

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-5633-2010 (O&M)

Date of decision: March 22, 2022

Sukhbir Singh Goyat

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Gunjan Mehta, Advocate and
Mr. Varun Veer Chauhan, Advocate for the petitioner.

Ms. Palika Monga, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ of mandamus directing the respondents to make the necessary correction of his date of birth in the official record as 15.12.1967 instead of 15.04.1964. Quashing of an administrative order dated 09.02.2010 (Annexure P-5) has also been sought, whereby petitioner's representation dated 21.08.2008 (Annexure P-3) for correction of his date of birth in the official record has been rejected.

2. Succinct facts first. Petitioner joined service on 08.12.2000 as District Attorney and is currently posted as Additional Director in the Department of Prosecution, Haryana. Petitioner got his graduation degree in Law in the year 1992. On 26.09.2000, he instituted a Civil Suit for seeking a decree of declaration to the effect that he is entitled to get his date of birth corrected in the matriculation certificate as 15.12.1967 instead of 15.04.1964.

He claims that his date of birth was wrongly mentioned in the matriculation certificate. The said suit was filed against the Board of School Education Haryana (for short 'Board'). On the basis of ex-parte evidence, which was primarily oral testimony of his mother coupled with certain supporting documents with regard to the birth of his elder brother, which was stated to be 15.12.1963. In the premise, the civil Court came to the conclusion that given the short gap between the date of birth of the petitioner and his brother, presumption was necessarily to be drawn that the petitioner's date of birth was indeed wrongly recorded in the matriculation certificate. It passed an ex-parte judgment/decreed dated 05.06.2008 Annexure P-1 declaring that the petitioner was born on 15.12.1967 instead of 15.04.1964 and as a consequence, he was entitled to get his date of birth corrected in the matriculation certificate as 15.12.1967 instead of 15.04.1964 and directed the defendant Board to make the necessary correction in the petitioner's Matriculation certificate and to issue the fresh duplicate certificate. The petitioner obtained corrected Matriculation certificate Annexure P-2 from the Board and submitted representation dated 21.08.2008 Annexure P-3 to respondent No.1 for change of his date of birth in service record. It was rejected vide the impugned order dated 09.02.2010, giving rise to the instant petition.

3. Respondents have filed a written statement contesting the case.
4. I have gone through the record and heard learned counsel for the parties.
5. Relevant part of the impugned order is as under:

“It has been decided by the Government to reject the representation of Sh. Sukhbir Singh, District Attorney on the basis of your comments and being time barred.”

6. I am of the opinion that no ground is made out for interference with the impugned order and that the petitioner is not entitled to any relief in exercise of the extraordinary discretionary writ jurisdiction of this Court. Reasons are more than one, as discussed hereinafter in the succeeding paragraphs.

7. Petitioner seeks change of his date of birth on the basis of judgment/decreed dated 05.06.2008 (Annexure P-1) passed by the Additional Civil Judge (Senior Division) Hissar and the corrected Matriculation Certificate dated 24.07.2008 (Annexure P-2).

8. Outcome of the civil suit, which is the basis of the petitioner's claim herein, is not as much to be seen as his conduct which is unbecoming of a law officer. He was well aware of his legal rights, not only having practised as a Lawyer fighting for the rights of the others but also having been appointed as Law Officer as District Attorney in December, 2000. Much before that, he had already filed civil suit No.34-C/2000 on 26.09.2000 against the Board for correction of date of birth in Matriculation certificate. While applying for the post, he on his own volition gave his date of birth as 15.04.1964 without demur or whisper or giving a passing reference that his Civil Suit against the Board was then pending.

9. Apart from aforesaid, from day one, petitioner knew that his goal was to get additional service benefits by change of date of birth. Not only, it was expected of him at the time of applying for the post of District Attorney to disclose that his suit for correction of date of birth was then pending in the Court, but even more importantly to implead them as parties to the *lis* as ultimately they would also be affected by its outcome. He did nothing of the

sort. Perhaps deliberately so, to obviate a contest by depriving the respondents of opportunity of participation in the *lis* affecting them.

10. For the first time, it was only by his representation dated 21.08.2008 that the petitioner informed the respondents that his date of birth was 15.12.1967 and not 15.04.1964 as disclosed to them at the time of his appointment as District Attorney; that he had filed the suit for correction of date of birth, wherein judgment/decree dated 05.06.2008 was passed and pursuant thereto his corrected Matriculation certificate was issued by the Board. For about eight years of joining service in 2000, all along the petitioner kept the respondents totally in dark about all these developments. Such conduct of the petitioner leaves much to be desired.

11. Ex-parte judgment dated 05.06.2008 was passed against the Haryana State Education Board declaring that the petitioner was born on 15.12.1967 instead of 15.04.1964 and as a consequence, he was entitled to get his date of birth corrected in the matriculation certificate as 15.12.1967 instead of 15.04.1964 and directing defendant Board to make the necessary correction in the Matriculation certificate of the petitioner and to issue the fresh duplicate certificate. The respondents herein were not party to that case and were not even aware of it till 21.08.2008. It was not a judgment passed by a competent court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, attracting the provisions of Section 41 of the Evidence Act. For ready reference Section 41 *ibid* is as below:-

“41. Relevancy of certain judgments in probate, etc., jurisdiction.—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is

relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—

that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.”

