
(2004) 01 AHC CK 0148

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41442 of 1999

Ram Krishna Pandey

APPELLANT

Vs

University of Allahabad, through its Vice-Chancellor & Anr.

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Citation : (2004) 01 AHC CK 0148

Hon'ble Judges : R.B.Misra, J

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri Ashok Khare, learned Senior Advocate along with Sri S. D. Shukla, learned Counsel for the petitioner and Sri Anand Tiwari, learned Counsel, holding brief of Sri Prakash Padia, learned Counsel for the respondents.

In this petition prayer has been made for issuance of writ of certiorari to quash the notice dated 1391999 (Annexure 8 to the writ petition) issued by the Registrar, University of Allahabad and further prayer has been made for issuance of writ of mandamus restraining the respondents from effecting any recovery on the basis of the order dated 1391999 and also for commanding the respondents not to interfere in the working of the petitioner as a Class IV employee till 31102003 i.e. till he attains the age of 60 years.

2. It appears that by order dated 1391999, treating the petitioner's date of birth 3011939 as entered into service record, the petitioner after completing the age of superannuation was notified to be retired from 3011999, which has been challenged by the petitioner in the present writ petition.

3. According to the petitioner, he is only VIIIth Class pass and is not High School pass, however, he was appointed as Lab. Attendant (Class IV post) in the year 1963 in the Allahabad University, and in the transfer certificate issued by the school the date of birth of the petitioner is specified as 3011943. According to the petitioner since in the year 1986 large number of records of Allahabad University including the service book of employees including that of the petitioner

were destroyed in a fire, which took place in the office of the Registrar of the University. On account of such destruction, the Registrar of University directed total number of 70 employees including the petitioner to undergo a medical examination before the Senior Medical Officer, where the certificate dated 29101986 (Annexure2 to the writ petition) was issued to the petitioner assessing his age as 43 years by physical appearance. As such, the date of birth of the petitioner as 29101943 was acknowledged on the basis of medical certificate and was accepted from the year 1986 by the University Authorities, according to which the petitioner could only be retired on 31102003, however, a notice dated 1391999 has been issued retiring the petitioner on 3011999, which is in violation of principle of natural justice, against the provisions of Article 14 of the Constitution and is also without any rhyme or reason.

4. According to the respondents, the date of birth of the petitioner was recorded as 3011939 in various old financial statements of the university and the financial statement of the university for the year 197273 and 197374 (AnnexuresCA1 and CA2 to the counter affidavit) revealed the date of birth of the petitioner as 3011939. The petitioner himself at relevant time of appointment has disclosed his date of birth as 3011939 on the basis of one school leaving certificate (enclosed as AnnexureCA3 to the counter affidavit), and the University had also initiated action against the petitioner on account of the complaint (AnnexureCA4 to the counter affidavit) made by Sri Shyam Babu, and the medical examination was superfluous and was not based on deeper examination, therefore, the same cannot be believed, whereas in the earlier documents prepared at the time of entering into service and in various records and financial statements disclosed by the petitioner, the date of birth of the petitioner is 3011939. The petitioner wants to take advantage of fire, which took place in the year 1986, and on the basis of estimated date of birth given in the medical certificate, which, according to the respondents, is only a farce.

5. On behalf of the respondents it has been argued that the claim of alternation of date of birth in the facts and circumstances by disputing the same is disputed question of fact, which cannot be gone into writ jurisdiction, as the same could be adjudicated before the trial Court in the suit, provided the petitioner files a plaint with the authentic supporting documents, namely, birth certificate by a Doctor or by Gram Pradhan, family register and horoscope and the statements in support of the plaint and after proper verification of the documents the declaration of the trial Court on the basis of the medical examination made including ossification of bones and after investigation, the date of birth could have been declared.

