent examination at the time of his entry into the Govt. service or where a Government Servant has not passed any such examination as aforesaid or has passed any such examination after joining the service, the date of birth of 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 of 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."

In the instant case, the respondent had himself admitted that the signature in the High School Examination form was signed by him and, therefore, his plea that the form was filed by his teacher is not at all sustainable. We have also perused the judgment of the appellate Court. The appellate Court has after appreciating facts and law rightly held that the suit was barred by limitation as the relevant rules framed by the U.P. Board of Education had not been followed by the respondent. As per Rule 7 of G.R., any application for correction is to be made within two years of issuing certificate, while in the present case it was made after more than 15 years i.e. on 25.05.1981 and the suit was filed on 07.04.1995. The High Court, in our view, has wrongly held that there was a continuing cause of action. Even if for the sake of arguments if it is accepted that document No. 63 [Ga] i.e. letter dated 13.10.1981 was written, even then the respondent's suit was barred by limitation as he filed the suit in 1995 after more than 14 years. The High Court has wrongly relied on the alleged application dated 27.02.1971 and Exhibit 63 & 64 and has failed to appreciate that the lower appellate Court after perusing the evidence categorically held that the respondent could have summoned the record from Kakori Shaheed Inter College, Jalalabad, Shahjahanpur when he got admission in Class IX and documents of his date of birth should have been produced by him at the time of admission in Class IX. These documents were the best documents to prove the respondent's case. The respondent's failed to produce these documents before the Court. As rightly argued by learned counsel for the appellant, the respondent's claim regarding the correction of his date of birth could not be entertained after several decades, specially on the plea of superannuation. The respondent being an educated man having completed his education upto M.A.Lt. and having remained in service for about four decades reaching the age of his superannuation discovered his age as incorrect by over four years short to the record one could be unthinkable and unbelievable. The respondent's date of birth having been written and declared by him in his examination form for High School and entered as such in High School Certificate and also entered as such in his service record by him, could not be changed without having recourse to the law, the education rules and the service rules and the provisions governing the respondent against settled law.

We have already noticed that the respondent's suit is time barred as he has filed the suit in 1995 whereas High School Examination Certificate which is sought to be corrected is of 60 and this certificate was issued in time and he is seeking this correction after 39 years. It may be mentioned at this point of time that after the written

statement of the defendant/appellant-herein the plaintiff/respondent-herein has not filed any replications with counter allegation that how and why his original suit is not time barred. This apart, any correction of any clerical error can be made if the candidate has drawn the attention and has moved an application through concerned Principal within two years of issuing the certificate. As per Rule 7 of G.R. any application for such correction is to be made within two years of issuing of the certificate. In the present case, the respondent has not moved any application within two years of this certificate being issued through concerned Principal.

Learned counsel for the appellant has also relied on the following judgments of

this Court:-

1. State of U.P. and Others vs. Gulaichi (Smt), (2003) 6 SCC 483

In this case, Rule 2 of the U.P. Recruitment of Service (Determination of Date of Birth) Rules, 1974 and U.P. Recruitment of Service (Determination of Date of Birth) (First Amendment) Rules, 1980 was under consideration by this Court. This Court, after analysing various judgments referred to before them, came to the conclusion as under:

"12. In the instant case the Rules and the Amendment Rules referred to above clearly indicate the permissible area for correction of the date of birth. In view of the specific provisions made, it was not permissible to effect change. Additionally, the first appellate court and the High Court seem to have lost sight of the fact that the person who endorsed changes was not authorized to do so. The original service-book was produced before us by the learned counsel for the appellants. Though the learned counsel for the respondent submitted that we should not look into it, for the purpose of arriving at the truth, we overruled the objection and looked at the original document, which undisputedly was exhibited during trial. The entry i.e. 31-7-1929 appears to have been made simultaneously by one and the same person at the time when other entries were made in FR Form 13. The respondent has herself signed the page at Serial No. 8, whereas the entry relating to the date of birth is at Serial No.5."

2. State of Uttaranchal and Others vs. Pitamber Dutt Semwal, (2002) 1 UPLBEC 441 SC.

In this case, here again, this Court was considering Rule 2 of the U.P. Recruitment Service (Determination of Date of the Birth) Rules, 1974 and held as under:

"6. These rules, the validity of which have not been challenged, clearly stipulate that no application or representation shall be entertained for correcting any date or age record and the entry made in the service book shall be deemed to be the correct date of birth. Be that as it may, even dehors the said rule, we are of the opinion that the plea of the respondent that the date of birth was wrongly recorded was highly belated. He joined service in 1964, the service book was prepared in 1965 and according to the appellant, he has signed the said service book at least on three occasions. In any case, the plea of the wrong recording of the age in the service book has been taken, nearly thirty years after the service book was prepared. In our opinion, the Division Bench was in error in ignoring the provisions of the said Rule 2 and even otherwise, in the facts of this case, there was no occasion for the High Court to have interfered with the decision of the appellant."

