

**Virendra Singh Vs. State of U.P. and Another**

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**Court :** Allahabad

**Decided On :** May-22-2000

**Reported in :** 2000(3)AWC2250; [2000(86)FLR322]; (2000)2UPLBEC1748

**Judge :** M. Katju and; D.R. Choudhary, JJ.

**Acts :** Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 - Rules 3 and 4; [Evidence Act, 1872](#) - Sections 13(1) and 44; [Limitation Act, 1963](#) - Sections 5; [Constitution of India](#) - Articles 226 and 309

**Appeal No. :** C.M.W.P. No. 6036 of 2000

**Appellant :** Virendra Singh

**Respondent :** State of U.P. and Another

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** A.K. Srivastava and ;T.P. Singh, Advs.

**Judgement :**

**M. Katju, J.**

1. This writ petition has been filed praying for a writ of certtorari to quash the impugned order dated 5.1.2000 Annexure-1 to the writ petition and for a mandamus directing the respondents to treat the petitioner's date of birth as

6.7.1948 Instead of 6.7.1942 for the purpose of superannuation and hence not to retire the petitioner from 31.7.2000

2. Heard learned counsel for the parties.

3. The petitioner is working as an Executive Engineer in the Irrigation Department in the State of U. P. When he entered in service, his date of birth as recorded in the High School Certificate was 6.7.1942. However, he filed a civil suit being O.S. Wo. 63 of 1994. Virendra Singh v. State of U. P., before the Civil Judge, Roorki. district Hardwar and that suit was decreed and it was directed that his date of birth should be treated as 6.7.1948. True copy of the judgment of the learned Civil Judge is Annexure-2 to the writ petition. Against that Judgment. the respondent filed an appeal being Appeal No. 1 of 1995 which was dismissed by the learned Additional District Judge vide Annexure-3 to the writ petition. Against that judgment, a second appeal was filed in this Court along with an application under Section 5 of the Limitation Act and it is stated in paragraph 9 of the writ petition that judgment has been reserved on 31.8.1999 in that case. However, no stay order was passed by this Court against the Judgment of the learned Additional District Judge.

4. It is alleged in paragraph 11 of the writ petition that despite the judgment of the learned Additional District Judge the respondent has proposed to retire the petitioner on 31.7.2000 treating the date of birth of the petitioner as 6.7.1948 Instead of 6.7.1942.

5. Sri T. P. Singh, learned counsel for the petitioner submitted that In view of the Judgment of the learned Additional District Judge, the petitioner's date of birth should be treated as 6.7.1948. We do not agree with this submission. It may be mentioned that the U. P. RECRUITMENT TO SERVICES (DETERMINATION OF DATE OF BIRTH) RULES. 1974. have been framed by the State Government under Article 309 of the Constitution. Rule 3 of the aforesaid Rules states as follows :

'The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a Government

servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time of his entry into Government service, shall be deemed to be his correct date of birth or age, as the case may be for all purposes in relation to his service including eligibility for promotion, superannuation, premature retirement or retirement benefits and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.'

Rule 4 states as follows :

These Rules shall have effect, notwithstanding anything contrary contained in the relevant service rules or orders.'

6. A perusal of the above Rules shows that the legal position is settled, namely, that if a person has passed High School examination when he entered in service, then the date of birth recorded in the High School certificate shall be treated as correct, and when he had not passed High School, then the date of birth recorded in his service book at the time of his entry in Government service shall be deemed to be his correct date of birth and no application or representation shall be entertained for correction of such date of birth in any circumstances. This Rule has overriding effect over any other existing Rule.

7. In *Union of India v. Rama Swamy and others*. AIR 1997 SC 2055. which was a case coming from Andhra Pradesh. It was held by the Supreme Court that the date of birth can be changed only if there was a bona fide mistake. It was also held that the principle of estoppel will apply and hence when the Government servant had indicated a particular date of birth in his application form or any other document at the time of employment, the Court should not change that date of birth. The ratio of the above decision shall apply with greater rigidity in U. P. because here the 1974 Rules specifically provide that no application or representation shall be entertained regarding change of date of birth in any circumstances whatsoever vide Rule 3 quoted above.

8. The use of the words in any circumstances whatsoever indicate that the date of birth recorded in the High School certificate (or in the service book at the time of

entry into Government service, if the person had not passed High School) is not merely a presumption but conclusive proof of the date of birth. In other words, no evidence can be led in rebuttal of such date. The reason for this Rule was obviously because a lot of fraud was being played by many Government servants who did not want to retire, and hence they were getting their date of birth changed by various fraudulent means, e.g., manufacturing a false date of birth in the 'kutumb' register, or a false doctor's certificate or a collusive decree. Hence. It was decided to put an end to these fraudulent techniques by adopting a rule of conclusive proof.

9. It is very unfortunate that a practice has arisen in U. P. and also in many other States to change the date of birth which was recorded in the service book or in the High School certificate by some fraudulent method so that a person can continue in service even after he has crossed the age of retirement. This has become a very wide spread practice in the State of U. P. and even collusive suits are being unfortunately filed and decreed in this connection. The present appears to be a case where the petitioner has sought to reduce his age by six years by obtaining a collusive decree. This is in gross violation of the 1974 Rules.

10. Learned counsel for the petitioner submitted that the decree of the civil court has become res Judicata. He submitted that the correct date of birth is 1948 as recorded in the 'kutumb' register and not that recorded in the High School certificate. We cannot agree. The 1974 Rules make the date of birth recorded in the High School certificate conclusive of the matter as is evident from a perusal of the said Rules. The kutumb register or other material is wholly irrelevant for this purpose. The judgment of the Court below appears to be collusive. It is settled law that a collusive decree can be ignored by the High Court in view of Section 44 of the Evidence Act, vide *Ibne Hasan v. Smt. Hasini Bibi*. AIR 1984 All 216 : *Asharfi Lal v. Smt. Kali*. AIR 1995 SC 1440, etc. In *Smt. Kaushilya Devi v. K. L. Bansal*, 1969 (1) SCC 59, the Supreme Court relied on its own decision in *Bahadur Singh's* case In which Bachawat, J., observed :

'On the plain wording of Section 13(1), the Court was forbidden to pass the decree and held the decree to be a nullity.'

11. It is settled law that writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our discretion under Article 226 of the Constitution in this case. It seems evident that a collusive decree was obtained by the petitioner to reduce his age by as much as six years. This Court cannot approve of such type of collusive and mala fide practice.

12. The petition is dismissed.

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