
(2004) 04 AHC CK 0126

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17867 of 1998

Shankar Lal Pandey

APPELLANT

Vs

Vice-Chancellor, Allahabad University & Ors.

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Citation : (2004) 04 AHC CK 0126

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

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Sri V.K. Misra, learned counsel for the petitioner and Sri P.S. Baghel, learned counsel for the respondents. With the consent of the parties this writ petition is disposed of under Second proviso Rule 2 of Chapter XXII of the Allahabad High Court, 1952.

In this petition the order dated 1911996 (Annexure1 to the writ petition) has been challenged whereby the petitioner after completing 60 years of age was to retire on 31121996 treating the date of birth of the petitioner as 4121936. According to the petitioner he is High School pass from Board of High School and Intermediate Education Allahabad in short called "Board" and had joined as an Assistant Librarian in year 1965 in the Allahabad University where the date of birth of petitioner was recorded in the service book as 4121936 the same was at one time verified by the petitioner and the competent authority, however the petitioner continued in service without any break and was retired on 31121996. The petitioner claims his date of birth as 1981942 and asserts that the name of the father of petitioner is Nankai Lal Pandey alias Kashi Prasad Pandey and both names are of his father, while entering in the service in University the name of the father of the petitioner was written as Sri Kashi Prasad Pandey, but his original High School certificate was lost which was obtained from the "Board" in duplicate and transfer certificate from Shri Radharaman Inter College, Daraganj, Allahabad in both these certificates procured by the petitioner the date of birth of the petitioner is 1981942 and name of his father as Nankai Lal Pandey.

Supplementary affidavit was also filed as Annexure 4 endeavouring to explain how his father's name was entered in the school records as Nankai Lal and Kashi Prasad in the service records of University respectively. According to the petitioner despite repeated representations no heed was taken therefore, the present writ petition has been filed for alteration of date of birth.

2. Counter affidavit has been filed by the respondents. As asserted in para 10 of the counter affidavit the petitioner's father name was mentioned as Kashi Prasad Pandey and not Nankai Lal Pandey in all the records of the University. In the past, petitioner had filed as many as two writ petitions as indicated below, in this Court seeking various reliefs such as, salary, promotion etc. and in all the writ petitions he has sworn affidavits showing his father's name as Kashi Prasad Pandey. In none of the affidavits sworn by him, he had shown his father's name as Nankai Lal Pandey or father's name Nankai Lal Pandey alias Kashi Prasad Pandey. The earlier petitions filed by the petitioner are as under:

(i) Writ Petition No. (sic) of 1998

(ii) Writ Petition No. 3169 of 1990

(iii) Contempt Petition No. 1409 of 1994.

3. According to the contents of paragraph 11 of the counter affidavit it has been indicated that the High School certificate which the petitioner has enclosed, clearly demonstrate that it was not his certificate in as much as, the name of the father has been mentioned as Nankai Lal Pandey whereas admittedly, the petitioner's father name was Kashi Prasad Pandey and it is pertinent to note that the duplicate certificate of the High School Examination was issued to the petitioner on 2351997 i.e., after the retirement of the petitioner.

4. According to para 12 of the counter affidavit the transfer certificates enclosed with the writ petition reveals that the petitioner's father name is not Kashi Prasad Pandey. The petitioner has shown that he passed his High School examination from Radha Raman Inter College, Allahabad and supplementary examination has been alleged to be passed from Government Inter College, Allahabad and in none of the certificates, the petitioner's father name was ever mentioned as Kashi Prasad Pandey. It is significant to mentioned that the petitioner has enclosed the duplicate copy of the High School certificate, however, he has not made any averment that he got published notice in the newspaper regarding loss of his certificate. The duplicate High School certificate does not bear the signature of Secretary of the Board. The petitioner has first time filed the duplicate certificates, documents showing the name of his father as Nankai Lal Pandey. The petitioner has started claim of service on duplicate certificate of High School Certificate and Transfer Certificate at the fag end of the service career and according to the respondents the documents/records of the University reveal following aspects given as below:

(i) Financial Statement of Allahabad University from 141976 to 3131977 the

petitioner's name figure at Sl. No. 15, where column of date of birth has been left blank.