6. In (2003) 1 UPLBEC 280, Bimlesh Sharma v. Electricity Board, Office of Chief Engineer, U.P. Rajya Vidyut Parishad, Moradabad and others, where date of birth entered in the service book was to be changed by the wife of the deceased employee when the husband of the writ petitioner had died after retirement by disputing the change of date of birth. This Court has held disputed question of

fact cannot be investigated in the writ petition and the date of birth once entered in the service book of the petitioner under U.P. Recruitment to Service (Determination of Date of Birth) Rules, 1974, was treated to be correct supported by the relevant documents and supporting entries in the service book and the change of the date of birth disputing the same on the basis of fitness certificate were not treated to be relevant proof of age and such controversy and disputed question of fact could not be resolved by investigating the authenticity of the documents relied upon by the parties concerned in the writ proceedings.

7. In the case of Adhishashi Abhiyanta, Electricity Board, Rihand and Hydel Civil Div. U.P. State Electricity Board, Allahabad and another v. Shitla Prasad and another, Special Appeal No. 383 of 1989, decided on 17/9/1993, a Division Bench of this Court has held that:

?in our opinion, the medical fitness certificate dated 25/7/1974 could not be treated as an opinion of the Doctor regarding the age of the petitioner. The certificate has been given in the proforma prescribed under Fundamental Rules 10. The Doctor had examined the petitioner in order to ascertain as to whether he suffered from any communicable disease or otherwise and whether he had any constitutional weakness or bodily infirmity which would constitute disqualification for employment in the Hydel department. The Doctor was not asked or required to give an opinion regarding the age of the petitioner. There are well known scientific methods to ascertain the age of a person and ossification of bone gives a fairly accurate idea regarding the age. However, for this purpose X-ray examination has to be performed in case of Doctor had been asked to give his opinion regarding the age of the petitioner he would have performed necessary tests including X-ray examination etc. and would have also given the scientific date on the basis of which he would have formed his opinion about the age. The Doctor while giving opinion about the age of a person is if the.... Nature of an expert and in absence of necessary scientific date...weight in view of Section 45 of Evidence Act. We are clearly of the opinion that the medical fitness certificate dated 25/7/1974, could not at all be treated as an opinion of the Doctor regarding the age of the petitioner. As a consequence the said document could not be used for the purpose of determining his age.?

8. In the case of Burn Standard Co. Ltd. v. Dinabandhu Majumdar, AIR 1995 Supreme Court 1499 : 1995 (4) SCC 172, it was held that the employee of a public sector undertaking whose date of birth was entered in service book and leave record on the basis of the voluntary declaration made by the employee at the time of appointment and authenticated by him was never objected to up to the end of service, thereafter he sought for correction of date of birth about two years before his superannuation, when his prayer was refused, he moved the High Court in the writ petition, where relief was granted in his favour, however, the Supreme Court in appeal by special leave has held that ordinarily the High Court should not exercise its discretionary writ jurisdiction and entertain a writ petition filed by an employee of the Government or any instrumentality of State

towards the fag end of his service seeking correction of his date of birth entered in his service record or service register with the avowed object of continuing in service beyond the consequential period of retirement.

The Supreme Court has pointed out when an employer of the Government or its instrumentality who remained in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct all of a sudden comes forward towards the fagend of his service career with writ petition before the High Court seeking correction of date of birth in his service record, the very conduct of not raising any objection in the matter by the employee for long should be a sufficient reason for the High Court not to entertain such application on the ground of acquiescence, undue delay and latches.

9. In the case of State of Orissa and others v. Ramnath Patnaik, AIR 1997 Supreme Court 2452, the Supreme Court has observed in para 4. "When entry was made in service record and when he was in service, he did not make any attempt to have the service record corrected, therefore, any amount of evidence produced subsequently would be of no avail..." The Supreme Court has held that "an employee cannot be permitted to seek correction of his date of birth after his retirement".

10. In the case of Hindustan Lever Limited v. S.M. Jadhav and another, 2001 (2) LBESR 26 (SC) : AIR 2001 SC 1665, the Supreme Court, has elaborated its earlier view and held that "an employee cannot be allowed to raise, at the fag end of the career, dispute regarding correction of his date of birth".

