

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Neutral Citation No. - 2024:AHC-LKO:4582-DB

Court No.-10

Case :- SPECIAL APPEAL DEFECTIVE No. - 19 of 2024

Appellant :- State Of U.P. Thru. Secy. Deptt. Of Homeguards U.P. Govt. Lko. And Others

Respondent :- Rajesh Kumar And Others

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- A.Z. Siddiqui, Prashant Kumar Singh

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. We have heard the learned counsel for the appellants and Sri A.Z. Siddiqui, learned counsel for the respondent No.1 and Sri Prashant Kumar Singh, learned counsel for the respondent No.2.

2. This appeal has been filed with a delay of 77 days.

3. We have perused the affidavit filed in support of the application for condonation of delay, which states

sufficient reasons. The delay is **condoned** in filing the present special appeal.

4. The counsel for the appellants, while challenging the order passed by the Writ Court dated 22.09.2023, has submitted that while allowing the writ petition and setting aside the order dated 19.06.2023 on the ground that it had not taken into account the letter issued by the Education Authorities, the Writ Court has not given any opportunity to the appellants to pass a fresh order. The order being set aside only on technical ground without making any observations on the merits of the controversy with regard to the correct date of birth of the respondent No.1, the matter is covered by the observations made by the Hon'ble Supreme Court in several cases leading case of which is **MDECIL vs. B Karunakar**, that if an order is set aside on technical grounds, opportunity should be given to the Officer to pass a fresh order, in accordance with the provisions of law.

5. The facts in brief as stated by the counsel for the appellants are that the respondent No.1 had applied for the post of Home Guard Volunteer and his application, annexed at annexure No.1 to the application for interim relief, states his date of birth as 25.02.1966. Such application was made by the respondent No.1 himself and in his own handwriting and there is no interpolation by anyone in the same. In support of his date of birth, the respondent No.1 had

submitted a school leaving certificate/ scholar register wherein his name has been mentioned as Rajesh Kumar, although, there is some overwriting in the name as son of Arjun and his date of birth has been shown as 25.02.1966 filed as annexure No.2 to the application for interim relief. On the basis thereof, the respondent No.1 was appointed as Home Guard Volunteer. He continued to work from 1989 till 2019. All of a sudden, on 18.12.2019, he made an application that his date of birth has been wrongly mentioned in his service records as 25.02.1966. His actual date of birth is 02.08.1970 and he submitted a copy of scholar register of the school last attended. The District Commandant, Home Guards wrote a letter to the District Basic Education Officer, Hardoi on 15.09.2022 praying for verification of the scholar register/ T.C. indicating his date of birth as 25.02.1966 as submitted by the respondent No.1 at the time of seeking appointment. The District Basic Education Officer, Hardoi by his letter dated 16.11.2022 informed the District Commandant, Home Guards that after perusing the records, it has been found that the scholar register/ school leaving certificate, which was earlier submitted by the respondent No.1 showing his date of birth as 25.02.1966 was in fact that of one Naresh Kumar S/o Arjun. A copy of the information sent by the District Basic Education Officer, Hardoi dated 16.11.2022 has been filed as annexure No.5 to the application for interim relief. The respondent No.1 was issued a show cause notice on 15.10.2022, which the respondent challenged in **Writ-A No.8297 of**

2022 titled as **Rajesh Kumar vs. State of U.P. and others** wherein this Court was pleased to grant an interim order dated 09.12.2022 staying the operation of the show cause notice and directing the State Authority to let the respondent No.1 continue in service. The said writ petition was finally disposed of by this Court by its order dated 15.05.2023, a copy of which has been filed at page No.162-163 of the instant appeal. This Court, while disposing of the writ petition, issued a direction to the District Commandant, Home Guards, Hardoi to take a final decision on the impugned show cause notice issued to the petitioner after taking into consideration the letter dated 20.03.2020 (annexure-10 to the writ petition) addressed to the Basic Shiksha Adhikari, Hardoi and his reply dated 24.09.2020 within a period of one month from the date of the order. The Court further directed that Rajesh Kumar be given opportunity of personal hearing before taking a final decision.

