

(1990) 11 PAT CK 0012

In the Patna High Court

Case No : Letters Patent Appeal No. 91 of 1989

Patna University and Another

APPELLANT

Vs

Md. Quamrul Hoda and Another

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 11 PAT CK 0012

Hon'ble Judges : G.G. Sohani, C.J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Ram Balak Mahto, S. Rafat Alam and Mukesh Kumar Sinha, for the Appellant; Basudeo Prasad, Sudhanshu Jyoti Mukhopadhyay and I.T. Gaur, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, C.J.—This Letters Patent Appeal is directed against the judgment dated the 6th November, 1989, passed by a learned single Judge of this Court in C.W.J.C. No. 6279 of 1989.

2. The material facts giving rise to this appeal, briefly, are as follows:

(i) The writ Petitioner (respondent No. 1 in this appeal) is a member of the Superior Judicial Service in the State of Bihar. He passed the matriculation examination in the year 1947 and his date of birth recorded in the matriculation certificate, issued by the Appellant University, is the 12th January, 1932. Accordingly, the Petitioner would have attained the age of superannuation on 11th January, 1990.

(ii) The Petitioner did not approach the High Court or the State Government for (sic)

(sic) recting the matriculation certificate was complexly justified. The learned single Judge, therefore, directed the Appellant University to issue a fresh

matriculation certificate containing the corrected date of birth as 12th January, 1935. The learned single Judge further observed as follow:

...This corrected certificate will now form the basis of the due of birth of the Petitioner wherever and whenever his age becomes an issue for any purpose whatsoever and all concerned departments, officers and authorities should correct the records relating to the Petitioner's date of birth....

Aggrieved by this judgment the University has filed than appeal.

3. Shri Mahto, learned Advocate-General, appearing for the University contended that while issuing the aforesaid direction the learned single Judge failed to appreciate that the State Government and the High Court were not parties to the writ Petition, and that no direction should have been issued binding these parties where they were not in leaded by the predictor It was also contended that the learned single Judge failed to appreciate that in accordance with the rules of the Syndicate the University had issued the matriculation certificate recording that age which was certificate by the Headmaster of the school in the application form submitted by the Petitioner at the time of Matriculation examination, that no duty was cast on the University to ADJUDICATE the question regarding correct date of birth of the Petitioner and that the University, there fore could not be held to have failed to do its duty acceding to law. It was further contended that the learned single Judge failed to appreciate that the extract of the school register (Annexure 3) relied upon by the learned single Judge was ex facie unreliable because howsoever intelligent the Petitioner might have been, he could not-have been admitted in Class V of the school at the of 5 years only. It was contended that the admission register of the school, which the Petitioner claimed to have attended prior to his admission to the Nawadah school was not produced. Our attention was invited to the application form (Annexure A) submitted by the Petitioner while appearing at the matriculation examination, the particulars filled in by him at the time of examination and Annexure A/1, the Photostat copy of the list of candidates appearing matriculation examination in the year 1947 furnished by the Headmaster of the school, along with the application forms of the candidates, wherein the date of birth of the Petitioner was shown to be 12th January, 1932. It was urged that the learned single Judge did not even refer to all these documents on the basis of which the Appellant University had entered the date of birth in the matriculation certificate issued to the Petitioner on 12th January, 1949, and that in any event general direction could not have been issued to all the authorities, who were not imp leaded in the writ petition, to correct their records relating to the petitioner's date of birth.

4. In reply, Shri Basudeo Prasad, learned Counsel for the writ Petitioner-Respondent, contended that the learned single Judge was, justified in relying on the extract of the school register and that he had not committed any error in directing the University to issue a fresh matriculation certificate. As regards the general direction given, by the learned single fudge that the age recorded in the fresh matriculation certificate, to be issued by the University in accordance with

the, direction of this Court, should hereafter form the basis of the data of birth of the Petitioner wherever and whenever his age was in question, learned Counsel contended that that direction was not necessary, but it was stated that, that direction was given by the learned single Judge only with a view to avoid (multiplicity of proceedings. It was also concluded that the appeal WAS not presented by the authorised person, that it was not accompanied by a typed copy of the judgment as required by the rules of this Court and that the appeal, therefore, deserved to be disordered on this ground alone.