11. In the case of General Manager, Bhawani Cooking Coal Limited, West Bengal v. Shib Kumar Dushad and others, (2000) 8 SCC 696, the Supreme Court has held that "no dispute regarding correction of date of birth shall be permitted to be raised after long time his joining service unless it is based on some typographical or arithmetical error and the Court refused to interfere in such matter".

12. In the matter of dispute regarding date of birth, the Government may choose one of the suggested date of birth given by the employee if some preliminary inquiry is made to resolve the controversy of the date of birth and Inquiry Officer holds the preliminary inquiry does not disclose to the person concerned and the decision arrived thereunder was treated to be contrary to the basis of justice and can have no value and shall be treated against the rules of natural justice has to accept one date of birth out of the claims by the employee on the basis of the inquiry report, such inquiry report should be passed on after informing the person concerned and after taking into the evidence in support thereof and after providing opportunity to the persons concerned as held in the State of Orissa v. Dr. Miss Binapani Dei, AIR 1967 SC 1269.

13. In Bhupendra Nath Chatterjee v. State of Bihar, AIR 1977 SC 746, it was held that the date of birth recorded in service record is to govern the date of

superannuation of the person from service.

14. In the matter of correction of date of birth, an application for that purpose is to be filed, according to the procedure prescribed within the time under rules or if no rule is prescribed, such application should be made within reasonable time. The Supreme Court has held that no interim order on application for correction of the date of birth should be passed by the Tribunal or the High Court keeping in view only the public service, directing the employee to be continuing in service unless there are cogent and conclusive materials produced by the employee that the date of birth recorded in the service record was not correct. The onus is heavy on the employee to prove the authenticity of the date of birth claimed for, it was therefore, held that the Court or Tribunal shall be slow in granting such interim relief unless the claim is supported by prima facie evidence of unimpeachable character, as observed in *Secretary cum Commissioner, Home Department v. R. Kirubakaram*, AIR 1993 SC 2647: 1994 Supp (1) SCC 155.

15. The application for correction of date of birth as recorded in the service book are not permitted to be corrected by inordinate delay as held in *Union of India v. Kantilal Hemantram Pandiya*, 1995(1) LBESR 447 (SC) : (1995) 3 SCC 17 : AIR 1995 SC 1349. The Supreme Court has held that the document which came into existence subsequent to the entrance in service but while getting the date of birth recorded in the said certificate respondents had not been involved. The Supreme Court considered this issue in *Union of India v. Kantilal Hemantram Pandya* (supra) and held that Court may not place any reliance on a document or certificate of date of birth which had been brought into existence for the benefit of the pending proceedings as the correctness and genuineness of such a certificate is not free from doubt. In *Union of India v. Kantilal Hemantram Pandya* (supra), the Supreme Court reiterated a similar view observing as under:

?He allowed the matter to rest till he neared the age of superannuation. The respondent slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only..... State claims and belated applications for alteration of the date of birth recorded in the Service Book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement need to be scrutinized carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual. On facts, the respondent was not entitled to the relief, which the Tribunal granted to him.?

16. In another case when long delay was made in seeking the correction of date of birth and the application having been filed beyond the statutory time limit (three years) it was held by the Supreme Court that competent authority may reject such application and the plea of the employee that the alleged mistake was discovered at about the time when he filed the application for date of birth which was about 40 years of the date of joining the service cannot be accepted as correct. *Chief Medical Officer v. Khadeer Khadri*, AIR 1995 SC 850; (1995) 2 SCC 82.

17. In *Union of India v. Ram Suia Sharma* 16, (1996) 7 SCC 421, the Supreme Court has again reiterated that the claim for correction of the recorded date of birth made 25 years of joining in the service could not have been entertained by the Central Administrative Tribunal and the Tribunal's direction allowing such a claim as per se illegal and that due to long delay and laches, such a claim should not have been entertained by the Tribunal.