6. It has been submitted that the respondent No.1 was given opportunity of hearing and then an order was passed on 19.06.2023 wherein mention was made of the earlier application moved by the respondent No.1 indicating his date of birth as 25.02.1966 and also the scholar register, copy of which showed interpolation and instead of name of Naresh Kumar, the name of Rajesh Kumar was mentioned therein and the verification made thereafter by the District Basic Education Officer by his reply dated

16.11.2022 mention therein a letter dated 30.12.2019 issued by the District Commandant, Home Guards to the school where the respondent No.1 had studied and the reply received from the same on 21.01.2020 that the scholar register indicated the name of Naresh Kumar S/o Arjun having been born on 25.02.1966 and it was not the copy of the scholar register/ school leaving certificate of Rajesh Kumar. The order dated 19.06.2023 thereafter mentions that on 31.12.2022, a show cause notice was issued to Rajesh Kumar and he was also stopped from working any further. Rajesh Kumar challenged the same in Writ Petition No.8297 of 2022, which was finally disposed of by this Court on 15.05.2023 with the aforesaid directions. Thereafter, the order dated 19.06.2023 mentions that in pursuance of the Writ Court's order, the letter of the District Basic Education Officer, Hardoi, dated 24.09.2020 was also considered, from which, it was evident that the educational document that was submitted by Rajesh Kumar at the time of his initial appointment was not correct, but the educational document that was submitted by him through his application dated 18.12.2019 was correct. In a fact, the District Basic Education Officer, Hardoi had certified that the date of birth of the respondent No.1 was 02.08.1970 and not 25.02.1966. However, the District Commandant, Home Guards thereafter has observed that show cause notice had been issued to the respondent No.1 as to under what circumstances, he had indicated an incorrect date of birth i.e. 25.02.1966 at the time of seeking

appointment and as to why, he submitted a forged/ interpolated school leaving certificate that actually belonged to his brother, Naresh Kumar S/o Arjun. The respondent No.1 submitted an explanation on 09.06.2023 saying that he had indeed put his signature on the application form, which indicated his date of birth as 25.02.1966, but he did not give any explanation/ plausible explanation for indicating an incorrect date of birth and signing such application form. The preliminary fact finding inquiry that was conducted in the matter was referred to in the letter dated 19.06.2023 thereafter, and it has been stated that at the time of taking admission, the respondent No.1 had placed reliance upon the educational documents of his brother, Naresh Kumar and a certificate issued by the Gram Pradhan, Chetram of Gram Panchayat Shahbuddipur, Post Sathra, Block Khand Sirsa, District Hardoi, has also been placed reliance upon saying that Naresh Kumar is the real brother of Rajesh Kumar. Thereafter, the order dated 19.06.2023 mentions that no person can have two dates of birth and that the initial date of birth as mentioned in the application form at the time of appointment cannot be changed later on. Since the respondent No.1 had admitted to having signed the application form and having mentioned 25.02.1966 therein, he cannot resile from the same after passage of long time and it shall be presumed that the respondent No.1 had submitted forged educational documents of his brother, Naresh Kumar to seek

appointment. Therefore, the appointment of the respondent No.1 was cancelled with immediate effect as having been based upon forged documents.

7. It has been submitted by the learned counsel appearing on behalf of the respondent No.1, Sri A.Z. Siddiqui, Advocate that in the writ petition filed by him challenging such order dated 19.06.2023, the respondent No.1 had also impleaded the dealing clerk, Vinod Chauhan as respondent No.4 and he had made allegations of *mala fide* against respondent No.4, Vinod Chauhan that he used to demand money for giving posting to Avaitnik Home Guard including the respondent, Rajesh Kumar and when Rajesh Kumar had refused to give bribe to Vinod Chauhan, he had interpolated documents relating to service of Rajesh Kumar leading to the passing of the order dated 19.06.2023.

8. This Court has perused the record. Although averments have been made with regard to alleged *mala fides* action of the opposite party No.4, the Court had not issued any notice to the opposite party No.4 and the version of opposite party No.4 was not taken into account, therefore, at this late stage, after decision under writ petition on exchange of pleadings, it cannot be said that because the respondent No.1 had refused to grease the palm of Sri Vinod Chauhan, he had carried out the alleged interpolation in the service records of the respondent, Rajesh Kumar.

9. The counsel for the respondent No.1, Rajesh Kumar has also pointed out from his writ petition that in the identity card issued to him by the respondents themselves, they had shown his date of birth as 02.08.1970. He has referred to paragraph No.6 of the writ petition and the reply submitted thereto in the counter affidavit in paragraph No.21.

