
(1978) 07 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Second Appeal No. 236 of 1976

Praveen Kumar

APPELLANT

Vs

The Board of Secondary Education for Rajasthan and Another

RESPONDENT

Date of Decision : 12-07-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14

Citation : (1978) WLN 180

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Judgement

M.L. Joshi, J.—The plaintiff-appellant passed the High School Examination from the Board of High School and Intermediate Education U.P. Allahabad in the year 1973. The plaintiff took admission in the 11th class in the Government Higher Secondary School, Dholput on 11th of July, 1973 and continued the studies there. The application from for the Higher Secondary Examination, which was to be held in March/April, 1974, were to be filled in by 15th of November, 1973, and were to be forwarded by the defendant Principal of the Higher Secondary School Dholpur to the Board of Higher Secondary Education, Ajmer (hereinafter referred to as the Board). The Principal of the said school refused to forward the application form of the plaintiff appellant to the Board as according to the circular No. 33/73 P 26.07-27831 of the Board sent to the defendant No. 2 to the effect that only those candidates who were born on or by first 1st of October, 1958, were only eligible for the examination of 1973-74. It may be mentioned here that the said circular was issued by the Board in pursuance of its regulation No. 12 Chapter 19 of the Hand Book of the Board. The said regulation lays down that no candidate shall be allowed to appear at the Higher Secondary Examination unless he would complete the age of 16 years on 1st of October, of the year in which he intends to take the examination. The appellant, therefore, filed a suit wherein he challenged that the said circular was invalid being violative of Article 14 of the Constitution of India. The plaintiff further alleged in the plaint that the date of

birth which had been recorded, in his transfer certificate, was not correctly recorded, as his correct date of birth is 14th September, 1958. The plaintiff, therefore, prayed for issuance of a direction to the defendant No. 2 the Principal of the Higher Secondary School, Dholpur, to forward his application form for the examination of the Board so as to enable him to appear in the examination to be held in March/April, 1974. It was further prayed by the plaintiff that the Board should be restrained from rejecting his application for entry for the examination on the basis of the above mentioned circular.

2. The defendant respondent No. 1, the Board, contested the suit and inter alia challenged that the age restrictions to the effect that the candidate should have completed 16 years on 1st of October, 1973 is not at all violative of Article 14 of the Constitution of India and is a valid one. The Board further pleaded that the plaintiff being under age was not eligible to appear in the said examination and was, therefore, entitled to no relief. The defendant, Principal of the Higher Secondary School Dholpur, also contested the suit. In the written statement the defendant No. 2 challenged the assertion of the plaintiff that his date of birth was 14th of September, 1958 on the ground that such assertion was inconsistent with the plaintiff's date of birth recorded in his transfer certificate and application for admission which also contained the date of birth of the appellant was duly signed by the natural guardian of the plaintiff, and the plaintiff is bound by the date of birth recorded in the application for admission and in his transfer certificate. The defendant No. 2 further supported the plea of the Board in regard to the eligibility of the plaintiff to appear at the said examination as the plaintiff had not completed the age of 16 years on 1st of October, 1973. Further, an objection was taken by the defendant No. 2 that he being a public officer and having not been served with a notice u/s 80 CPC the suit against him is not at all maintainable in the absence of such a notice being served upon him.

3. The trial court after framing as many as seven issues and recording the evidence of both the sides held that the date of birth of plaintiff is in fact 12th of November 1958 and not 14th of September, 1958 as recorded in the transfer certificate. It further held that the suit was not competent as notice u/s 80 C.P.C. was not given to the defendant No. 2. The trial court also held that the age restriction contained in Regulation No. 12 Chapter 19 of the Handbook of the Higher Secondary Board was not at all violative of Article 14 of the Constitution of India and was in no way invalid. It was also held by the trial Court that it had jurisdiction to hear the suit. Consequently, in view of the finding arrived at by it, the trial Court by its judgment dated 30th of November, 1974, dismissed the plaintiff's suit.