18. In respect of condition precedent for correction of date of birth the Supreme Court held the employee seeking the correction of the date of birth must show that the recorded date of birth was made due to negligence of some other person or that the same was an obvious clerical error and that where the employee fails to do so, such relief for correction of date of birth should not be granted by the Administrative Tribunal. In that case, the extract from the Birth Register was produced, subsequently to the recording of date of birth on the basis of the schoolleaving certificate. The authority refused to correct the date of birth in the service on the basis of such extract. It is held by Supreme Court that in the absence of any material to show that the entry in the school leaving certificate was incorrect, the authority rightly refused to correct the date of birth, more so when the extract from the Birth Register even otherwise was found to be doubtful. *Commissioner of Police, Bombay v. Bhagaban V. Lahane*, AIR 1997 SC 1986.

19. The respondent applied for correction of date of birth before the appointing authority on obtaining a decree from Civil Court in a civil suit filed by the respondent against the Board/University for correction of his date of birth in the matriculation certificate issued by the Board/University. In that suit Government was not made a party. The question arose if the Government was bound to correct the date of birth in the service record on the basis of the said decree obtained against the Board/University in which the Government was not a party. The Supreme Court has held that as in the suit the Government was not a party, such decree is not binding upon the Government and the Government is not obliged to correct the date of birth on the basis of the said decree. It is also held that at best it is a piece of evidence and the Government has to look into all kinds of evidence for determination in order to decide whether the date of birth should be correct. It is observed that what is the date of birth is undoubtedly a question of fact and so all kinds of evidence can be looked into for such determination and if the Government on consideration of all these facts refused to correct the date of birth, then the order cannot be interfered with by the Court or Tribunal. *Director of Technical Education v. Smt. K. Sitadevi*, AIR 1991 SC 308; 1991 Supp(2) SCC 387.

20. The object of the rule or statutory instructions issued under the provision to Article 309 or orders issued by the Government under Article 162 of the Constitution for the correction of date of birth entered in the service record, is that the Government employee, if he has any grievance, in respect of any error or entry in the date of birth, will have an opportunity, at the earliest to have it

corrected. Its object also is that the correction of the date of birth beyond a reasonable time should not be encouraged. Permission to reopen accepted date of birth of an employee, specially on the eve of or shortly before the superannuation of the Government employee would be an impetus to produce fabricated records. *State of T.N. v. T.V. Venugopalan*, (1994) 6 SCC 302.

21. In reference to the decision of Supreme Court in *Burn Standard Co. Ltd.* (supra) where entry of date of birth noted in the Admit Card of Matriculation Examination could not be relied upon by the employer to correct the date of birth recorded in the service and Leave Register of the employee and authenticated by the employee himself it was the date of birth recorded at the time of joining service on the basis of the S.S.L.C. register was challenged by the employee 35 years later and his previous application for correction seven years earlier had already been rejected by the authority and at the belated stage, the only evidence was his oral evidence and the horoscope evidence. Therefore, the Supreme Court held that at the belated stage the horoscope evidence or oral statements cannot be believed. *Collector of Madras v. Rajamanickram*, (1995) 2 SCC 98.

22. The date of birth recorded in periodical medical inspection reports can be relied up when the employee challenged the declared date of birth as mentioned in the notice of superannuation as incorrect as the service records were missing. The Department pleaded before the Court below that the service record was manipulated and that the service register was removed by the employee in connivance with the Office Superintendent. The employee sought to rely upon the periodical medical reports noting date of birth to uphold his contention that the date of birth mentioned in the notice of superannuation was not correct. It was held that the date of birth recorded in the periodical medical inspection reports are not such reliable piece of evidence to uphold the contention of the employee that the date of birth mentioned in the superannuation notice is incorrect. *Sheo Nandan Singh v. Union of India*, (1996) 1 SCC 593.