(ii) The list of teachers and employees of Allahabad University of the year 199596 wherein the petitioner's name figured at Sl. No. 2 under the Library Department shows the date of birth as 4121936.

(iii) Letter dated 2291997 of the Secretary, Intermediate Education Board in response to the letter of the University dated 1481997 wherein the name of petitioner has been shown as Shanker Lal Pandey son of Shri Nankai Lal Pandey.

5. Learned counsel for the University has also produced order sheet dated 4112003 of this Court and the financial statement. According to the respondents the certificate on which the petitioner has placed reliance does not belong to him.

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 1791993, a Division Bench of this Court has held that:

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 fag 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 in 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. Jadhay and another, 2001(2) LBESR 26 (SC) : 2001 (2) E.S.C. 338 (S.C.) : 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, Bharat Cooking Coal Limited, West Bengal v. Shib Kumar Dushad and others, 2001(1) LBESR 269 (SC) : (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 there under 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 Hematram 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 Hematram 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 Hematram 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, moreso 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 Art. 309 or orders issued by the Government under Art. 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(2) LBESR 243 (All) : 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.*, 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.*, (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 *If law ?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.*, 2001(2) LBESR 71 (SC) : 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(2) 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 Sharma*, 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.

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.

46. It is settled proposition of law that a party has to plead the case and produce/ adduce 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 & Toubro Ltd. v. State of Gujarat & Ors.*, 1998(2) JCLR 786 (SC) : AIR 1998 SC 1608; *National Building Construction Corporation v. S. Raghunathan & Ors.*, 1998(2) LBESR 743 (SC) : AIR 1998 SC 2779; *Ram Narain Arora v. Asha Rani & Ors.*, (1999) 1 SCC 141; *Chitra Kumari v. Union of India & Ors.*, AIR 2001 SC 1237, and *State of U.P. & Ors. v. Chandra Prakash Pandey*, 2001(2) LBESR 6 (SC) : AIR 2001 SC 1298).

47. In *Atul Castings Ltd. v. Bawa Gurvachan Singh*, AIR 2001 SC 1684, the Hon"ble Supreme Court observed as under:

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

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

In *Re: Sanjiv Datta*, (1995) 3 SCC 619, the Hon''ble Supreme Court has also observed as under:

?Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from..... the filing of incomplete and inaccurate pleadings they do not realize the seriousness of these acts and omissions. They not only amount to the contempt of the Court but do positive disservice to the litigants and create embarrassing situation with Court leading to avoidable, unpleasantness and delay in disposal of matters. This augurs ill for the health of our judicial system.?

49. In *Thakur Sukhpal Singh v. Takur Kalyan Singh & Anr.*, AIR 1963 SC 146, Hon''ble Supreme Court has held that in absence of proper assistance to the Court by the lawyer, there is no obligation on the part of the Court to decide the case, for the simple reason that unless lawyer satisfies the Court that there is some balance in his client''s favour to alter the situation, the Court is not able to decide the case. It is not for the Court itself to decide the controversy. The Court observed as under:

?.....He (counsel) cannot just raise objections in his memorandum of appeal and leave it to the appellate Court to give its decision on those points after going through the record and determining the correctness thereof. It is not for the appellate Court itself to find out what the points for determination can be and then proceed to give a decision on those points.?

50. While deciding the said case, Hon''ble Supreme placed reliance upon judgment of Privy Council in *Mst. Fakrunisa v. Moulvi Izarus*, AIR 1921 PC 55, wherein it had been observed as under:

?In every appeal it is incumbent upon the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in their favour when all the circumstances are considered to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged.?

51. In *T.C. Mathai and another v. District & Sessions Judge, Thiruvananthapuram, Kerala*, (1999) 3 SCC 614, Hon''ble Supreme Court observed:

?The work in a Court of law is a serious and responsible function. The primary duty of aCourt is to administer justice. Any lax or wayward approach, if adopted; towards the issues involved in the case, can cause serious consequences for the parties concerned..... In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very

necessary that the Court gets proper assistance from both sides.?

