

(2016) 01 KAR CK 0219
In the Karnataka High Court
Case No : W.P. No. 66628/2010 (GM-RES)

Krishna V. Hegde

APPELLANT

Vs

The Commissioner, Dept. of Public Instructions and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) 01 KAR CK 0219

Hon'ble Judges : H. Billappa, J.

Bench : Single Bench

Advocate : Ravi Hegde, Advocate, for the Appellant; Ravi V. Hosamani, AGA, for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—1. In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the endorsements/communications dated 15.3.2010 and 4.6.2010 vide Annexures-"G" and "H".

2. By the impugned endorsement at Annexure-"G", the Deputy Director (Administration) Public Instructions, Karwar, has been informed by the first respondent that the decree passed in R.A. Nos. 8 and 11 of 2005 only directs to change the date of birth of the petitioner in the SSLC marks card, transfer certificate and school records. The date of birth of the petitioner cannot be changed in the service records. Based on the endorsements of the first and the second respondents, the third respondent has issued endorsement as per Annexure-"H" stating that as per the endorsements of the first and the second respondents, the date of birth of the petitioner can be changed only in the SSLC marks card, Transfer Certificate and school records and not in the service records.

3. Aggrieved by that, the petitioner has filed this writ petition.

4. Briefly stated the facts are:

"The petitioner joined service in the year 1983. His date of birth was 21.2.1957. His parents furnished wrong date of birth to the school authority as 1.8.1956. The petitioner filed suit in O.S. No. 59/2003 for declaration that his date of birth is 21.2.1957 and to direct the respondents to correct the date of birth in the school records and for other reliefs. The Trial Court by its judgment and decree dated 20.11.2004 decreed the suit of the petitioner declaring that the petitioner was born on 21.2.1957 and has directed the defendants in the suit to correct the date of birth of the petitioner in the school records as 21.2.1957. However, it is made clear that the petitioner is not entitled for any service benefits on the basis of the correction of the date of birth in the school records."

5. Aggrieved by that, the petitioner has filed appeal in R.A. No. 8/2005. The respondents 1 to 4 have preferred R.A. No. 11/2005. The Appellate Court by its judgment and decree dated 17.11.2006 has allowed the appeal filed by the petitioner and has expunged the observation made by the Trial Court to the extent challenged by the petitioner and the decree of the Trial Court is modified. The suit is decreed declaring that the date of birth of the petitioner is 21.2.1957 and that the date of birth of the petitioner has been wrongly entered as 1.8.1956 in the SSLC marks card, School Transfer Certificate and other school and educational records. Further, the Appellate Court has directed the defendants in the suit to correct the date of birth of the petitioner as 21.2.1957 in the SSLC marks card, Transfer Certificate, other school and educational records only. Thereafter, the petitioner has requested the respondents to enter his date of birth as 21.2.1957 in the service records. The first respondent has informed the second respondent that the date of birth can be corrected in the school records and not in the service records. The second respondent has forwarded the communication to the third respondent for necessary action. The third respondent has issued endorsement/communication as per Annexure-H stating that the date of birth cannot be corrected in the service records. The decree is only to correct the date of birth in the SSLC marks card, transfer certificate and school records.

6. Aggrieved by that, the petitioner has filed this writ petition.

7. The learned counsel for the petitioner contended that the impugned endorsements/communications cannot be sustained in law. He also submitted that the Trial Court had decreed the suit declaring the date of birth of the petitioner as 21.2.1957 and directing the defendants to correct the date of birth of the petitioner in the school records as 21.2.1957 and observing that the petitioner is not entitled for service benefits on the basis of the correction of date of birth in the school records. Therefore, the petitioner had preferred an appeal in R.A. No. 8/2005 which has been allowed by the Appellate Court. The Appellate Court has observed that the observation made by the Trial Court to the extent challenged by the petitioner has been expunged. It is clear, the direction of the Trial Court that the petitioner is not entitled for any service benefits based on the correction of the date of birth has been expunged. Therefore, the petitioner is

entitled for correction of his date of birth in the service records also. Therefore, the impugned endorsements/communications cannot be sustained in law.

8. As against this, the learned Government Advocate submitted that the impugned endorsements/communications do not call for interference. He also submitted that the petitioner had filed suit in O.S. No. 59/2003 for correction of his date of birth in the school records. The Trial Court has specifically observed that the petitioner is not entitled for any service benefits based on the correction of his date of birth. In the appeal also, the Appellate Court has made it clear that the defendants are directed to correct the date of birth of the petitioner as 21.2.1957 in the SSLC marks card, Transfer Certificate, other school and educational records only. It means the Appellate Court has not granted decree for correction of date of birth in the service records. Therefore, the endorsements/communications issued by the first and third respondents conform to the decree passed by the Trial Court and also the Appellate Court. In the absence of specific direction, the petitioner cannot contend that his date of birth can be corrected in the service records also. Therefore, the impugned endorsements/communications do not call for interference.

9. I have carefully considered the submissions made by the learned counsel for the parties.

10. It is relevant to note, the petitioner has joined service in the year 1983. His date of birth is entered as 1.8.1956 in the service records. The petitioner has come to know that his correct date of birth was 21.2.1957 and his parents have wrongly furnished his date of birth as 1.8.1956 to the school authority. Therefore, the petitioner has filed suit in O.S. No. 59/2003 for declaration and correction of his date of birth in the school records and for other reliefs. The Trial Court has decreed the suit declaring the date of birth of the petitioner as 21.2.1957 and has directed the defendants to correct the date of birth of the petitioner in the school records as 21.2.1957. The Trial Court has made it clear that the petitioner is not entitled for any service benefits based on the correction of his date of birth in the school records. The petitioner has preferred an appeal in R.A. No. 8/2005. In the appeal, the Appellate Court has observed that the observation of the Trial Court to the extent challenged by the petitioner is expunged and has modified the decree directing the defendants in the suit to correct the date of birth of the petitioner as 21.2.1957 in the SSLC marks card, Transfer Certificate, other school and educational records only.

11. It is clear from the decree passed by the Trial Court and also the Appellate Court, the direction was only to correct the date of birth of the petitioner in the school records. There is no direction to correct the date of birth of the petitioner in the service records. Therefore, the request of the petitioner for correction of his date of birth in the service records has been rightly rejected by the respondents 1 and 3 by issuing endorsements/communications as per Annexures-"G" and "H". The impugned endorsements/communications as per Annexures-"G" and "H" conform to the decree passed by the Trial Court and the

also the appellate court. Therefore, the impugned endorsements/communications do not call for interference.

Accordingly, the writ petition is dismissed.