4. Being aggrieved, the plaintiff filed an appeal before the learned Addl. District Judge, Dholpur. The learned Addl. Judge, Dholpur endorsed the finding of the trial Court in regard to the validity of Regulation 12 Chapter 19. It further concurred with the finding of the trial Court that the suit was not maintainable against the defendant No. 2, as notice required u/s 80 CPC was not at all given

to him, much less served. The learned Addl. District Judge, Dholpur, however, disagreed with the finding of the learned Addl. Mans if that the plaintiff was born on 14th of September, 1958, and held that the real date of birth of the plaintiff as proved from the record is 12th of November, 1958. Accordingly, the learned appellate Court dismissed the plaintiff's appeal.

5. The plaintiff having felt aggrieved by the judgment and decree of the learned Additional District Judge has come up before this Court in second appeal. Learned Counsel for the appellant has raised before me the following two contentions:

(1) The Regulation 12 contained in Chapter 19 of the Hand Book of Higher Secondary Education, Ajmer is invalid as is violative of Article 14 of the Constitution.

(2) The act of forwarding the application for examination form of the plaintiff cannot be taken to be an act in discharge of official duty, so notice u/s 80 CPC was not at all necessary & the suit cannot be dismissed for want of service of notice u/s 80 CPC on defendant No. 2.

6. As regards first contention I may straight away say that the point is squarely covered by a Bench decision of this Court in Miss Kuntal Gupta v. The Board of Secondary Education Rajasthan R.L.W.1967 157. In that case the validity of the very Regulation No. 12 which is under challenge before me was at issue. Regulation No. 12 is reproduced as under:

Notwithstanding anything contained in these regulations, no candidate shall be allowed to appear at the Higher Secondary Examination unless he would complete the age of 16 years in which he intends to take examination.

7. This regulation was challenged before the Division Bench on the Pround that prescribing a minimum age only for admission to study, was arbitrary as the classification of candidate on the ground of age at the examination was neither rational nor was it based on any intelligible differentia. The contention was repelled by the Division Bench. It was observed:

For taking secondary examination of the Board, it is not necessary that one should have joined am institution. For certain specified subjects a candidate who had not studied at any school at all can take the examination which is evident from the scheme of Chapter XVIII of the Regulation,

The Division Bench further observed:

The object of the Act is undoubtedly to develop the system of secondary education, and this too en modern and progressive lines. Therefore, if examinations are taken to be the mile-stones in the progress of one's education and if the taking of education is made to depend upon the maturity of mind and body that a person develops with his or her age, then one cannot say that classification based on age for the taking of an examination is not rational or that

it is not in keeping with the underlying object of the enactment. System of examination is integral part of improving of education and the education of a person is inevitable judge on the basis of an examination that one has passed.

8. The Division Bench accordingly, held that regulation 12 was not ultra vires of the powers of the Board and was a valid one. This decision squarely negatives the contention of the appellant. The learned Counsel for the appellant has not been able to convince me to take a view different from the one taken by the Division Bench. The decision of the Division Bench is binding on me.

9. The next case which is relevant for our purpose is Surendra Kumar Jain and Others Vs. Central Board of Secondary Education, Ajmer and Others, The petitioners in that case were intimidated by the then Central Board of Secondary Education Ajmer that they were not eligible as they were below 14 years of age. There was a regulation No. 20 passed by the Central Board of Secondary Education in pursuance whereof the petitioners were not held qualified to appear at the High School Examination, 1957. The said regulation of the Board runs as follows:

Notwithstanding any thing contained in the Regulation of the Board, no candidate which is less than 14 years of age will be permitted to appear at the High School Examination of the Board and no candidate who is less than 16 years of age will be allowed to appear at the Intermediate Examination of the Board.

