

CASE NO.:
Appeal (civil) 6203 of 2000

PETITIONER:
Secretary, U.P. High School & Intermediate Education, Allahabad & Anr.

RESPONDENT:
H.K. Lal

DATE OF JUDGMENT: 11/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

Order

S.B. SINHA, J. :

The U.P. High School and Intermediate Education Board, Allahabad is before us questioning a judgment and order dated 20.3.1999 passed by the Division Bench of the Allahabad High Court dismissing the Special Appeal filed by the appellants herein against a judgment and order dated 14.10.1998 passed by the learned Single Judge of the Allahabad High Court in Civil Misc. Writ Petition No. 33278 of 1998.

The respondent was Principal in a College known as C.N.I. Boys Inter College, Dehradun. In his matriculation certificate granted by the appellants his date of birth was recorded as 25.6.1938. In the year 1994 a writ petition being writ petition No. 12027/1994 was filed praying for issuance of a writ of or in the nature of Mandamus directing the appellants to alter his date of birth to 17.8.1940. The said writ petition was disposed of by a judgment and order dated 29.2.1996 directing the Board to pass an appropriate order thereupon. Pursuant to and in furtherance of the said direction, an application filed by the respondent herein for alteration of his date of birth in the certificate granted by the Board, was rejected. Another writ petition was filed by the respondent which was also dismissed, inter alia, on the premise that his remedy lay in filing a suit before a Civil Court. Thereafter, he filed a suit in the year 1997 before the Civil Judge, Dehradun. The said suit was decreed. An appeal was preferred by the Board against the said judgment which was marked as appeal No. 28/98. Allegedly, an order of stay was granted therein. However, the said order of stay was later on vacated. Thereagainst a writ petition was filed and the High Court set aside the said order and directed the District Judge to recall the matter to his own court and dispose the matter himself or transfer it to any court other than the court which had earlier passed the order. At that stage the respondent filed a writ petition before the Allahabad High Court which was marked as O.S. No. 761/1997.

The said writ petition was allowed by the learned Single Judge of the High Court by order dated 14.10.1998 whereby and whereunder the Secretary, U.P. High School and Intermediate Education, Allahabad was directed to comply with the decree passed by the Civil Court on 18.4.1998. Against the aforementioned judgment and decree, the Special appeal filed by the appellant herein had been dismissed by reason the impugned judgment both on the ground of delay as also on merit stating as under :

"...There is no occasion for the Court to condone the delay, even otherwise the court finds that the judgment of the Hon'ble Judge in the writ petition is based on facts and further on the circumstances that H.K. Lal had filed a suit and had obtained a declaration. In the circumstances, the Hon'ble Judge held that the Secretary, U.P. High School and Intermediate Education,

Allahabad, was obliged to get the date of birth of the petitioner changed. This court has no reason to take a different view than taken by the Hon'ble Judge in Writ Petition No. 33278 of 1998."

From the records it is borne out that the question as to whether the respondent has a legal right to alter his date of birth recorded in the certificate granted by the Board was pending consideration before the Appellate Court. The writ petition filed by the respondent should, therefore, not have been entertained particularly in view of the fact that the appeal thereagainst was pending. Writ jurisdiction is discretionary jurisdiction and should not ordinarily be exercised if there is an alternative remedy.

Learned counsel appearing on behalf of the appellant has addressed us on merit of the matter urging that the horoscope cannot be made the basis for alteration of the date of birth in support whereof a decision of this Court in *State of Punjab v. Mohinder Singh*, [2005] 3 SCC 702 has been cited. Learned counsel, however, on a query made by us states that the aforementioned First Appeal preferred by the Committee of Management is still pending in the Court of Additional District Judge, Dehradun.

In that view of the matter, we do not intend to express any opinion on the merit of the matter. However, keeping in view the peculiar facts and circumstances of this case, we are of the opinion that the writ petition itself was not maintainable and the learned Single Judge, therefore, went wrong in allowing the same and consequently the impugned judgment passed by the Division Bench also suffers from manifest error. Even the delay in filing the Special Appeal was such which should have been condoned by the Division Bench.

The impugned judgment of the High Court is set aside. The appeal is allowed. However, as in spite of service of notice none has appeared for the respondent, there will be no order as to costs.