52. The Rajasthan High Court in *Bhola Singh v. State of Rajasthan*, AIR 1999 Raj. 242, held as under:

?.....the quality of the judgment depends upon the assistance rendered at the Bar. The Judge can not take the entire responsibility of laying down a correct law unilaterally without any assistance of the learned members of the Bar. The Judge cannot afford to retire from chamber and sit in the library and find out the case law on the issues involved in every case and what is the occasion to do anything in a case where the pleadings are so vague as the petition itself cannot be entertained.?

53. In *D.P. Chadha v. Triyugi Narain Mishra & Ors.*, (2001) 2 SCC 221, the Hon"ble Supreme Court observed as under:

?..... Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the Court, as they are called and rightly, the counsel have an overall obligation of assisting the Courts in a just and proper manner in the just and proper administration of justice..... A lawyer must not hesitate in telling the Court the correct position of law when it is undisputed and admits of no exception..... This obligation of a counsel flows from the confidence reposed by the Court in the counsel appearing for any of the two sides. A counsel, being an officer of the Court, shall apprise the judge with the correct position of law whether for or against either party.?

54. In view of the provisions of Sections 8 and 9 of the Arbitration and Conciliation Act, 1996 the Arbitrator has a power to grant interim relief. Moreso, in view of the provisions of Section 9 C.P.C. the Civil Court can grant interim relief at the initial stage even prior to resorting to the proceeding of arbitration.

55. In *M/s Sundaram Finance Ltd. v. M/s N.E.P.C. India Ltd.*, AIR 1999 SC 565, the Hon"ble Supreme Court held that a party can approach the Civil Court even prior to commencement of the arbitration proceedings under Section 21 of the Act. There has been a complete departure in this respect if compared with the provisions contained in Arbitration Act, 1940. In large number of cases it was found very difficult to serve the respondent, therefore, the legislature considered it necessary that the provision be made in the Act, which could enable a party to get interim measures urgently in order to protect its interest.

56. The Court determines a issue on applying its minds on the facts/pleadings taken by the parties and submissions made on their behalf on legal as well as factual issues. In absence of any factual foundation laid by the party concerned, and in absence of proper legal assistance on its behalf it is neither desirable nor possible for the Court to adjudicate upon as to whether the order impugned is worth sustainable in law. The party has to place whole case before the Court and challenged properly the correctness of the order impugned. If a party fails to do

so, or if proper assistance is not rendered by the counsel, the Court need not decide the case at all.

57. The petitioner has endeavoured to demonstrate that both the name of Nankai Lal Pandey and Kashi Prasad was the name of his father but could not explain how the duplicate transfer certificate and duplicate High School certificate procured after his retirement indicate the names of his father as Nankai Lal Pandey and under what circumstances the petitioner in all the writ petitions and contempt petition had mentioned the name of Kashi Prasad Pandey. A great doubt has been created when 1981942 was his true date of birth as High School duplicate certificate and Nankai Lal Pandey the real name of father then under what circumstances 4121936 and Kashi Prasad Pandey was entered and verified by petitioner as his date of birth and father's name on the records of the University. Dispute of date of birth and request for the change of date of birth at the fag end or after the retirement became disputed question of fact can not be gone under writ jurisdiction when the records of the University was duly verified by the petitioner himself. The petitioner cannot be allowed to take advantage of entries recorded in duplicate high school certificate and transfer certificate obtained after his retirement when at no point of time or at no place the petitioner has ever indicated that both the name of his father is Nankai Lal Pandey alias Kashi Prasad Pandey. For taking advantage a different version as an afterthought is being submitted before this Court. In the facts and circumstances the records and entries of the University shall be referred and no direction could be given to disbelieve these, for rectification of date of birth recorded in the service book and the records duly verified by the petitioner, if same was being disputed after his retirement from service. The petitioner if so advised, might have resorted to prefer a suit before the trial Court by filing a plaint, in support of his family register, certificates of Gram Pradhan or certificates of Doctor or Hospital and in support of horoscope and might have adduced evidences and witnesses and might have revealed the proof of his date of birth by specific test, including ossification of bones and after adjudication the trial Court might have decided the dispute and change of the date of birth as being disputed question of fact and for the above reasons the same could not be done by this Court.

58. In these circumstances the petitioner is not entitled to any relief in the present writ petition. Therefore, I do not invoke extraordinary jurisdiction under Article 226 of the Constitution. The writ petition is dismissed.