5. Having heard learned Counsel for the parties, I have come to the conclusion that this appeal deserves to be allowed. The Appellant being a statutory authority would no doubt be amenable to writ jurisdiction but it can be directed to do only that which it is required to do according to the provisions of law. Any action by the Appellant University would be also liable to be struck down, if it is shown that the Appellant University has acted contrary to the provisions of law or arbitrarily. In the instant case, no provision of law or rule was brought, to our notice which required the University to adjudicate after holding an enquiry into the question of date of birth of a candidate. The date of birth entered in the matriculation certificate issued by the Appellant University to the Petitioner on 12th January, 1949, was on the basis of the age as certified by the Headmaster of the school in the matriculation application form (Annexure ?A?) submitted by the petitioner. This was in accordance with rule 37 of the Rules (Annexure 6). No provision of law or any rule was brought to our notice which casts a duty on the Appellant University to make any further enquiry before accepting the age as certified by the Headmaster in the matriculation application form as the age for entry in the University record. The Appellant University cannot, therefore, be held to have acted illegally or arbitrarily. The learned single Judge has held that the Appellant was bound to correct the entry regarding the date of birth in the matriculation certificate issued to the Petitioner in view of the representation made to it by the Petitioner about 35 years after the issue of the certificate and that on the basis of the school record as evidenced by the extract (Annexure 3) produced before the learned single Judge, the Appellant University could be directed to issue a fresh certificate. The learned single judge, with respect, failed to appreciate that all that was laid down by the relevant rule 57 was that the Appellant was required to accept the age for entry in the University record which was certified by the Headmaster of the school. If, according to the petitioner, the certificate issued by the Head master (Annexure ?A?) was not based on the school record, then the Petitioner could have persuaded his employer the State not to act on the entry regarding his age as recorded in the matriculation certificate but to act on other reliable evidence and if the authority had refused to accede to that request, he could have sought appropriate relief against them by proving his date of birth by adducing reliable evidence in that behalf. The University was not the proper forum for adjudication of this dispute. Moreover, assuming that the University had the jurisdiction to enquire into the correct date of birth, it could not be directed to correct the date of birth of the Petitioner by

giving a finding in that behalf merely on the basis of production of Annexure "3". Mere production of the school record by the head clerk of the school cannot be held to be sufficient to prove the correct date of birth. In this connection the following observations of the Supreme Court in *Birad Mal Singhvi v. Anand Purohit* AIR 1988 Supreme Court 1796 at page 1806 are pertinent:

...The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If entry in the scholar's register regarding date of birth is made on the basis of information given by the parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs. 8, 9, 10, 11 and 12 were proved it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents....

The learned single Judge, in my opinion, erred in holding that the production of school record was proof of the correctness of the date of birth stated in Annexure 3. Even assuming that the Petitioner was a precocious Child, who could have been admitted to Class V at the age of 5 years, as stated in Annexure 3, there was no material whatsoever on record to prove the contents of Annexure "3". In any event, the Appellant University could not have been directed to correct its record and to issue a fresh matriculation certificate to the Petitioner on the basis of Annexure "3". Such a direction cannot be sustained in law.

The petition under Article 226 of the Constitution filed by the Petitioner against the Appellant University cannot be converted into a suit for declaration where a finding regarding the date of birth of the Petitioner can be given in the absence of the parties which would be affected by that finding. The proceedings under Article 226 of the Constitution commenced by the Petitioner against the University alone were, in my opinion, misconceived.

6. As regards the contention advanced on behalf of the respondent that the appeal was not properly presented, it has come on record that the appeal was presented by a lawyer who had signed the Vakalatnama along with his senior whose name appears in the Vakalatnama. The defect, if any, is not fatal. The other defect according to the learned Counsel for the Respondent was that a typed copy of the judgment was not filed along with the appeal. I find from the record that the memorandum of appeal is accompanied by a Photostat copy of the judgment. According to the rules of the Court, a letters patent appeal should be accompanied by a typed copy of the judgment. The irregularities pointed out on behalf of the respondent in presentation of the appeal are not, in my opinion, sufficient to justify dismissal of the appeal on that ground.

7. For all these reasons the appeal is allowed, the judgment dated 6th November, 1989, passed by the learned single Judge, is set aside and the Respondents writ petition under Article 226 of the Constitution is dismissed. No order as to costs in the circumstances of the case.

G.C. Bharuka, J.

I agree.