10. This Court has perused the paragraph No.6 of the writ petition as also paragraph No.21 of the counter affidavit, which are quoted herein below:-

"6. That the petitioner's services and relevant requisite records are verified number of times during the service period and on the basis of that he has continued to serve as Company Nagar A as a Home Guard No. 174 and he has received regular salary from the Office of District Commandant, Home Guards, Hardoi. To ascertain this fact it is being appended the identity card issued from the Office of the District Commandant, Home Guards, in the year 1991 which shows that the petitioner's date of birth is 02.08.1970. This is all based on records submitted by the petitioner from his service book. A copy of the identity card is being annexed herewith as Annexure No.6 to this writ petition.

21. That the contents of the paragraphs no. 6 of the writ petition are not admitted, it is important to mention here that on the basis of identity card of the petitioner for the date of birth is not appropriate."

11. It is apparent that the respondents have denied the contention raised in paragraph No.6 of the writ petition and has stated that the respondent No.1

cannot rely upon an identity card to substantiate his date of birth.

12. It is settled law rendered by the Hon'ble Supreme Court in **U.P. Madhyamik Shiksha Parishad and others vs. Raj Kumar Agnihotri**¹ that date of birth has to be substantiated only through educational documents or medical certificates issued by the competent Chief Medical Officer/ Civil Servant in the absence of educational documents of an applicant and no application for change of date of birth should be entertained at the fag end of the service career of an employee.

13. This Court having gone through the records of the writ petition finds that it is the admitted position of the respondent No.1 that he sought appointment as Home Guard Awaiting in 1989 on the basis of an application along with educational document showing his date of birth as 25.02.1966. However, at the fag end of his service career i.e. on 18.12.2019, he made an application for correction of his date of birth saying that he discovered a wrong entry being made in the service records/ nominal role when it was circulated by the respondents.

14. Such delayed application at the fag end of the service career should not have been entertained, however, the District Commandant, Home Guards, nevertheless, got verified the educational document

¹ **(2005) 11 SCC 465**

that was submitted by the respondent, Rajesh Kumar initially at the time of his appointment and also at the time of making application for correction of his date of birth. It had come out from the information submitted by the District Basic Education Officer, Hardoi that the initial certificate/ school leaving certificate/ scholar register that was submitted by Rajesh Kumar belonged to his brother, Naresh Kumar whereas the later educational documents that was submitted by him was indeed belonging to Rajesh Kumar showing his date of birth as 02.08.1970.

15. Taking into account such information submitted by the District Basic Education Officer, Hardoi, the Appointing Authority has taken the decision on 19.06.2023, but the Writ Court has observed that the District Commandant, Home Guards has not taken into account the letters issued by the District Basic Education Officer, Hardoi dated 24.09.2020.

16. The Writ Court has failed to notice that the order impugned in the writ petition dated 19.06.2023 was passed on a different ground altogether that is of taking recourse to filing forged educational document at the time of seeking appointment by the respondent No.1, Rajesh Kumar. This fact was uncontroverted from the record as Rajesh Kumar had not disputed the initial application made by him indicating his date of birth as 25.02.1966. Therefore, the initial appointment of Rajesh Kumar has been cancelled by the District

Commandant, Home Guards on the conclusion having been arrived at that he did not state correct facts at the time of seeking appointment.

17. The counsel for the appellants has placed before this Court a judgment rendered by the Hon'ble Supreme Court in **M/s. Indian Oil Corp. Ltd. vs. Rajendra D. Harmalkar**² wherein the Hon'ble Supreme Court has observed that an employer cannot trust an employee, who has produced a fake and forged marksheet/ certificate at the initial stage of appointment. The question is not of having an intention or *mens rea*. The question is producing the fake/ forged certificate and the Court has come to a conclusion that the Disciplinary Authority was justified in imposing the punishment of dismissal from service.

18. In the case of the respondent No.1, the appellants have not dismissed the respondent No.1 from service. They have cancelled his initial order of appointment treating it to have been obtained on the basis of forged document. The Writ Court has failed to notice the difference between dismissal/ removal from service and cancellation of initial appointment.

19. The Writ Court has also failed to notice that if an order is set aside on technical grounds, an opportunity should be given to the authorities to take corrective action and pass appropriate order afresh, in accordance with law.

2 [2022 (174) FLR 179]

20. This Court finds the order of the Writ Court to be bad in law for the reasons as aforesaid.

21. In view of the facts and circumstances of this case, the present special appeal is **allowed**. Consequently, the order dated 22.09.2023 is hereby set aside. The writ petition is restored to its original number to be decided afresh.

Order Date :- 17.01.2024
cks/-