
(2010) 10 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8832 of 2010

Chail Singh

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 RAJ CK 0032

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard learned Counsels for the parties.

2. The Petitioner by way of this writ petition has approached this Court praying therein that order Annex-7 dated 07.04.2010 seeking to retire him on 30.09.2010 may be quashed and set aside as the Petitioner would be completing the superannuation age of 60 years in the year 2017 as per his date of birth given by the Petitioner in the service book maintained by the Respondent-Department as 02.09.1957.

3. This Court on 29.09.2010 despite a caveat from the side of Respondent-Department recording these facts granted interim order in favour of Petitioner to the following effect:

Learned Counsel for the Petitioner submits that as per service record his date of birth is 02.09.1957 and, therefore, his retirement on completion of 60 years of age will due in the year 2017, however, the Respondents taking the date of birth as 02.09.1950 intend to retire him on 30.09.2010 vide impugned order Annex-7 dated 07.04.2010. Against the impugned order, the Petitioner submitted representation vide Annex-8 on 31.08.2010, which has un-responded so far.

Dr. Prathistha Dave, put in appearance on behalf of Respondents-Caveator and

prays for short time to file reply.

Considering the submissions made at the bar, it is directed the Petitioner may not be retired till the next date.

Put up on 05.10.2010.

4. The Respondents have filed reply to the writ petition and the learned Counsel for the Petitioner urged that the Petitioner has misled this Court by concealing material facts from the Court and from the record of "Scholar's Register Form" submitted by the Petitioner himself before the Respondent-Department, the date of birth given by the Petitioner to the Department was "02.09.1950" and not "02.09.1957" and, therefore, considering the correct date of birth as "02.09.1950", the Respondent-Department determined the date of retirement of the Petitioner as 30.09.2010 and to this effect, the retirement order was passed vide Annex-7. With the reply, the Respondents have also filed said document i.e. "Scholar's Register Form" vide Annex-R/2, the relevant entry No. 3782 pertaining to the Petitioner.

5. From the said document (Annex-R/2), it also transpires that the Petitioner passed 6th standard as per certificate given by the concerned Headmaster of the Government School, Falna, on 11.05.1963 and 8th standard on 15.05.1965. Apparently, if the correct date of birth is taken to be as "02.09.1957", the Petitioner would be only 6 years of age in the year 1963 and obviously he could not have passed the 6th standard of the school. Normally a student of 5-6 years was/is expected to be in the 1st standard, and for passing the 6th standard of a Government school, the minimum age could be around 12-13 years. On the basis of said document, it is apparent that the Petitioner's correct date of birth is 02.09.1950 only as given out by himself in the aforesaid Scholar's Register Form.

6. Besides the above, the Respondents have also produced the Prescribed Form filled-up by the Petitioner for the purposes of his pension and in that also, the date of birth given by him is 02.09.1950 vide Page 68 of the paper book. The said document is duly signed by the Petitioner and counter-signed by the employer, namely, Executive Officer of the Municipal Council, Khudala, Falna station. Confronted with these documents, learned Counsel for the Petitioner admits that these documents were given by the Petitioner only and the date of birth as 02.09.1950 was also given out by him in these documents. He submitted that the Petitioner is not guilty of misleading the Court and ground for approaching this Court was justified in view of the service book entry produced by him along with writ petition as Annex-5.

7. The document (Annex-R/2), namely, Scholar's Register Form has been produced by the Petitioner also as Annex-3, Page 16 of the paper book of this writ petition and the averments made in para 3 of the writ petition in this regard are reproduced herein below:

That it is pertinent to mention here that the Petitioner is having qualification of

9th class, which is clear from a transfer certificate issued by the competent authority, wherein, the date of birth of the Petitioner is being mentioned as 2.9.1950, which is submitted herewith as Annexure 3.

8. In para 4 of the writ petition, the Petitioner has stated as under:

that in pursuance of the requisite documents including the annexure 3 & 4, the Respondent department vide order annexure 1 & 2 appointed the Petitioner and maintain the service book in the name of the Petitioner since 27.3.1985, wherein also the date of birth of the Petitioner is mentioned as 2.9.1957, a copy whereof is being submitted herewith as Annexure 5.

9. However, the Petitioner has not produced the document, namely, "Prescribed Form" furnished by him for the purposes of obtaining pension with the writ petition, which has now been produced by the Respondents as Annex-R/8, in which also, the date of birth given by the Petitioner is 02.09.1950 and not 02.09.1957.

10. Thus, the Petitioner has apparently tried to confuse the Court as well as the Respondents by producing two sets of documents one containing his date of birth as 02.09.1950 and other set of document containing his date of birth as 02.09.1957.

11. Having heard learned Counsel for the parties and upon perusal of the documents placed on record by both the sides, this Court is of the view that the Petitioner is guilty of suppressio-veri in the present writ petition or in other words, placing before the Court only half truths though the documents which have been now produced by the Respondents with their reply, were duly within the knowledge of the Petitioner. He has chosen not to produce the same before this Court for claiming any relief from this Court. It is well settled that Article 226 of the Constitution of India is extraordinary power of this Court giving writ jurisdiction to Court under the Constitution of India to be invoked in favour of those persons who have approached the Court with clean hands, and are not guilty of concealment of material particulars from the Court. In the present case, the only controversy involved and raised by the Petitioner was about the correct date of retirement by the Respondent-Municipal Council, Khudala, Falna, District Pali and since apparently two different sets of documents are before this Court containing two dates of birth, and these questions being disputed questions of facts, this Court cannot go into these questions or determination of the same under writ jurisdiction. Learned Counsel for the Respondents also produced before the Court a certified copy of the service book entries of the Petitioner, Chail Singh, Naka Guard; according to which, vide Column No. 3 shows that initially the date of birth recorded therein was 02.09.1957 was corrected to be as 02.09.1950 as per order passed by the Deputy Director (Administration), Jaipur vide order No. 5394 dated 21.09.2010, copy whereof is placed on record as Annex-R/6. The order dated 21.09.2010 (Annex-R/6) is not under challenge in the present writ petition though copy of the order dated 21.09.2010 was

endorsed to the Petitioner but since the same is of dated 22.09.2010 and the present writ petition was filed by the Petitioner on 23.09.2010, obviously, same could not be produced by the Petitioner before this Court.

12. Be that as it may, in view of aforesaid facts and circumstances of the case, not ordering the prosecution of the Petitioner at this stage for having misled this Court by not producing all the relevant documents, which though were within the knowledge of the Petitioner before this Court, the documents relating to pension etc. which could have established before the Court the other date of birth or rather the correct date of birth of the Petitioner before the Court, the present writ petition is not maintainable.

13. The writ petition is accordingly dismissed. The Petitioner shall pay cost of Rs. 1,000/- to the Respondent- Department.