23. In respect of correction of date of birth after retirement when claimant retired from the service on 31st December, 1978 and in 1981 he filed a suit against the rejection of his representation for correct of his date of birth for declaration that his correct date of birth is 1st January, 1925 and not 1st January, 1921. The Trial Court dismissed the suit but the First Appellate Court decreed the suit and the Orissa High Court has dismissed the second appeal in limine. The Supreme Court set aside the order of the High Court and allowed the appeal and also the judgment and decree of the First Appellate Court and restored that the Trial Court. It was held that when entry was made in the service record and when he was in service, he did not make any attempt to have the service record corrected any amount of evidence produced subsequently would be of no avail and that the High Court has therefore committed the manifest error in refusing to entertain the second appeal. *State of Orissa v. Ramnath Patnaik*, AIR 1997 SC 2452: (1997) 5 SCC 181.

24. In 2003(2) LBESR 28 (All) : (2003) 2 UPLBEC 1602, Ehtesham Ullah Khan v. Central Administrative Tribunal, Allahabad and others, this Court (D.B.) (Hon"ble Dr. B.S. Chauhan and Ghanshyam Dass, JJ.) has held that once the date of birth is recorded in service record, at time of entrance in service, it can be changed only by production of strong documentary evidence showing that it was incorrect. Any document coming into existence subsequent to entrance in service in correctness or genuineness of entry therein is said not free from doubt. In the instant case, petitioner joined service in 1963 and got his date of birth recorded as 1751934, thereafter, he had passed High School Examination in 1965, wherein date of birth was recorded as 1721943. He filed application for change in his date of birth in 1987, i.e., after 19 years of his service on the strength of this High School Certificate, a documentary proof, which by itself was rightly not found reliable, in view of settled law, besides it the fact about its genuineness also became doubtful as parentage of petitioner was found recorded different than that recorded in service record as such the Tribunal, therefore, rightly held to have rejected application.

25. Similarly as held in Rajasthan High Court in R.S. Mehrotra v. Central Government Industrial Tribunal, 1991 (63) FLR 76, the documents obtained subsequent to the date of joining the service cannot be relief upon for the purpose of correcting the date of birth as it might be very easy for the employee to mention another date in the papers while preparing the other documents, which came into existence subsequently and the Industrial Tribunal should not have accepted the claim of the workman placing reliance on such documents.

26. In Maharashtra State Electricity Board v. Sakharam Sitaram Shinde, 1996 (72) FLR 562, the Bombay High Court has taken a similar view observing that the possibilities of fabricating the documents just to support bogus claim of an employee cannot be ruled out in such circumstances.

27. The Rajasthan High Court in Nagar Mahapalika, Bareilly v. Labour Court, Bareilly and Anr., 1995 (71) FLR 950, held that the Industrial Tribunal committed an error in placing reliance on the documents prepared by the employee subsequently.

28. In State of Madhya Pradesh and Ors. v. Mohan Lal Sharma, 2003(1) LBESR 709 (SC) : JT (2002) 10 SC 207, the Supreme Court held that while examining the issue of correction of date of birth the Court must be very slow in accepting the case of applicant if issue has been agitated at a much belated stage and it must examine the pros and cons involved, in the case even if not raised by the parties. In the said case, the application for correcting the date of birth was rejected observing, that if it was allowed the applicant had joined the service, when he was below 18 years of age, and therefore, accepting such application would amount to sanctifying the illegal entrance in service.

29. There is a presumption that official acts are regularly performed though such a presumption can be rebutted by adducing evidence. (Vide Jhaman Lal v. State

