

CWP-22471-2020 (O&M)

Date of decision: December 05, 2022

Mukesh Kumar

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Sandeep Kotla, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG Haryana.

Mr. Hardeep Singh Poonia, Advocate for

Mr. Rajesh K. Sheoran, Advocate for respondent No.5.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari seeking to set aside letter dated 10.12.2020 (Annexure P-10) whereby petitioner was ordered to be relieved from duty and directed to submit pension papers immediately.

2. While issuing notice of motion on 23.12.2020, my learned Brother G.S. Sandhawalia (as he then was seized of the matter) passed the following order:

“Counsel inter alia submits that the date of birth of the petitioner is 08.01.1968 as per the school leaving certificate (Annexure P-1). An over writing was done in the service book showing it as 01.07.1962 (Annexure P-3). Accordingly, representation dated 07.06.2011 (Annexure P-4) was made, on which the respondent no. 5 addressed communication dated 21.12.2012 (Annexure P-5) to the school for confirmation of the date of birth. Reference is also made to the Adhaar Card (Annexure P-6) and the certificate issued by the Income Tax Department (Annexure P-7) apart from the computerized record with respondent no. 5 showing the date of birth as 08.01.1968. It is submitted that in spite of that, the petitioner has been relieved on 10.12.2020 (Annexure P-10).

Notice of motion.

Mr. RKS Brar, Addl. A.G., Haryana accepts notice on behalf of respondents no. 1 to 4 and prays for time.

Adjourned to 23.02.2021, for service of respondent no. 5.

A perusal of the record would also go on to show that civil suit had been filed by the petitioner for declaration regarding the date of birth and it has been averred in para no. 10 that the civil suit had been dismissed in the absence of the record. Counsel now points out that an appeal is also pending before the Appellate Court.

In such circumstances, no case for stay is made out at this stage. Counsel is, however, free to press his remedy of interim protection before the Court where the matter is pending.”

3. *Apropos*, return dated 09.12.2021 has been filed by respondents No.1 to 4, wherein in Para-5 of the preliminary submissions, following stand has been taken:-

“5. *That the petitioner had filed a civil suit on matter in question which has been dismissed on merits by the Hon’ble Civil Court at Panipat vide judgment and decree dated 30.03.2018, copy of Civil Suit is Annexure R-1. Thereafter the petitioner filed a civil appeal against the judgment and decree dated 30.03.2018 which is pending before the court Ld. ADJ Panipat and same is fixed for 12.08.2021. (copy of jimni order is annexed R-2). The present CWP is of the same subject matter which had already been decided by the court vide judgment and decree dated 30.03.2018. Thus the present CWP is not maintainable because the same subject matter is still pending for adjudication before the Hon’ble court of Panipat, so the present CWP is premature as infructuous and same is liable to be dismissed.”*

4. No further counter affidavit and/ or replication has been filed. In view of the above uncontroverted factual position, no grounds to interfere are made out.

5. Dismissed with liberty to the petitioner to pursue his remedy of appeal pending before Additional District Judge, Panipat, which he has already resorted to.

6. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

December 05, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No