
(1996) 01 AHC CK 0049

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 1006 of 1996

Vijay Kumar Mehta

APPELLANT

Vs

Registrar B.H.U.Varanasi and Others

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Citation : (1996) 01 AHC CK 0049

Hon'ble Judges : B.S.Chauhan, J

Final Decision : Dismissed

Judgement

Dr. B. S. Chauhan, J.—The instant writ petition has been filed by the petitioner seeking a direction to the respondents, namely, the Registrar, ViceChancellor and Executive Council of the Banaras Hindu University, Varanasi (hereinafter called the respondentUniversity) not to superannuate the petitioner with effect from afternoon of 3111996 and seeking a further direction that the respondent University should make correction of the date of birth of the petitioner.

2. The facts mentioned in the writ petition reveal that the petitioner has also filed the representation on 18121995 (Annexure2 to this writ petition) before the respondent University for making the aforesaid correction. In the service book the date of birth of the petitioner has been recorded as 811936. The petitioner is working as Senior Technical Assistant in the said university. As the petitioner could not seek any relief from the University, he filed the instant writ petition for the aforesaid relief.

3. Shri Namwar Singh, learned counsel for the petitioner has argued that the Ordinance No. 2.5 was introduced in the calendar of the University on 961979 which provides inter alia that school leaving certificate or municipal corporation's certificate shall be relevant in determining the date of birth. The ordinance 2.5 (1) reads as under :

"In the case of those who are able to produce School Leaving Certificate, Municipal Corporation Certificate in support of the date of their birth and in the

case of those who have passed the Matriculation Examination or equivalent Examination, the date of birth as recorded in the School Leaving Certificate or Municipal Corporation Certificate or High School/Matriculation Certificate, as the case may be, be treated as final and the same be recorded in the service book."

4. It has further been argued that the date of birth recorded in the admission certificate of the Central Hindu School, Varanasi was not recorded on the basis of any specific knowledge and thus the correct date of birth of the petitioner has not been recorded and he is entitled for the said equitus relief.

5. In the case of Secretary and Commissioner, Home Department v. R. Kiru Bakaran, 1994 Suppl. 1 SCC 155, the Apex Court after referring to and considering the catina of judgments held that the application for making correction of the date of birth should be made within the time fixed by any rule or order and in absence of such rule or order, it should be made within a reasonable time. It was further held that the correction of the date of birth of public servant should not be done in a casual manner but the court must pass such order on "material produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect". The Court observed as under :

"As such whenever an application with alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servant, to raise such a dispute, without explaining as to why this question was not raised earlier".

6. In the said case the Apex Court has also observed that the onus to prove that the recorded date of birth was wrong was very heavy on the person seeking such correction.

7. In the case of Chief Medical Officer v. Khadeer Khadri, 1995 (2) SCC 32, the Apex Court rejected the plea that the alleged mistake in the recorded date of birth was itself discovered at the very late stage and found that it was merely a rule holding that such a belated attempt is not the bona fide one.

8. Similarly in the case of Collector of Madras v. K. Raja Manickam, 19. 5 (2) SCC 98, it was found to be beyond apprehension to believe at the" belated stage the horoscope evidence or oral statement as in the service book the date of birth has been recorded on the basis of school register and volume;; could be spelt out of the authenticity of the lodged entries in the school register or transfer certificate.

9. In the case of Bum Standard Company Limited v. Shri Din Bandhu Majumdar, AIR 1995 SC 1499, the Supreme Court held that if an application is made for the correction of the date of birth at the fag end of service by way of seeking a writ directing his employer not to retire him on superannuation according to the date of birth declared and accepted at the time of his appointment and to correct hi;; date of birth in the records to accord with newly found materials, the Court

should not exercise ordinary jurisdiction in favour of such an employee as a matter of course. The Court observed as under :

"The importance of the date of birth of an employee given to his employer and accepted as correct by the latter and entered in the "service and leave record" of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer have to be necessarily regulated according to such date of birth.....Even where such correction is sought, the Government or its instrumentality, as the case may be, would be entitled to refuse to correct the date of birth of its employee if the facts in the given case did not warrant such correction.....The fact that an employee of Government or its instrumentality who would be in service for over decades, with no objection whatsoever raised as of his date of birth accepted by his employer as correct. When all of a sudden comes forward towards the fagend of his career with a writ application before the High Court seeking correction of his date of birth in his service record, the very conduct of nonraising of an objection in the matter by the employee. In our view, should be a sufficient reason for the High Court, not to entertain such application on grounds of acquiescence, undue delay and laches."

10. If the law referred to above is applied in the instant case, the facts of the case reveal that the petitioner is a well qualified person and had joined the services of the respondent University in the year 1964 and sought correction of his date of birth in December, 1995, is by no means understandable. Further more, the averments that the mother of the petitioner who was the Member of the Legislative Assembly of Bihar wrote a letter dated 15/4/1960 that the date of birth of the petitioner was 24/3/1939 and an affidavit was also filed in support of the said letter and a request was made to correct the matriculation certificate of the petitioner accordingly and the filing of the statement of his brother Yogesh Kumar Mehta recorded in some civil litigation on 23/5/1963 (Annexure 6 to this writ petition) showing that the recorded date of birth of the petitioner was not correct, lacks merit and have no force as the petitioner has not explained as when the respondent University did not take any action on the said letter dated 15/4/1960 why the issue was not raised/agitated any further and the same material cannot be considered at such a belated stage. The nonagitating the issue any further after writing the letter in 1960, 35 years, ago amounts to acquiescence and the petitioner cannot be permitted to raise the issue at the fagend of his career. The petitioner is not an illiterate person or class IV employee of the University. He was capable to understand the consequences of nonagitating the issue further. In view of the provisions of Sections 101-103 of the Evidence Act, 1872, the burden to prove that the entry regarding the date of birth of the petitioner, recorded in the school register/certificate is not correct, lies upon him and the onus is very heavy. Such an entry made in the school register ante litem mortem i.e. made several decades ago, is definitely valid and admissible piece of evidence under the provision of Section 35 of the Evidence Act (Mohd. Ikram Husain v State of U. P., AIR 1964 SC 1625 ; Umesh Chandra v.

Sine of liajasthan AIR 1982 SC 1057).

11. The instant case is squarely covered by the law laid down by the Apex Court in the cases referred to above and thus this petition fails and is accordingly dismissed.