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(2012) 02 AHC CK 0373

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 59320 of 2010

Ram Charan @ Rajendra Paswan	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision: Feb. 3, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 4 ADJ 431

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: R.C. Gupta, for the Appellant; A.S.G.I., S.K. Varma and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.
The petitioner has challenged the orders dated 31.8.2010/ 4.9.2011 and 30.7.2004/ 2.8-2004 (Annexures 8 and 6 respectively to the writ petition) which are relating to his date of birth. Admittedly the petitioner has joined the service on 24.5.1984 as Handling Labour in the respondent Corporation i.e. Food Corporation of India at Hapur. The case set up by the petitioner is that his date of birth had been mentioned as 1.12.1956 but in 1995 when he was transferred from Hapur to Varanasi, he received a letter from the District Manager that there is some interpolation in his date of birth, therefore, he may adduce evidence regarding his date of birth.

2. After looking the evidence adduced by the petitioner showing his date of birth as 1.12.1956, an order was passed by the District Manager on 11/16.3.2004 stating that the date of birth of the petitioner is being corrected as 1.12.1956. It is said that the corrected date of birth was mentioned in several other documents. However, it is not in dispute that later on the District Manager, Food Corporation of India, Varanasi by office order dated

30.7.2004/ 2.8.2004 have recalled his earlier order dated 11 /16.3.2004 and clarified that date of birth of the petitioner is 1.12.1950 winch was mentioned in his office history card prepared at Hapur.

3. The petitioner remained silent and did not challenge the said order of cancellation for almost six years. On the basis of date of birth as 1.12.1950, the petitioner was going to retire on 30.11.2010 and just a few days earlier i.e. about three months, he approached this Court in Writ Petition No. 45742 of 2010 challenging the order dated 30.7.2004/2.8.2004. This Court, however, declined to interfere with the said order observing that no correction in the date of birth at the fag end of the service career is permissible and no writ petition for such purpose shall be entertainable. Having so said, this Court granted liberty to the petitioner to place his case before the administrative authority. The judgment of this Court dated 4.8.2010 is as under :

Under the order dated 2.8.2004 the District Manager, Food Corporation of India, District Office Varanasi has directed that the date of birth of the petitioner as per the service record, be treated as 1.12.1950. It is against this order that the present writ petition has been filed.

The petitioner has approached this Court at the fag end of his service career as per the date of birth noticed above. The Hon''ble Supreme Court of India has repeatedly held that such petitions for correction in the date of birth at the fag end of the service career are not to be entertained.

In the facts of the present case, this Court finds no good ground to interfere with the order dated 30.7.2004.

However liberty is granted to the petitioner to represent his grievance before respondent No. 2, within two weeks from today, alongwith a certified copy of this order. On such a representation being made the respondent No. 2 shall call for the records and shall pass a reasoned speaking order preferably within six weeks thereafter.

Writ petition is disposed of.

4. Thereafter it appears that petitioner made a representation which has been rejected by the authorities concerned i.e. the General Manager (Region), Food Corporation of India by the impugned orders.

5. Learned counsel for the petitioner submitted that this Court had summoned the original record and the same may be perused. The Court examined the original record which shows that there is no interpolation. This Court has perused the history card of the petitioner prepared at Food Corporation of India, Hapur mentioning his date of birth is 1.12.1950 and clearly there is no interpolation or overwriting. The date of birth is mentioned very clearly. The pen and ink used in the date of birth mentioning as 1.12.1950 is also the same in which the name and other particulars of petitioner have been

mentioned on the said sheet. The aforesaid sheet also contain signatures of certain officials mentioning the date, below their signatures as 2.4.1990 and 21.7.1992 etc. meaning thereby that these signatures are prior to 1995.

6. Learned counsel for the petitioner further submitted that in some of records the date of birth of the petitioner is 1.12.1956, therefore, other record should have been considered by the respondents. In my view the submission is thoroughly misconceived and has to be rejected at the out set. The petitioner has already failed in his attempt to get his date of birth changed when the order dated 30.7.2004/ 2.8.2004 was passed. This Court has already declined to interfere with the said order and, therefore, the said order has attained finality. He, now, cannot be permitted to assail the same order in a fresh writ petition. More over, liberty granted to the petitioner to approach the authorities concerned on the administrative side does not render the judgment dated 4.8.2010 in-effective in so far as it has recorded a finding that correction in date of birth at the fag end of the service career cannot be permitted and no writ petition for the said purpose is to be entertained. It is legally impermissible to now challenge the order dated 30.7.2004/ 2.8.2004 which was also challenged in earlier writ petition but in vain. The earlier it having attained finality, now it cannot be permitted to assail the same order in a fresh writ petition. More over, it has repeatedly be said that non-statutory representation, does not explain latches or give a fresh cause to a person even if a direction was issued by the High Court to decide the such representation.

7. Undue delay and laches are relevant factors in exercising equitable jurisdiction under Article 226 of the Constitution of India. Following the cases of Government of West Bengal Vs. Tarun K. Roy and Others, and Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, , the Apex Court in New Delhi Municipal Council Vs. Pan Singh and Others, , observed that after a long time the writ petition should not have been entertained even if the petitioners are similarly situated and discretionary jurisdiction may not be exercised in favour of those who approached the Court after a long time. It was held that delay and laches were relevant factors for exercise of equitable jurisdiction. In Lipton India Ltd. and Others Vs. Union of India (UOI) and Others, and M.R. Gupta Vs. Union of India and others, , it was held that though there was no period of limitation provided for filing a petition under Article 226 of Constitution of India, ordinarily a writ petition should be filed within reasonable time. In The Oriol Industries Ltd. Vs. The Bombay Mercantile Bank Ltd., , it was said that representation would not be adequate explanation to take care of delay. Same view was reiterated in State of Orissa Vs. Pyarimohan Samantaray and Others, and State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others, and the said view has also been followed recently in Shiv Dass Vs. Union of India (UOI) and Others, and New Delhi Municipal Council (supra). The aforesaid authorities of the Apex Court has also been followed by this Court in Chunvad Pandey v. State of U.P. and others, 2008 (4) ESC 2423.

8. Learned counsel for the petitioner vehemently suggests that Court should look into original documents prepared at the time of induction in service in Food Corporation of

India at Hapur. Having gone through the documents I find that there is no interpolation or over-writing in the date of birth of the petitioner and the aforesaid claim of the petitioner is mischievous.

9. In the entirety and in the facts and circumstances of the case and considering the above findings, in my view the writ petition deserves to be dismissed with costs since it shows an attempt on the part of the petitioner to re-agitate a matter which has already attained finality, and also that the petitioner has gone to the extent of making false statement before this Court. The writ petition is, accordingly, dismissed with costs of Rs. 25,000/-