
(2017) 01 MP CK 0009
In the Madhya Pradesh High Court
Case No : W.P. No.77 of 2016

Prakash Singh Yadav

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2017) 2 MPLJ 113

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri Ankit Saxena, Advocate, for the Petitioner; Shri Pushpendra Yadav, G.A, for the Respondents

Final Decision : Allowed

Judgement

Sujoy Paul, J.—The petitioner has challenged the order dated 27.10.2016 Annexure P/8 in this petition whereby the respondents have rejected the representation of the petitioner dated 30.8.2016.

2. Briefly stated, the facts are that the petitioner's date of birth was mentioned in the service record as 7.7.1964. However, said date of birth of the petitioner was altered by the respondents as 7.7.1955 in the year 2014. This action came to be challenged in WP No.10381/2015 which was decided by this Court on 6.8.2015 Annexure P/3. The action of respondents in unilaterally altering the date of birth of the petitioner was disapproved. The department was directed to issue show cause notice to the petitioner. In turn, the petitioner was permitted to file reply. The department was given liberty to pass a final order after following the principles of natural justice. The department thereafter passed the order dated 10.9.2015 which was again challenged by the petitioner by filing WP No.18129/2015 Annexure P/4. Since no show cause notice was issued and action in altering the date of birth was approved, this court again set aside the said order dated 10.9.2015 and gave liberty to the department to proceed in accordance with the directions contained in the first judgment dated 6.8.2015.

Thereafter, show cause notice dated 17.8.2016 Annexure P/5 was issued. The petitioner filed his detailed objection Annexure P/6. The said representation of petitioner is turned down by impugned order dated 27.10.2016.

3. Criticising the said order, Shri Ankit Saxena contended that (i) the show cause notice dated 17.8.2016 does not contain any stipulation regarding alteration of date of birth. In other words, it is urged that in the said show cause notice the petitioner was directed to show cause as to why department should not proceed against him for his alleged misconduct and should not punish him. (ii) The show cause notice is not related with alteration of date of birth. Thus, this show cause notice is not in conformity with the order passed by this Court in WP No.10318/2015. (iii) As per clause 84 of M.P. Financial Code, the date of birth once recorded cannot be altered. (iv) HE submits that date of birth cannot be altered at the fag end of career of employee and this alteration cannot be done at the behest of employee or employer. Reliance is placed on the order passed in WP No.4368/2016 Annexure P/7.

4. Shri Pushpendra Yadav, learned Government Advocate opposed the same by contending that the impugned action is in consonance with the directions issued by this Court in the first round of litigation. The principles of natural justice were followed and hence no fault can be found in the impugned action. He further submits that in cases of fraud on the part of employee, date of birth can always be altered. He submits that the petitioner deliberately did not produce the mark-sheet of Higher Secondary. When the marks were obtained from the Board it was found that petitioner's date of birth is 7.7.1955 and not 7.7.1964. He submits that fraudulent action of employee vitiates everything and; therefore, no relief is due to the petitioner.

5. No other point is pressed by the learned counsel for the parties.

6. I have heard the learned counsel for the parties and perused the record.

7. The contention of Shri Saxena was found to be correct in relation to earlier order dated 10.9.2015 which became subject matter of challenge in WP No.18129/2015. The said order was set aside by reserving liberty to the department to issue a proper show cause notice as per first order of this Court. In turn, the show cause notice dated 17.8.2016 is passed. The petitioner filed his reply and thereafter impugned order dated 30.8.2016 is passed. The core issue is whether the decision making process adopted by the respondents is in consonance with law or not. The show cause notice shows that on 11.12.2012 and 19.12.2012, the department directed the petitioner to provide the mark-sheet of Higher Secondary. The same direction was issued again from the Office of Engineering- in-Chief on 22.2.2014, 12.3.2014 and 1.4.2014. Despite these communications being issued, the petitioner did not submit the said mark-sheet. The petitioner was directed to remain present with the mark-sheet by issuing notice dated 21.4.2014 and 30.4.2014. The petitioner remained absent on the fixed dates i.e. 28.4.2014 and 6.5.2014. The Collector, Mandla also issued notice

on 31.12.2012 and 2.1.2013 and directed the petitioner to provide mark-sheet and attend the personal hearing. The petitioner did not cooperate and did not attend the hearing nor provided the mark-sheet. The petitioner, in turn, produced the birth certificate issued by concerned Registrar. This certificate was issued on 7.9.2007. The petitioner also produced a horoscope in support of his date of birth. The aforesaid backdrop shows that ample opportunities were given to the petitioner to put forth his case. The petitioner despite getting reasonable and adequate opportunity, did not produce the mark-sheet of Higher Secondary. The respondents sought information and verified the Higher Secondary mark-sheet of the petitioner from Board of Secondary Education, Bhopal. As per the said verification, it was found that petitioner's date of birth is 7.7.1955. The decision of respondents is based on such verification.

