

IN THE HIGHT COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6348 of 2016

Reserved on 10.11.2017

Date of decision : January 19, 2018

Darshana Devi

....Petitioner

versus

Principal, Govt. Sr. Secondary School,

Ratta Khera & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Balraj Singh Rathee, Advocate for the petitioner.

Mr. Sharad Kumar Yadav, DAG, Haryana.

* * * *

B.S. WALIA, J.(ORAL)

1. Prayer is for quashing of order, Annexure P-12 dated 25.2.2015 passed by the learned Civil Judge (Junior Division), Saffidon whereby application filed by the petitioner under Order 39 Rule 1 and 2 CPC was dismissed, Annexure P-15 dated 05.09.2016 passed by the learned Additional District Judge, Jind upholding order Annexure P-12 & consequential letter Annexure P-16 dated 07.09.2016 whereby the petitioner was directed to submit papers for grant of pension benefits.
2. Brief facts of the case leading to the filing of the revision petition are that the petitioner joined as Part Time Water Carrier in Government Primary School, Village Todi Kheri on 08.02.1990. Subsequently, the petitioner and one Dharampal filed CWP No.6011/2000 praying for regularization of their services. Respondents therein filed a written statement that the services of the petitioners therein had been regularised w.e.f 29.03.2012. In the circumstances, the writ petition was

disposed of vide order Annexure P-1 dated 12.09.2012 granting liberty to the petitioners to file representation for regularization with effect from the date their juniors had been regularised.

3. That pursuant to the orders of the High Court, as referred to above, the petitioner in terms of Gazette Notification Annexure P-2 dated 29.07.2011 was asked to submit certificate of date of birth as well as caste for regularization of her services. Petitioner alleging herself to be illiterate and claiming not to be having any birth certificate submitted a certificate from the Medical Board in the office of the Civil Surgeon, Jind certifying her to be 46 years of age as on 21/25.10.2011. On directions by the respondent-Department, the petitioner submitted Medical Certificate of Fitness of First Entry into Government Service i.e. Annexure P-4 whereupon the services of the petitioner were regularized w.e.f. 08.02.1999 and service book Annexure P-5 prepared mentioning therein her date of birth as 31.07.1966.

4. That thereafter, letter Annexure P-6 dated 01.10.2013 was written by the Principal, Government Senior Secondary School, Karkhana to the District Education Officer, Jind, seeking clarification regarding actual date of birth of the petitioner. In response thereto, the Sub Divisional Education Officer, Jind vide letter Annexure P-7 dated 09.10.2013 intimated that date of birth of the petitioner recorded at the time of her part-time appointment was to be treated as her date of birth for as per documents received from the office of the Principal, Government Senior Secondary School, Ratta Khera, date of birth of the petitioner was 06.02.1955 whereas on regularisation of her service in 2012, the petitioner had submitted a certificate from the Chief Medical Officer, Jind reflecting her date of birth as 31.07.1966. In response to the communication from the Principal,

Government Senior Secondary School, Karkhana, Jind, the Sub Divisional Education Officer, Jind, informed that date of birth of the petitioner as per record at the time of her joining as Part Time Water Carrier had been mentioned as 06.02.1955 and on the said basis, her Seniority along with that of 72 Part Time employees had been prepared vide letter dated 01.12.2006, consequentially date of birth of the petitioner as given by her on the post of Part Time Water carrier be considered as her date of birth. Accordingly, amendment was made in the record w.r.t. date of birth of the petitioner.

5. The petitioner alleging that amendment in her date of birth in the service book had been made from 31.07.1966 to 06.02.1955 on the basis of false and fabricated affidavit as a consequence of which the respondents were going to retire her from service on 28.02.2015 without compliance with the principles of Natural Justice, challenged the amendment of her date of birth in the service book i.e. Annexure P-8 by way of a civil suit along with an application under Order 39 Rule 1 & 2 CPC for a declaration that her date of birth be considered as 31.07.1966 and the respondents be restrained from retiring her prior to 31.07.2026 on account of age of retirement of Class-IV employee in Haryana being 60 years. Vide order Annexure P-12 dated 25.02.2015, learned Civil Judge (Junior Division), Safidon, dismissed the application under Order 39 Rule 1 & 2 CPC.

6. That aggrieved with order Annexure P-12 dated 25.02.2015 passed by the learned Civil Judge (Junior Division), Safidon, the petitioner filed an appeal Annexure P-13 before the learned Additional District Judge, Jind, who vide order Annexure P-14 dated 27.02.2015 granted order of status quo qua retirement of the petitioner. Eventually, vide order Annexure P-15 dated 05.09.2016, the appeal was dismissed.

