

Court No. - 39

Case :- SPECIAL APPEAL DEFECTIVE No. - 440 of 2020

Appellant :- Roop Nath Yadav

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Ashok Kumar Srivastava,Indrajeet Kumar

Counsel for Respondent :- C.S.C.,Brijendra Kumar

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri B.R. Mishra, Advocate, holding brief of Sri Indrajeet Kumar, learned counsel for the petitioner/appellant and Sri B.K. Ojha, learned counsel for respondent Nos. 2 and 3 and learned Standing Counsel for Respondent No.1.

2. The present intra court appeal has arisen from the order of learned single judge dated 10.2.2020 in Writ-A No. 2199 of 2020 (Roop Nath Yadav Vs. State of U.P. and two others). Primarily, the learned single judge has dismissed the writ petition filed by the petitioner to assail the order dated 3rd May, 2016 as barred by laches.

3. Petitioner appellant had been engaged on a Class-IV post by the respondent-Development Authority. Initially his date of birth recorded in his service record was 1.1.1968. Later, some dispute arose as to the correctness of the date of birth disclosed by the petitioner-appellant. On that, a departmental inquiry was instituted. Therein, on the strength of material received by way of evidence, a conclusion was recorded that the school records pertaining to transfer certificate obtained by the petitioner-appellant disclosed his date of birth 14th August, 1959. At the same time petitioner continued to contend that his recorded date of birth was 1.1.1968. In that regard, he placed reliance on certain reports submitted by the District Basic Education Officer.

4. At the same time it is undisputed, consequent to the inquiry report dated 20.8.2014, the petitioner was issued a second show cause notice dated 27.5.2015. Perusal of the same clearly disclose, the petitioner was required to show cause why the date of birth may not be corrected in the service record to read 14.8.1959. In reply thereto, the petitioner did not dispute the fact that the date of

birth as recorded in his school records was 14.8.1959. However, he contended that his date of birth be recorded as per the medical opinion obtained at the instance of the Development Authority.

5. Perusal of the reply filed by the petitioner dated 10.9.2015 leaves no doubt that the petitioner did not dispute the reliance placed by the Inquiry Officer on the school record.

6. In view of that reply, by order dated 3rd May, 2016 the disciplinary authority corrected the date of birth of the petitioner in the service record to read 14th August 1959.

7. Almost, four years thereafter, after receiving retirement notice dated 22nd February, 2019 and 31st August, 2019, the petitioner appellant filed the above described writ petition giving rise to present intra court appeal.

8. The learned single judge proceeded to dismiss the writ petition on the ground of laches.

9. Having heard counsel for the parties and having perused the record, we find that there is no explanation to the delay of four years in filing the writ petition.

10. It is undisputed that the writ petition came to be filed at the fag end of the career of the petitioner/appellant. Even on merits, once the petitioner did not dispute the correctness of the inquiry report, wherein it was stated that the date of birth of the petitioner/appellant, as recorded in the school record, was 14th August, 1959 and in absence of any challenge to the fairness or propriety of the inquiry proceedings, no challenge may have arisen at the hands of the petitioner.

11. Sitting in intra court appeal, we are not a higher court or forum. We are in a Court of appeal on principle. Seen in that light, we find that the learned single judge refused to exercise discretionary jurisdiction under Article 226 of the Constitution of India occasioned by delay and laches as also the conduct offered by the appellant.

12. We find no error in the application of correct principle.

13. We find that the learned single judge applied the correct principle.

14. Once the discretionary relief has been refused by the writ

court, no case is made out for grant of that relief in the present intra court appeal.

15. The instant appeal lacks merits, and is accordingly dismissed.

Order Date :- 6.11.2023

Kumar Manish.

(Arun Kumar Singh Deshwal,J.) (Saumitra Dayal Singh,J.)