In view of the aforesaid provision, *ex parte* judgment cannot be taken as conclusive proof to the effect that the date of birth of the petitioner was 15.04.1964 and not 15.12.1967 as was initially disclosed to respondents by the petitioner. Qua the respondents, therefore, for the purpose of the present writ petition, the judgment dated 05.06.2008 declaring the petitioner's date of birth as 15.12.1967 is not binding and is only a piece of rebuttable evidence. At the time of entry into service in 2000, the petitioner had himself disclosed his date of birth as of 15.04.1964.

12. In any case, it is debatable and disputed question of fact as to which of the two dates-15.12.1967 or 15.04.1964 - is the petitioner's correct date of birth, sought to be adjudicated through instant writ proceedings. Adjudication of the petitioner's claim declaring his date of birth as 15.12.1967 has necessarily to be determined *de-novo* and independently of the judgment dated 05.06.2008. Of course, for such determination, said judgment would also be a piece of relevant but rebuttable evidence. Civil suit is thus more appropriate and proper remedy for decision of such disputed and contested

questions of fact after recording elaborate evidence. Extraordinary writ jurisdiction of this Court for decision of such disputed and contested questions of fact cannot and ought not be invoked and/or exercised. In view of this, I am not inclined to entertain the instant writ petition, more so when petitioner himself had given his date of birth as 15.04.1964 at the time of joining the service and maintained stoic silence in this behalf for as long as for 8 years until filing of his representation dated 21.08.2008.

13. Learned Senior counsel relies on **Basti Ram Mangaki v. State of Rajasthan 1993(4)SCT 601**. High Court of Rajasthan merely noted the contention of the concerned counsel therein that a judgment which declares the status of a person as regards his qualifications and as regards his promotion is a judgment *in rem* and binding on the whole world. However, no such finding/conclusion of the Court was recorded. Likewise, facts were different in **S. Selvavinayagam versus State of Tamil Nadu and another, 1986 LIC 1239**, **Updesh Kumar, etc. versus Prithvi Singh and others, 2001(3) BCR 118**, **K. Madhadeva Sastry versus Director, Post Graduate Centre, Anantapur, 1982 AIR (A.P.P 176**, **S. Selvavinayagam versus State of Tamil Nadu and another, 1986 LIC 1239**, **N. Sanyasi Rao versus High Court of Andhra Pradesh, 2002 (5) SLR 62**. Thus, these judgments relied upon by the learned counsel for petitioner do not seem applicable to the instant case.

14. There is another aspect of the matter which though is being mentioned in the passing reference, and need not to be gone into, since I have already given my mind on the petitioner having given his date of birth as 15.04.1964 by his own volition and by sheer long acquiescence thereof. Under Article 186 of the Haryana Education Code, minimum age for joining the

School for a student is five years. For ready reference, relevant extract of the same reads as under:-

“Age limit.

186. The minimum age for admission in a recognised school is five years. Compulsory attendance under the Punjab Primary Education Act, 1960 however, provides from the age of 6 years. No pupil, who has attained the age of twenty years upto the 10th class and 21 years upto XI class, may be retained in a recognised school except with the sanction of the District Education Officer, and for exceptional reasons, e.g., if the education of pupil has been unavoidably retarded.

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15. Even if one is to assume that the petitioner had joined according to the aforesaid Article, his matriculation certificate was issued in 1981 and on that date, he was way below 15 years which seems to be the requirement as per the minimum age of 5 years for admission to school, after which it takes 10 years to appear for the matriculation examination.

16. At this stage, learned Senior counsel for the petitioner once again strenuously argues that the Department was not required to be impleaded as a party to the Civil Suit as decree passed by learned Additional Civil Judge (Senior Division), Hisar is binding on the third party. To support the contention, he also relies upon **Dimpy Sharma versus State of Punjab, 2006 (3), S.C.T. 345, Hari Parshad Handa PCS (Judicial) Magistrate Ist Class, Subordinate Judge 1st Class, Garhshankar, Hoshiarpur versus The State of Punjab and another, 1985(1) PLR 39**. These judgments are distinguishable on facts and are not applicable to the instant case. I have already opined above that the petitioner was fully aware of the filing and pendency of his Civil Suit from day one. For 8 years of joining service, he did not even inform the Department about the pendency of his suit let alone impleading the respondents as party thereto, fully knowing that they would be

affected by its outcome. I am, therefore, not inclined to accept the contention of the learned counsel that the Department was not required to be informed or impleaded as a party to the Civil Suit as, according to him, decree passed by learned Additional Civil Judge (Senior Division), Hisar is binding on the third party. The conduct of the petitioner borders on sharp practice. However, taking a lenient view thereof, the petition is being dismissed simplicitor and the Court restrains itself from making any further comments in this regard.

- 17. Dismissed.
- 18. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 22, 2022
mahavir

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