of Rajasthan and Ors., AIR 1965 Raj. 86; Somasusudarshan Goud v. The District Collector, Hyderabad and Anr., AIR 1978 AP 420; Ganga Ram v. Smt. Phulwati, AIR 1970 All. 446; Saheed Ahmed v. Syed Qumar Ali and Anr., AIR 1973 All. 23; Gopal Narain v. State of U.P. and Ors., AIR 1964 SC 370; Maharaja Pratap Bahadur Singh v. Thakur Man Mohan Dey and Ors., AIR 1966 SC 1931; Ajit Singh v. State of Punjab and Ors., AIR 1967 SC 856; State of Punjab v. Satya Pal Dang and Ors., AIR 1969 SC 903; Sone Lal and Ors. v. State of U.P. and Ors., AIR 1978 SC 1142; Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd. and Ors., 1999(2) LBESR 227 (SC) : AIR 1999 SC 264; K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr., (1999) 7 SCC 510; Kiran Gupta v. State of U.P. and Ors., 2001(1) LBESR 902 (SC) : (2000) 7 SCC 719; Superintendent, Narcotics Control Bureau v. R. Paulsamy, (2000) 9 SCC 549, and the State Government of NCT of Delhi v. Sunil and Anr., (2000) 1 SCC 652.

30. In Narayan Govind Gavate v. State of Maharashtra and Ors., AIR 1977 SC 183, the Hon"ble Supreme Court observed that presumption provided in Illustration (e) of Section 114 of the Evidence Act is based on wellknown maxim *omnia praesumuntur rite esse acta*? (i.e., all acts are presumed to have been rightly and regularly done). The Court further held that this presumption is, however, one of the fact. It is an optional presumption and can be displaced by the circumstances, indicating that the power lodged in an authority or official has not been exercised in accordance with law.

For rebutting the long standing entry regarding the date of birth of an employee in his service record is a difficult task for the reason that the case of applicant has to be considered in view of the provisions of Sections 35 and 114 of the Evidence Act.

31. In Harpal Singh v. State of Haryana, AIR 1981 SC 361; Brij Mohan v. P.B.N. Sinha, AIR 1965 SC 282 and Ramprasad v. State of Bihar, AIR 1970 SC 326, it has been held by the Supreme Court that unless it is proved that the entries had been recorded in exercise of the official duties by a Government servant, the same cannot be held to be admissible under Section 35 of the Evidence Act. In case, it is proved that it got recorded by an illiterate Chowkidar or by someone else, or entries had been made without proper checking, the same requires corroboration and cannot be assumed to be correct.

32. In Mohammed Ikram Hussain v. State of U.P., AIR 1964 SC 1625, it was held that the age of the girl mentioned in the School Register at the time of admission was a good evidence under Section 35 of the Evidence Act. School Register was found to be admissible on the ground that these entries were made ante litem mortem.

33. In Updesh Kumar and Ors. v. Prithvi Singh and Ors., AIR 2001 SC 703, the School Admission Register was held to be made admissible under Section 35 of the Evidence Act. Even the age mentioned in Matriculation Certificate by the Education Board was held to be done in accordance with law as required under

Section 114, Illustration (e) of the Evidence Act.

34. School should be a Government one only then it can be held that date of birth had been recorded by a public servant in exercise of his official duty. No such presumption would be there in respect of Admission Register of the private school. Entries therein shall require corroboration. (Vide *Rammurti v. State of Haryana*, AIR 1970 SC 1029; *Brij Mohan Singh* (supra)).

35. In *Ramdeo Chauhan v. State of Assam*, AIR 2001 SC 2231, the Supreme Court, while examining the issue regarding admissibility of School Admission Register under Section 35 of the Evidence Act, held that as it was not clear as under what provision of law, the School Register was maintained, the entries made in such a Register cannot be taken as a proof of age of the person concerned for any purpose.

36. Date of Birth, the Secondary School Certificate is not to be taken to be correct unless corroborated by parents who got the same entries made. (Vide *Biradmal Singhvi v. Anand Purohit*, AIR 1988 SC 1796 and *Tora Devi v. Sudesh Choudhary*, AIR 1998 Raj. 54 (D.B.)).

