
(2011) 07 AHC CK 0232
In the Allahabad High Court
Case No : Special Appeal No. 1199 of 2011

Hari Pati

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Evidence Act, 1872 — Section 35
High Court Rules, 1952 — Rule 5

Citation : (2011) 5 AWC 5264 : (2011) 131 FLR 411 : (2011) 3 UPLBEC 1988

Hon'ble Judges : S.P. Mehrotra, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Pankaj Mithal, JJ.—On being unsuccessful in the writ petition to get his date of birth changed, the petitioner-appellant has preferred this appeal under Rule 5 of Chapter VIII of the Rules of the High Court, 1952.

2. The petitioner-appellant filed a writ petition for issuance of mandamus to correct his date of birth as mentioned in his service book from 1.7.1951 to 12.7.1953.

3. The learned single Judge dismissed the writ petition inter alia on one of the grounds that after 27 years of service the belated request for correction in the date of birth cannot be accepted.

4. The petitioner entered into service on 13.3.1970. His date of birth in the service book was recorded as 1.7.1951. Thereafter, petitioner passed High School examination in 1971. In the High School certificate he got his date of birth recorded as 12.7.1953. Since 1971 till at least 1997 petitioner-appellant made no effort to get his date of birth in the service record changed.

5. The submission of Sri Anil Tiwari, learned counsel for the petitioner-appellant is that the learned single Judge has failed to take into consideration the mark-sheets of the petitioner-appellant of Class V and VIII which also mention his date

of birth as 12.7.1953 as has been mentioned in the High School certificate.

6. Admittedly, petitioner-appellant had entered into service prior to passing the High School. In the service book his date of birth has been mentioned as 1.7.1951 as supposedly given by him. It is not his case that the date of birth as appearing in the service book was recorded in an arbitrary manner without consulting him. There is no material to substantiate that the aforesaid mark sheets of class V and VIII were placed before the appointing authority at the time of petitioner-appellant's appointment or preparation of service book. The petitioner-appellant himself is guilty of concealing his mark sheets of class V and VIII at the time of entry into service, The petitioner-appellant cannot be permitted to rely upon such mark sheets at such a long distance of time at the fag end of his service. It may be true that date of birth appearing in the School register or in the mark sheets may be a good evidence u/s 35 of the Evidence Act but such evidence cannot be accepted unless it is duly proved. The mark sheets of class V and VIII on which reliance is being placed as such requires to be proved before its veracity can be accepted. This cannot be done in exercise of writ jurisdiction and therefore also no reliance can be placed upon the said mark sheets.

7. The date of birth of the petitioner-appellant as mentioned in the High School certificate cannot be entered into service record at this juncture when the petitioner-appellant himself got his date of birth recorded as 1.7.1951 in the service book at the time of appointment without disclosing the mark sheets of class V and VIII. He had passed High School subsequently but even on the basis of the High School certificate of the year 1971 he remained silent till 1997 and made no effort to get the service book corrected.

8. The submission that he acquired knowledge of the wrong entry of the date of birth in the service book in the year 1997 is without substance and cannot be accepted.

9. Even in equity the conduct of the petitioner-appellant disentitles him from any discretionary relief in exercise of extraordinary writ jurisdiction of the Court. In case the date of birth of the petitioner is taken to be 12.7.1953 as mentioned in the High School certificate, it would mean that the petitioner was minor when he was appointed in service on 13.3.1970. Thus, his very appointment would be bad in law. The petitioner-appellant having taken advantage of early entry in service, cannot now be permitted to get his service extended by changing his date of birth to 12.7.1953. It is settled proposition in law that once a fact has been admitted by a party and he has derived benefit out of it, he cannot turn around and permitted to dispute such a fact. Law does not permit a person to approbate and reprobate.

10. In such circumstances, If the learned single Judge has declined to exercise his extraordinary jurisdiction in the matter, no exception to it can be taken to enable this Court to interfere with the order on appellate side.

The appeal is without substance and is dismissed.