

(2010) 02 RAJ CK 0028
In the Rajasthan High Court
Case No : Writ Petition No. 2452 of 1997

Gopal Lal Vyas

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 2 WLN 216

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Reashm Bhargava, for the Appellant; Ganesh Meena, Government Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner Gopal Lal Vyas with the prayer that the order dated 27.11.1996 by which the respondents have declined to record 13.4.1940 as his date of birth in his service book be quashed and set aside and the petitioner be allowed to continue in service treating that to be his date of birth with all consequential benefits.

3. Shri Reashm Bhargava, learned Counsel for the petitioner submitted that declaration form submitted by the respondents with their reply even though may have contained the signatures of the petitioner, but it has not been filled by the petitioner by his hand and therefore the date of birth mentioned in the declaration form cannot be taken as basis for making entry in the service book. Now the respondents themselves demanded from the petitioner the relevant document so as to attest his date of birth in the service book. This is therefore not one of the case, where the effort is being made by the employer to get the date of birth corrected. Learned Counsel in this respect referred to letter dated 8.5.1974, by which the petitioner was required by the respondents to prove the relevant documents. Petitioner accordingly submitted the copy of the transfer

certificate of the eighth standard dated 15.5.1996, the copy of mark sheet issued by Board of Secondary Education for Rajasthan dated 24.7.1974 and a certificate issued by Bombay Hindi Vidya Peeth to prove his date of birth as 13.3.1940. Learned Counsel submitted that the respondents then again vide letter dated 13.9.1977 demanded such documents which the petitioner had already submitted. The matter was forwarded to the Government and the finally by impugned order of Director of the Printing and Stationary Department, Rajasthan, on the basis of Sub-clause (2) of Rule 8 of the Rajasthan Service Rules declined to change the date of birth whereas the validity of said rule has already been struck down by this Court being invalid. Learned Counsel in support of his submissions sought to rely on the judgement in Samarath Lal Joshi v. State and Ors. 1985 RLR 443 . Learned Counsel sought to rely on the judgement of Supreme Court in R.K. Jangra Vs. State of Punjab and Others, to argue that if the employer does not have any document in his possession to justify the date of birth as against the documents produced by the employee, the consideration to be given to the documents produced by the employee.

4. Shri Ganesh Meena, learned Government Counsel opposed the writ petition and submitted that petitioner when entered in the service of the respondents declared 14.4.1940 as his date of birth and the declaration form was given for the purpose of State Insurance Policy and considering that date as his date of birth, the State Insurance Department made the repayment on his superannuation. The department issued seniority list long back containing 14.4.1939 as his date of birth. If the petitioner wanted to question the correctness of such date of birth, he should have immediately taken steps. Learned Counsel submitted that mere reference laid by Rajasthan Service Rules could not invalidate the action of the respondents particularly when the mark sheet of secondary school education produced by the petitioner is of the year 1976. The respondents immediately emanded documents from the petitioner so that the date of birth dated 14.4.1939 can be declared as his date of birth in the declaration form. This however did not allow him to change his date of birth even for the purpose of so called transfer certificate. Learned Counsel for the respondents relied on the judgement of this Court in Union of India v. Harnam Singh 1993(2) SLR 42 SC and this Court in Sumer Chand Mathur v. State and Anr. 2006(1) WLC (Raj.) 253.

5. Having heard the learned Counsel for the parties, I find that even though it may be a fact that the respondents demanded from the petitioner copies of the documents to prove his date of birth, but the fact remains is that when petitioner filed the declaration form at the time of entry in service declaring his date of birth as 14.4.1940, at this distance of time, it cannot be accepted that the respondents on their own would have filled in his date of birth other than, which was declared by the petitioner. Petitioner joined the services in the year 1962 and the respondents have asserted that in the seniority list which they issued long ago, the date 14.4.1940 was mentioned as his date of birth. Merely because the respondents demanded from the petitioner the supporting documents to

attest the date of birth in the service too, that would not enable the petitioner to seek change of his date of birth. In any case, the writ petition was filed in the year 1997 when the petitioner was due to retire on 30.4.1997. There is always the tendency in matters of this nature to approach the court when the employee was on the verge of retirement.

6. I do not find any merit in this writ petition. The writ petition is dismissed.