37. It is settled proposition of law that a party has to plead the case and produce/adduced sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. (Vide *Bharat Singh v. State of Haryana*, AIR 1988 SC 2181; *M/s. Larsen and Toubro Ltd. v. State of Gujarat and Ors.*, 1998(1) JCLR 786 (SC) : AIR 1998 SC 1608; *National Building Construction Corporation v. S. Raghunathan and Ors.*, 1998(2) LBESR 743 (SC) : AIR 1998 SC 2779; *Ram Narain Arora v. Asha Rani and Ors.*, (1999) SCC 141; *Chitra Kumari v. Union of India and Ors.*, AIR 2001 SC 1684, the Supreme Court observed as under:

?The findings, in the absence of necessary pleadings and supporting evidence cannot be sustained in law.?

38. Similar view has been reiterated in *Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors.*, (2003) 1 SCC 18.

39. In 2003 AIR SCW 3775 : (2003) 2 UPLBEC 1780, *State of U.P. and others v. Smt. Gulaichi*, the Supreme Court has held in paras 8 and 9 as below:

?(8) Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, on even filing suits for adjudication as to whether the

dates of birth recorded were correct or not.?

?(9) Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Deka*, 1970 (3) SCC 624, this Court said that the date of the compulsory retirement ?must in our judgment be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure.? In the case of *Government of Andhra Pradesh v. M. Hayagreev Sarma*, 1990 (2) SCC 682, the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was inter alia observed by this Court.

?The object underlying Rule 4 is to avoid repeated applications by a Government employee for the correction of his date of birth and with that end in view it provides that a Government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth.?

40. In *Executive Engineer, Bhadrak (R & B) Division, Orissa and Ors. v. Rangadhar Mallik*, 1993 Supp (1) SCC 763, Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the Order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor made any

representation for correcting his date of birth till September 9, 1986.

41. It is settled proposition of law that the date of birth entered in the Service Book cannot be corrected at a belated stage. Where the date of birth entry remains in existence for a long time, the same does not require to be disturbed.

42. In case of *Union of India v. Harnam Singh*, 1993 (2) SCC 162, the position in law was again reiterated and it was observed:

?A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay.?

?An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the

service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim order, they continue for months, after the date of superannuation. The Courts or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to this immediate junior.?

43. In general, a disputed question of fact is not investigated in a proceeding under Article 226, particularly where an alternative remedy is available, e.g., the merits of rival claims to property or a disputed question of title; *State of Rajasthan v. Bhawani*, (1993) Supp(1) SCC 306 paragraph 7.

44. The High Court may interfere with a finding of fact, if it is shown that the finding is not supported by any evidence, or that the finding is "perverse" or based upon a view of facts which could never be reasonably entertained; *Arjun v. Jamnadas*, (1990) 1 SCJ 59 paragraph 15.

45. A finding based on no evidence constitutes an error of law, but an error in appreciation of evidence or in drawing inferences is not, except where it is perverse, that is to say, such a conclusion as no person properly instructed in law could have reached, or it is based on evidence which is legally inadmissible; *Board of Wakfs v. Hadi*, (1993) Supp 1 SCC 192 paragraph 17.

46. If the conclusion of facts is supported by evidence on record, no interference is called for even though the Court considers that another view is possible; *Maharashtra S.B.S.E. v. Gandhi*, (1991) 2 SCC 716 paragraph 10.

47. I have heard learned Counsels for the parties. I find that the petitioner is not High School pass and at the time of entering into service he disclosed his date of birth as 3011939, which was duly verified by him and acknowledged by the competent authority. The financial statement, school leaving certificate and other documents, which are still available in the university, reveal the date of birth of petitioner as 3011939, however, the petitioner, it appears, wanted to take advantage of the documents of some persons destroyed in the fire of 1986 and has referred the same school leaving certificate, which is not an authentic document and the estimation of the date of birth only on assessment by physical appearance has also no authenticity. In these circumstances, I find force in the contention of the respondents as the alteration of date of birth is a disputed question of fact, which cannot be adjudicated into writ jurisdiction, therefore, this Court is not inclined to invoke its extraordinary discretionary jurisdiction under Article 226 of the Constitution to give any relief as prayed for.

In view of the above observations writ petition is dismissed.