
(2003) 05 DEL CK 0107

In the Delhi High Court

Case No : Regular First Appeal No. 486 of 1988

Satya Narain Verma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2003

Acts Referred:

Citation : (2003) 8 AD 8 : (2003) 107 DLT 325 : (2003) 71 DRJ 115

Hon'ble Judges : R.S. Sodhi, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : S. Janani, Ad, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—R.F.A. 486/88 is directed against the judgment and order dated 25.5.1985 of the learned Additional Sessions Judge in Suit No. 171/80 seeking a declaration to the effect that the appellant-plaintiff's correct date of birth is "23.10.1920" instead of "5.10.1919" and for a mandatory injunction directing the respondents-defendants to treat the date aforesaid as correct date for all intent and purposes in the service of the appellant.

2. It was the case of the appellant before the trial court that the appellant was recruited as a civilian in the Army Headquarters on 5.10.1944 as a Clerk on casual/daily wages in the Ordnance Depot, Mathura at which time his age in the service record was recorded as "20" without the knowledge and consent of the appellant. In 1953, the appellant passed High School Examination from the U.P. Board of High School and Intermediate Education, Allahabad, where his correct date of birth was recorded as "23.10.1928" which entry was made after confirmation from two Municipal Commissioners on the basis of horoscope. In the same year, the service book of the appellant was made where the appellant found out that the date of birth recorded was "5.10.1919". Thereafter he made various representations to have the date of birth corrected. He has further alleged that on 28.6.1960, the Commander, Works Engineer, under duress

obtained a certificate from him showing his date of birth as "5.10.1919". He contends that the High School Certificate coupled with horoscope, extracts from Municipal birth register and two certificates from Municipal Commissioner, Mathura, indicate his date of birth as "23.10.1928".

3. On the basis of pleadings, the following issues were framed:

(i) Was the plaintiff born on 23rd October, 1928 and not on 5th October, 1919, as alleged by the plaintiff?

(ii) Is the plaintiff stopped from contending that his date of birth is 23rd October, 1928 and not 5th October, 1919, as alleged by the plaintiff?

(iii) Is the plaintiff stopped from contending that his date of birth is 23rd October, 1928 and not 5th October, 1919 on account of his assertions, declarations and conduct?

4. The appellant examined five witnesses in all in support of his case. PW-1, Ram Kishan Verma, is the elder brother of the appellant, PW-2, Shyam Lal, is a Clerk from the Municipal Board who produced extracts from the birth/death register while PW-5 is the appellant himself. PW1 deposed to the effect that the children of the family consisted of two brothers and three sisters. The appellant being the younger brother was born in 1928 whereas he himself was born in 1914 and his sisters were born in 1919, 1924 and 1932 respectively. This witness is very categoric about the date of birth of all other members of the family, but does not remember the date and month of birth of the appellant. PW-2, Shyam Lal, produced the original birth/death register and exhibited PW-2/1 where there is an entry regarding birth of a male child to one "Nathi Lal", son of Basant Lal, village Singalpura, on 23.10.1928. However, the copy, Ex.PW-2/1 is in Urdu and this witness does not know Urdu and could not read it. The appellant examined himself as PW-5. He deposed to the effect that he studied in a private school at Mathura but his date of birth was not recorded in the school register. In the same breadth he admits that the date of birth was recorded at the time of admission, he exhibited certificates by Municipal Commissioners of the Municipal Board, Mathura. He also admits that he had signed the service book after seeing his date of birth recorded therein as "5.10.1919". PW-3, Ram Lubhaya, was examined to prove copies of various letters and representations made.

5. The case of the appellant primarily rests on (a) the horoscope, (b) certificates of the Municipal Commissioners and (c) the metriculation certificate; (d) extracts of birth/death register and (e) the testimony of PW-1. As regards the horoscope, which otherwise is inadmissible, it mentions birth of a male child to one Shri Nathi Mal Ji while the Municipal record, Ex.PW-2/1, shows a male child born to Nathi Lal, son of Basant Lal, Village Singalpura. Both these documents pressed into service contradict each other. As regards the date entered in the metriculation certificate, the same cannot be proof of age for the reason that the metriculation examination was undertaken by the appellant eight years after his joining service and knowing fully well that his date of birth as mentioned in the

service book was "5.10.1919", yet he deliberately entered his date of birth as "23.10.1928". The date of birth entered in the metriculation certification cannot be deemed to be authentic. The appellant did not produce the best evidence i.e. School Leaving Certificate or extracts of the admission register at the time of entry to school. Further, the entries made in the service record are those made by the appellant himself; latter saying that they were made under duress cannot wash away its effect. Coming to the testimony of PW-1, it does not inspire confidence. This witness does not say that Nathi Lal was son of Basant Lal, resident of Village Singalpura. Therefore, the entry regarding Nathi Lal in the Municipal record does not get corroboration.

6. Having analysed the evidence on record, we are of the view that the trial court has rightly held that the appellant has not been able to prove his case. We, Therefore, affirm the impugned judgment and order dated 20.5.1985. R.F.A. 486 of 1988 is dismissed. No order as to costs.