3. State of T.N. vs. T.V. Venugopalan, (1994) 6 SCC 302,

In this case, this Court held that the rule provided that an application for alteration of recorded date of birth would be entertained only if made within five years after entering the service. This Court held that an employee already in service at the time of enforcement of such rule should make the application for correction within five years from the date of enforcement of the rule, otherwise he would lose his right to make such an application and the Government servant would not be permitted to challenge the entry at the fag end of his service.

4. Executive Engineer, Bhadrak (R&B) Division, Orissa and Others vs. Rangadhar Mallik, 1993 Supp (1) SCC 763.

In this case, this Court was considering Rule 65 of the Orissa General Finance Rules stipulating that representation for correction of date of birth made near about the time of superannuation shall not be admitted. This Court held that the representation for correcting the date of birth made by respondent 18 years after is not maintainable in law since the entry regarding date of birth made in the service record was on the basis of the horoscope produced by the employee himself and after obtaining his signature.

5. Government of Andhra Pradesh and Another vs. M. Hayagreev Sarma, (1990) 2 SCC 682.

A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 was under consideration in this case by this Court. The date of birth of the employee was recorded in the service book on the basis of school certificate at the time of entry into service. The employee's application for alteration in the date of birth so recorded was finally rejected prior to coming into force of the rules. A subsequent claim was

made by the employee for alteration after commencement of the rules. This Court held that the subsequent claim for alteration after the commencement of the rules even on the basis of the extracts of entry contained in births and deaths register maintained under Births, Deaths and Marriages Registration Act, 1886 was not open.

6. Union of India vs. Harnam Singh, (1993) 2 SCC 162.

In this case, there was a delay of five years in seeking for alteration prescribed in Note 5 to FR 56(m) as substituted in 1979. This Court held that those already in service prior to 1979, for a period of more than five years, obliged to seek alteration within the maximum period of five years from the date of coming into force of amended note 5 in 1979. Alteration sought by the employee in 1991, 35 years after his induction into the service during which period he had several occasions to see the service book to raise any objection regarding his date of birth cannot be allowed in view of unexplained and inordinate delay.

7. Burn Standard Co. Ltd. and Others vs. Dinabandhu Majumdar and Another, AIR 1995 SC 1499.

"Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employers as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court."

8. In The Secretary & Commissioner Home Department & Ors. Vs. R. Kirubakaran, JT 1993 (5) SC 404, this Court held :

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless clear case on the basis of materials which can be held to be conclusive in nature, is

made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the Court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service book.

\005.. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier. In the facts and circumstances of the case, it is not possible to uphold the finding recorded by the Tribunal."

It is thus seen from the above quoted judgments that this Court has consistently taken the view that correction in entries made in Government records on the basis of which the Government servant got the service cannot be allowed to be changed just a few years before retirement or at the fag end of his retirement.

In the instant case, the U.P. Recruitment to Services (Determination of Date of Birth) Rules came into force w.e.f. 28.05.1974. Rule 2 of the Rule was amended by the first amendment Rules, 1980 of 07.06.1980. The existing rule and the substituted rule are extracted herein below:

COLUMN 1

(Existing rule)

COLUMN 2

(Rule as hereby substituted)

2. The date of birth of Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a Government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time of his entry into 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.

2. 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.

As per the existing rule, the date of birth or the age recorded in his service book at the time of entry into the Government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

The amended rule of 1980 was deemed to have come into force w.e.f 28.05.1974 and as per the substituted Rule, the date of birth or the age recorded in the service book at the time of entry into the Government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and that no application or representation shall be entertained for correction of date of birth or age in any circumstances whatsoever. The respondent has given his date of birth as 30.07.1941 at the time of entry into service which has also been recorded in the service records of the respondent. The above amended rule which come into force w.e.f. 28.05.1974 stipulates that no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever and that the date of birth or age recorded in the service book at the time of his entry into government service shall be deemed to be his correct date of birth or age as the case may be for all purposes.

In view of the above rule, we hold that the correct date of birth of the respondent is only 30.07.1941 and the claim now made by the respondent to correct his date of birth from 30.07.1941 to 16.10.1945 cannot at all be entertained or encouraged.

We do find much force in the argument of the appellants counsel that the suit was barred by limitation of time. In these circumstances, the respondent's suit is liable to be dismissed and the findings of the lower appellate Court is to be affirmed and the order passed by the High Court is liable to be set aside.

In view of the foregoing discussion, we have no hesitation to set aside the judgment of the High Court dated 10.03.2003 in second appeal No. 334 of 1999 and allow this appeal as prayed for by the appellant. However, we order no costs.