7. Impugned order Annexure P-15 dated 05.09.2016 passed by the learned Additional District Judge, Jind, dismissing the appeal against order Annexure P-12 dated 25.02.2015 rejecting the application under Order 39 Rule 1 and 2 of the CPC has been challenged on the ground that the learned Additional District Judge failed to take into account that the respondents had arbitrarily and illegally amended the date of birth of the petitioner without complying with the principles of natural justice, that there was no occasion for the petitioner to have filed affidavit dated 26.08.2002 stating her date of birth as 06.02.1955 *and that even if it was presumed that the alleged affidavit had been submitted by the petitioner, then also it could not be considered as proof of date of birth*, that both the courts below had failed to take into account that the respondents had exceeded their jurisdiction for as per instructions dated 13.08.2001 i.e. Annexure P-9, it was the employee who could apply for amendment/correction of date of birth and there was no occasion for the employer to change the date of birth in the service record of the employee. In the aforementioned background, prayer is for allowing the revision petition, setting aside impugned order Annexure P-12 dated 25.02.2015 & Annexure P-15 dated 05.09.2016, for allowing the application filed by the petitioner under Order 39 Rule 1 & 2 CPC, consequentially, for directions that communication Annexure P-16 dated 07.09.2016 requiring the petitioner to submit her pension papers be not acted upon.

8. Learned Deputy Advocate General, on the other hand, contended that the petitioner herself while on the post of Part Time Water Carrier had submitted affidavit dated 26.08.2002 disclosing her date of birth as 06.02.1955 and on the said basis, seniority list was prepared on 01.12.2006 and 08.02.2007 reflecting date of birth of the petitioner as stated by her in her affidavit, that the petitioner

never had any reason to challenge the date of birth given by her in her above said affidavit, therefore never challenged the same, therefore, the date of birth incorporated in the record on the basis of the affidavit had to be treated as her correct date of birth. Learned Counsel further contended that as per instructions dated 13.08.2001 issued by the Government of Haryana, Finance Department, the Government had the right to correct the date of birth of an employee at any time if it was satisfied that the age recorded in the service book etc. was not correct and had been incorrectly recorded. Relevant extract of the instructions is reproduced as under :

“..... Government however, reserves the right to make a correction in the recorded age of Government employee at any time against the interest of that Government employee when it is satisfied that the age recorded in his service book or in the history of services of a Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage therefrom.”

9. Learned Counsel for the petitioner by relying on the decision of this Court in **Bhagat Singh vs Union of India 1992 (1) RSJ 384** disputed the submissions of learned counsel for the respondents by contending that even if it be presumed that affidavit had been submitted by the petitioner, the same could not override assessment of age made by the Medical Authorities and in any case the amendment in the date of birth of the petitioner to her detriment was legally unsustainable on account of non compliance with the principles of Natural Justice.

10. I have considered the submissions of learned counsel for the parties. Although, opportunity of hearing was not given before altering the date of birth of the petitioner but the Hon'ble Division Bench in Bhagat Singh's case (Supra) approved the decision of the Hon'ble Madhya Pradesh High Court in Bhanwar Singh Bhup Singh Rajput versus State of Madhya Pradesh - **AIR 1963 Madhya**

Pradesh 335 wherein it has been held that medical evidence with respect to determination of age of a person can never be certain. Admittedly, the Medical Board determined the age of the petitioner at approximately 47 years and on the said basis, date of birth of the petitioner was recorded as 31.07.1966. However, it is also on record that the petitioner submitted affidavit dated 26.08.2002 while working as Part Time Water Carrier disclosing her date of birth as 06.02.1955 and on the said basis, seniority list was prepared on 01.12.2006 and 08.02.2007. The petitioner never challenged the date of birth i.e. 06.02.1955 on the basis of which the seniority list was prepared nor the seniority list at any point of time. At the stage of passing of an interlocutory order such as on an application for grant of ad interim injunction under Order 39 Rule 1 & 2 CPC, the Court has to form its opinion on the basis of the three pillars on which rests the foundation of any order of injunction-**Shanti Kumar Panda versus Shakuntala Devi 2005 (11) JT 122** i.e. making out of a prima facie case, balance of convenience and irreparable loss.

11. In the case in hand, admittedly, seniority list of Part Time Water Carriers prepared on the basis of date of birth of the petitioner as per affidavit dated 26.08.2002 submitted by her is 06.02.1955. Seniority list was prepared on the said basis on 01.12.2006 and 08.02.2007. Neither the date of birth on the basis of which the same was prepared nor the seniority list was disputed by the petitioner at any point of time. It was only when the petitioner was regularized that she submitted a certificate from a Medical Board showing her to be of 46 years of age and date of birth as 31.07.1966.