The petitioners in the case challenged the regulation on the ground that it was violative of the Article 14 of the Constitution. The argument was based on the fact that the Rajputana University has no such lower limit of age to appear at the High School Examination. Repelling the contention the Division Bench of this Court held that where the sources of authority for two rules or regulations are different. Article 14 of the Constitution can have no application, It was observed that the Rajputana University Board of High School and Intermediate Examination, and the Central Board of Secondary Education, Ajmer, being two different authorities, the fixing of 14 years as the minimum age limit for the High School examination candidates and 16 years for Intermediate examination candidates by the said Central Board of Ajmer is not hit by the Article 14 of the Constitution, even though the Rajputana University has not prescribed such age limit. The Division Bench held that the Regulation 20 of the Board prescribing the age limit for appearance at the High School examination and Intermediate examination is not hit by Article 14 of the Constitution and the regulation cannot be impeached as being discriminatory. This authority lends support to the Board's case and negatives the contention raised on behalf of the appellant that the regulations prescribing the minimum age limit for the appearance at the examination of Higher Secondary Board cannot be impeached as invalid on the ground of violation of Article 14 of the Constitution of India.

10. Mr. Mridul, learned Counsel for the appellant, referred me to Jagdish Pandey Vs. The Chancellor University of Bihar and Another, That case is really of no

assistance to the appellant. On the contrary in that case their Lordship have held that the dates mentioned in Section 4 of the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) is not arbitrary and violative of Article 14 of the Constitution. Mr. Mridul then relied upon *State of Rajasthan and Others Vs. Ramdhan, Balraj Singh v. State of Rajasthan and Ors.* ILR 1976 Raj. 375, *Jela Singh and Anr. v. State of Rajasthan and Ors.* 1976 SCC 602 and contended that the fixation of completion of age of 16 years or the eligibility for appearance at the Higher Secondary Examination is arbitrary and has no rational nexus with the object sought to be achieved I have carefully gone through these cases and regards to say that the cases cited before me have no direct bearing on the contention raised before me. It cannot be gain said that the fixation of completion of age of 16 years for eligibility to appear at the examination of the Higher Secondary Board, cannot be Said to be irrational and arbitrary and has nexus with the object sought to be achieved by the Board which has been high lighted by the Division Bench in *Kuntal Gupta's case (supra)* in its judgment. In the above mentioned cases the impugned law was struck down on the vice of discrimination as there was no rational nexus between the time fixed in law and the objects sought to be achieved by it. The same, however, cannot be said in regard to impugned regulation 12 The cases cited before me by the learned Counsel for the appellant are, therefore, distinguishable and cannot be of any assistance to the appellant.

11. In view of my decision on the first contention, I need not express my opinion on the second contention. Consequently, this second appeal deserves to be dismissed and the same is dismissed without any order as to costs.

12. Before parting with the case I cannot help observing that this is really a very hard case which deserves sympathetic consideration The appellant's admission was cancelled as candidates who were born on or before 1st of October, 1958 were only eligible for examination of 1973-74 The appellant's date of birth is 14th of September, 1958 and, therefore, he fell short by a few days in the matter of eligibility The appellant's admission was cancelled on this ground only, but under the interim orders of the Court the appellant was allowed to be provisionally admitted Thereafter he has cleared the Higher Secondary Examination and BE. Part I and Part II. If the order of the Board is allowed to continue the appellant will have to start fresh innings by appearing at the Higher Secondary Examination and further on the Engineering side. Thus he will suffer a loss of about 5 years which will not only be a loss to the appellant but it will also be a national waste. There is no act of moral turpitude or misconduct ascribed to the appellant. The only reason for which the appellant has been, penalised is that his period of eligibility fell short of a few days only. Thus there will be substantial injustice to a young man who has prosecuted his studies in the B.E. course. The future career of the appellant will therefore be ruined. In order to save the appellant from being ruined in his future career it is hoped that the State Government in exercise of its power will take suitable action to undo the injustice. It may be mentioned that the old rigour of minimum age 16 has been

relaxed even by the Board. In such circumstances, the appellant's case deserves to be dealt in a manner so that real justice may be done and he may be saved from again reappearing in the Higher Secondary Examination and other examination of B.E. Part I and Part II which he has already cleared.

13. Let a copy of this judgment be sent to the State Government drawing its attention to the last paragraph of this judgment.