8. The para 8 and operative para of notice dated 17.8.2016 Annexure P/ 5 makes it clear that the contention of Shri Ankit Saxena that show cause notice does not contain any stipulation regarding alteration of date of birth is totally incorrect. The show cause notice very much contains the allegation regarding date of birth. The reasons for proposed alteration of date of birth are specifically shown. The petitioner is put to notice as to why date of birth should not be altered. Thus, the point (I) and (ii) raised by the petitioner are devoid of merits.

9. The point (iii) and (iv) raised by the petitioner are also devoid of substance. This Court in the first round permitted the department to take a decision about alteration of date of birth recorded in the service book. In this round, this Court cannot travel behind or beyond the said order. Thus, Clause 84 of the Financial Code cannot be pressed into service by holding that date of birth cannot be altered at this point of time. For the same reason, the order passed in WP No.4368/2016 cannot be of any help to the petitioner.

10. The allegations against the petitioner are relating to fraud in getting a wrong date of birth recorded in the service book. I find substance in the stand of the department that a candidate who is having a statutory certificate issued by Statutory Board (Board of Secondary Education), his date of birth is determined on the basis of said certificate. Horoscope or any other certificate like birth certificate issued at a later point of time cannot be relied upon. The petitioner's conduct is not above board. The petitioner, despite getting sufficient opportunities, did not produce the mark-sheet of Higher Secondary. For the sake of argument, even if it is accepted that petitioner had lost the original mark-sheet issued by the Board, nothing prevented him to obtain another copy/ duplicate copy from the Board and produce it before the department. If this course would have been adopted, petitioner's conduct would have been treated as fair and proper. However, as noticed, petitioner did not produce the said certificate which shows that the petitioner's conduct was not above board.

11. The argument that date of birth recorded in the service book cannot be altered at this stage cannot be accepted for yet another reason. If date of birth was recorded on the basis of a fake document, it amounts to a fraud played on

the department. Such entry which is based on a fraud can always be altered. In *Lazarus Estates Ltd. v. Beasley*, (1956) 1 QB 702, the Court of Appeal opined as under:

"I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

(Emphasis supplied)

In *S.P. Chengalvaraya Naidu v. Jagannath*, 1994 (1) SCC 1, the Supreme Court opined that fraud avoids all judicial acts, ecclesiastical or temporal.

In 2013 (8) SCC 311 (*Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and others*), the Apex Court held as under:

"Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud."

Justice D.D. Basu in his celebrated book *Commentary on the Constitution of India* (8th Edition 2007 page. 133) opined that the authorities, be they constitutional, statutory or administrative (and particularly these who decide a lis) possess the power to recall their judgment or orders if they are obtained by fraud and fraud and justice never dwell together.

12. On the basis of foregoing analysis, I find no legal infirmity in the decision making process and ultimate decision dated 30.8.2016. The date of birth of petitioner is determined by the department on the basis of certificate issued by Board of Secondary Education. No fault can be found in the said action. The department has taken a plausible view in the matter which does not attract *wednesbury's* principle. The scope of judicial review against administrative orders is limited. Another view is possible is not a ground for interference (See 2002 (3) SCC 496 (*Haryana Financial Corporation v. Jagdamba Oil Mills*), 2005 (5) SCC 181 (*State of NCT of Delhi v. Sanjeev*), 2006 (2) SCC 1 (*Rameshwar Prasad(6) v. Union of India*), 2006 (1) SCC 645 (*Ganesh Bank of Kurundwad Ltd. v. Union of India*) and 2013 (6) SCC 602 (*S.R. Tewari v. Union of India*)). Hence, I find no reason to interfere in discretionary jurisdiction under Article 226 of the Constitution.

13. Petition being devoid of merits is dismissed. No cost.