12. After considering all aspects of the matter, I am of the view that none of the three essential requirements for grant of interim injunction are made out. In the facts of the case it cannot be said that the petitioner has a prima facie case in her

favour. It is a matter of evidence whether affidavit dated 26.08.2002 on the basis of which date of birth of the petitioner was incorporated in the service record was submitted by the petitioner or whether the same does not reflect her correct date of birth, that the date of birth of the petitioner as recorded in the Seniority list prepared on 01.12.2006 and 08.02.2007 on the basis of affidavit submitted by her is not correct and that her correct date of birth is 31.7.1966. On the contrary, a prima facie case is made out in favour of the defendant-respondents that the date of birth of the petitioner as recorded in the service record on the basis of the affidavit submitted by her on 26.8.2002 and on the basis of which the seniority list was prepared on 1.12.2006 and 8.2.2007, correctly records the date of birth of the petitioner. Besides, if on the basis of evidence led during the course of trial, the petitioner establishes that the declaration sought for i.e. that her correct date of birth is 31.7.1966, is proved, she would be entitled to be continued in service and would also get appropriate monetary benefits. Besides if the injunction prayed for is granted the same would tantamount to grant of the relief sought for in the main case itself which is not permissible under law. Reference in this connection can be made to a decision of the Delhi High Court in Anant Gupta vs. PNB, 1997 (70) DLT 666. Relevant extract of the aforesaid decision is reproduced as under :

“15. Another important aspect is that in case temporary injunction as sought for is granted, the same would amount to granting the final relief prayed in the suit. In case of a grant of injunction and transfer of the amount to the Huf account, nothing would be left to be decided in the suit. In that event, the plaintiff would get the relief without there being any declaration that the amount in question belongs to the Huf and not to late Amar Nath Gupta in his personal capacity.

18. However, in view of the facts and circumstances of the case, I consider it

necessary to order for expeditious trial of the suit. Since the pleadings in respect of the suit are complete, let the matter be placed before the Joint Registrar for admission/denial of the documents on 7.3.1997 and before the Court on 17.3.1997 for framing of issues.”

Likewise reference is made to a decision of the Hon’ble Orissa High Court in Mahavir Prasad Santuka and others vs. Sankar Lal Tiberwal, 2005 AIR Orissa 159.

Relevant extract of the aforesaid decision is as under :

“3. We have perused the order dated 18-11-2003 passed by the learned single Judge in W.P. (C) No. 9095 of 2003, which is impugned in the present appeal. From the said order it appears that the learned single Judge after considering the case of the appellants as made out in the plaint, found that allowing the interim order of injunction in favour of the appellants would amount to allowing the prayer made in the suit, as the sole dispute in the suit is that the defendant No. 1 is interfering with the plaintiffs construction/reconstruction/repair work of the shop rooms in which they are tenants. It was, therefore, rightly concluded by the learned single Judge that the trial Court was right in refusing to grant interim order of injunction on the ground that the same would amount to granting the relief claimed in the suit. It has also been taken note of, in the impugned order dated 18-11-2003 that the learned District Judge was right in holding that the defendants did not produce any document in proof of obtaining permission from the Cuttack Municipal Corporation for constructing or repairing work, which is required under the Orissa Municipal Act, 1950.”

13. Since the petitioner has not been able to make out a prima facie case nor can

it be said that balance of convenience exists in her favour or that she would suffer irreparable loss if interim injunction is not granted, no fault can be found with the impugned orders particularly in view of law as referred to above as also to the effect that orders passed by the Courts below can be interfered with by the Appellate Authority only where the discretion is shown to have been exercised arbitrarily or capriciously or the Courts below have ignored settled principles of law regulating grant or refusal of interlocutory injunctions. The Appellate Court cannot substitute its views in the matter merely on the ground that in its view the facts of the case call for a different conclusion. Reference in this connection can be made to the decision in **Esha Ekta Aparments CHS Ltd., & ors vs The Municipal Corporation of Mumbai & anr-2012 (3) RCR (Civil)93 (SC), Mohd.Mehtab Khan & ors vs Khushnuma Ibrahim & ors-2013 (2) RCR (Civil) 295 (SC).**

14. Finding no infirmity with the orders passed by the Courts below, no case is made out warranting interference in respect thereof. Accordingly, the revision petition is dismissed. Impugned order dated 05.09.2016 passed by the learned Additional District Judge, Jind is upheld. However, it is made clear that nothing said herein would be construed to be an expression on the merits of the case so as to affect the rights of the parties at the time of final adjudication of the case.

January 19, 2018
ps

(B.S.WALIA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No

