
(2011) 02 SC CK 0108

In the Supreme Court Of India

Case No : Civil Appeal No. 1380 of 2011 (Arising out of SLP (Civil) No. 21528 of 2006)

Narinder Kaur

APPELLANT

Vs

Punjab and Haryana High Court and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Constitution of India, 1950 — Article 283

Citation : (2011) AIRSCW 1288 : (2011) 2 CHN 201 Supp : (2011) 128 FLR 1048 : (2011) 1 JCR 183 : (2011) 6 JT 495 : (2011) 7 MLJ 392 : (2011) 2 SCALE 231 : (2011) 11 SCC 553 : (2011) 2 SCC(L&S) 319 : (2011) 2 SCR 535 : (2011) 1 Supreme 650

Hon'ble Judges : J. M. Panchal, J;H. L. Gokhale, J

Bench : Division Bench

Advocate : P.N. Mishra, Harikesh Singh, T. Singh, Sohovan and Kamal Mohan Gupta, for the Appellant; Manjit Singh, Ajay Pal, Abha Jain and Naresh Bakshi, for the Respondent

Final Decision : Allowed

Judgement

1. Leave granted.

2. This appeal is directed against the judgment dated 20.4.2006 rendered by the High Court of Punjab & Haryana at Chandigarh in CWP No. 16151 of 2003 by which the prayer made by the Appellant to quash order dated 12.5.2002 passed by the Punjab & Haryana High Court at Chandigarh on its administrative side declining the request made by the Appellant for effecting change in her date of birth from 26.1.1971 to 9.1.1972 is rejected.

3. From the record of the case, it is evident that the Appellant was selected to the Haryana Civil Services (Judicial) and was posted as Civil Judge (Jr. Division) Ambala City. She joined her duties on 20.5.2000. The case of the Appellant is that her date of birth is 9.1.1972 but it was wrongly mentioned in the records as 26.1.1971, on the basis of factually incorrect birth certificate wherein her date of

birth was shown to be 26.1.1971. The Governor of Haryana in exercise of powers conferred by Clause (2) of Article 283 of the Constitution made Punjab Financial Volume I (Haryana First Amendment) Rules, 2001 amending certain provisions of Punjab Financial Volume I Rules 2001 providing inter alia that in regard to the date of birth, a declaration of age made at the time of, or for the purpose of entry into Government service, shall as against the Government employee, be deemed to be conclusive unless he applies for correction of age as recorded within two years from date of his entry into Government service and when such an application is made a special inquiry shall be made to ascertain correct age by making reference to all available sources of information such as certified copies of entries in the municipal birth register, university or school certificate indicating age, Janam Patrika, horoscopes etc.

4. The Appellant realising that her date of birth was wrongly recorded in the birth certificate, as 26.1.1971 made an application dated 12.4.2002 i.e. within two years from the date of her entry into Government service, requesting the authority concerned to change her date of birth from 26.1.1971 to 9.1.1972. By communicating a non-speaking order dated 12.5.2002, the Appellant was informed by the Registrar of Punjab and Haryana High Court, Chandigarh that the representation made by her seeking change in her date of birth was rejected by the High Court.

5. Feeling aggrieved, the Appellant filed CWP No. 16151 of 2003 before the High Court. The High court by the impugned judgment has dismissed the petition giving rise to the present appeal.

6. This Court has heard the learned Counsel for the parties and considered the documents forming part of the instant appeal.

7. The main reason assigned by the High Court for dismissing the writ petition filed by the Appellant is that the Appellant had failed to show satisfactorily that she had not taken any advantage of the recorded date of birth. It was further held by the High Court that the Appellant belonged to a mature class and her age as declared in the application Form for selection must have influenced the mind of the Selection Committee and, therefore, the principle of estoppel would apply to the facts of the case. The High Court also held that notification dated 13.8.2001 is discretionary in nature and the Appellant is not entitled to change in her birth date on the basis of the said notification.

8. It may be mentioned that the State of Punjab and Punjab and Haryana High Court had filed reply affidavit before the High Court. However, no material was produced on the record of the case to show that the Appellant had taken undue advantage of the recorded date of birth. The proceedings relating to the selection of the Appellant as Civil Judge never formed part of the instant case and, therefore, it was preposterous on the part of the High Court to assume that the learned High Court Judges who were members of the Selection Committee while selecting the Appellant as Civil Judge (J.D.) must have been influenced by the

age of the Appellant as declared by her in the application form for selection. The record does not indicate that after receipt of the application from the Appellant regarding change of her birth date, any inquiry, much less a special inquiry as contemplated by amended Rules of 2001 was undertaken by the High Court. It is true that the amended Rules of 2001 are discretionary in nature but that fact by itself does not justify the High Court on its administrative side to ignore them altogether and then to come to the conclusion that on the basis of the discretionary rules, the Appellant is not entitled to claim change in her date of birth.

9. In the present appeal, Dr. J. P. Singh, Director, Health & Family Welfare-cum-Chief Registrar, Births & Deaths, Punjab has filed an affidavit on 26.8.2010 mentioning that as per the record maintained by the office of Local Registrar, Births & Deaths, Municipal Council, Rajpura, Tehsil Rajpura, Distt. Patiala, Punjab, the entry of the birth of the Appellant is recorded with particulars as Annual Sr. No. 10, Date of Registration 11.1.1972, Date of Birth 9.1.1972. Thus, the State of Punjab has now admitted in this affidavit that the correct date of birth of the Appellant as per births and deaths record was 9.1.1972. The contents of the affidavit filed by Dr. J. P. Singh, Director, Health & Family Welfare-cum-Chief Registrar, Births & Deaths, Punjab are not disputed or controverted in any manner by the Punjab and Haryana High Court.

10. In view of the presumptive value which attaches to the birth and death records, this Court is of the opinion that appeal deserves to be allowed.

11. For the foregoing reasons, the appeal succeeds. The judgment dated 20.4.2006 rendered by Division Bench of the High Court of Punjab and Haryana at Chandigarh in CWP No. 16151 of 2003, is hereby set aside. CWP No. 16151 of 2003 filed by the Appellant in the High Court is allowed. The order dated 12.5.2002 passed by Punjab and Haryana High court on its Administrative side rejecting the application dated 12.4.2002 made by the Appellant to the High Court with a request to change her date of birth from 26.01.1971 to 9.1.1972 is also set aside. The application dated 12.4.2002 made by the Appellant to the High Court to change her date of birth from 26.01.1971 to 9.1.1972 stands allowed. Both the Respondents are hereby directed to carry out necessary changes in service record of the Appellant by mentioning her date of birth to be 9.1.1972. The appeal accordingly stands disposed of.