

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10794-2020
Date of Decision: July 29th, 2020

Devi Dutt

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Karan Singh, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana, for respondent No.1.

Mr. Saurabh Goel, Advocate, for respondent No.2.

HARNARESH SINGH GILL, J.

The case is taken up for hearing through Video Conferencing.

The petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 31.12.2019 (Annexure P.3), vide which respondent No.2 had communicated the date of retirement of the petitioner, as 30.07.2020 after dismissal of the civil suit.

Learned counsel for the petitioner contends that the date of birth of the petitioner is 10.10.1961, which is duly supported by his birth certificate (Annexure P.1). However, respondent No.1 has passed the impugned order by treating the date of birth of the petitioner as 16.07.1960. While making a reference to Annexure P.5, which is stated to be the date of birth certificate of the brother of the petitioner, wherein his date of birth is recorded as 14.01.1960, it is contended that if the said fact is taken into consideration, by no logic could it be said that

the petitioner was born on 16.07.1960 i.e. within a period of six months of the birth of his brother.

It may be pointed out that the petitioner had filed a civil suit for declaration and mandatory injunction regarding his date of birth as 10.10.1961. The said suit was dismissed by the learned trial Court vide judgment and decree dated 08.11.2019 on the ground of limitation. Against the said judgment and decree, the appeal filed by the petitioner was also dismissed by the learned Additional District Judge, Kurukshetra, vide judgment dated 13.07.2020. Both the Courts below have held that in view of the law laid down by the Division Bench of this Court in LPA No. 1613-2014- Ambika Kaul Vs. Central Board of Secondary Education and others decided on 21.05.2015, the suit ought to have been filed by the petitioner within a period of three years of his attaining majority.

Concededly, the remedy of the petitioner is to file a Regular Second Appeal, if any, against the judgments and decree passed by the Courts below and not to approach this Court by way of a writ petition. As per the documents on record, the order impugned in the present writ petition was passed by respondent No.2 on 31.12.2019 i.e. after the decision of the civil suit by the trial Court on 08.11.2019.

Admittedly, in the matriculation certificate, the date of birth of the petitioner was recorded as 16.07.1960. It was on the basis thereof that in his service record as well, his date of birth was recorded as such. Thus, challenging said action just a few days before his date of retirement, is not only barred by

limitation, as held in Ambika Kaul's case (supra), but silence of the petitioner for all these years speaks volumes.

Reliance of the petitioner on Annexure P.1, is of no help to the petitioner. The petitioner claims that as per the said certificate, his date of birth is 10.10.1961. However, a note has been appended at the bottom of the said certificate that in the original record, no year has been recorded. Further reliance of the petitioner on the date of birth certificate of his brother, is also untenable as any determination on the said certificate, could not be done in the writ jurisdiction of this Court as it involves the disputed questions of facts and the same can only be decided in a civil suit after recording the evidence.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

July 29th, 2020
ds

(HARNARESH SINGH GILL)
JUDGE

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