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STATE OF U.P. AND ORS.

v.

SMT. GULAICHI

JULY 25, 2003

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[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Service Laws:

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U.P. Recruitment of Service (Determination of Date of Birth) (First Amendment) Rules, 1980—Rule 2—Claim for correction of date of birth few days before date of superannuation—Declaratory suit filed—Dismissed by trial court—Allowed by First Appellate Court and High Court—On appeal, Held: In view of Rule 2 it is not permissible to correct the date of birth—First Appellate Court as well as High Court lost sight of statutory provision, acted on irrelevant, inadmissible materials and ignored relevant materials—Thus the order of trial court restored—High Court's order set aside.

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Constitution of India, 1950—Article 136—Interference—When called for—Held: When courts below lost sight of statutory provision, acted on irrelevant and inadmissible materials, ignoring relevant materials, interference is permissible.

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Respondent joined services under the appellant-State and in the service book her date of birth was recorded as 31.7.1929. Few days before the date of retirement she claimed her date of birth to be 31.7.1939. Officer concerned carried out the correction in her service book. Respondent then filed a suit for a declaration that her date of birth was 31.7.1939 and by mistake the employee of the department wrongly recorded it as 31.7.1929. Trial Court dismissed the suit. First Appellate Court allowed the appeal and decreed the suit to the effect that the date of birth of the respondent was 31.7.1939. High Court upheld the order. Hence the present appeal.

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Appellants contended that the First Appellate Court as well as the High Court considered irrelevant materials and left out the relevant materials for correcting the date of birth; the U.P. Recruitment of Service (Determination of Date of Birth) (First Amendment) Rules, 1980 clearly delineate the area of permissible correction; that there is no scope for effecting any change, that too just a few days before the date of superannuation; and that the person

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who carried out the corrections had no authority in law to do so.

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Respondent-employee contended that findings of fact have been recorded relating to the correct date of birth; and that the First Appellate Court as well as the High Court considering the relevant materials rightly and in accordance with law decided the issue in favour of respondent and thus, no interference was called for.

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Allowing the appeal, the Court

HELD: 1.1. An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury. There are cases when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is an important and relevant aspect which should be looked into by the courts while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a time fixed and in accordance with the procedure prescribed in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. If no rule or order has been framed or made, then such application must be within a reasonable time. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth, in his service book. In many cases, public servants approach the Court on the eve of their retirement, questioning the correctness of date of birth. The court or the Tribunal must be slow in granting an interim relief or continuation in service, unless *prima facie* evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby causing injustice to his immediate junior. [768-C-F, G-H; 769-A-B]

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1.2. In the instant case, in view of Rule 2 of the U.P. Recruitment of Service (Determination of Date of Birth) (First Amendment) Rules, 1980, it was not permissible to effect any change in the date of birth. Additionally, the First Appellate Court and the High Court lost sight of the fact that the person

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A who endorsed changes was not authorized to do so. In the original service book the entry 31.7.1929 appears to have been made simultaneously by one and the same person at the time when other entries were made in FR Form No. 13. Respondent has herself signed the page at serial No.8, whereas the entry relating to date of birth is at serial No. 5. Though respondent submitted that there was no original entry as in 1965 and 1984 there were no entries in the service book, the documents annexed to prove the said assertion do not inspire confidence. In fact the existence of these documents is shrouded in mystery. Before the Trial Court as well as the First Appellate Court a definite stand was taken by the respondent that due to mistake of an employee/officer of the department, the date of birth was recorded as 31.7.1929 instead of 31.7.1939 in her service book. If the stand of respondent that there was no entry till 1984 is correct, it could not be explained as to when entry was made and by whose mistake it was wrongly recorded. The stand presently taken runs counter to the pleadings and stands before trial court and first appellate court. Therefore, the order of the High Court to the effect that the date of birth of respondent was 31.7.1939 is set aside and the date of birth of respondent has to be taken for all purposes to be 31.7.1929.

[769-E-H; 770-A, B, D]

E *State of Assam v. Daksha Prasad Deka*, [1970] 3 SCC 624; *Government of Andhra Pradesh v. M. Hayagreev Sarma*, [1990] 2 SCC 682; *Executive Engineer, Bhadrak (R & B) Division, Orissa and Ors. v. Rangadhar Mallik*, [1993] Supp. 1 SCC 763; *Union of India v. Harnam Singh*, [1993] 2 SCC 162; *The Secretary and Commissioner, Home Department and Ors. v. R. Kirubakaran*, JT (1993) 5 SC 404; *State of Tamil Nadu v. T.V. Venugopalan*, [1994] 6 SCC 302 and *State of Orissa and Ors. v. Ramanath Patnaik*, [1997] 5 SCC 181, referred to.

F 2. Usually, no interference is called for when findings of fact are recorded by the Trial/Appellate Court and the High Court, more so, when the issue is decided in Second Appeal. But where the courts below lose sight of statutory provisions or act on irrelevant or inadmissible materials, and ignore relevant materials, interference is not impermissible. [766-C-D]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5207 of 2003.

From the Judgment and Order dated 14.5.2002 of the Allahabad High Court in S.A. No. 314 of 2002.

H R.C. Verma, Mukesh Verma and Manish Shanker for the Appellants.

Vinai Singh and R.D. Upadhyay for the Respondent.

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The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Request for correcting the date of birth recorded, made a few days before the date of superannuation as per original records, having been accepted by the First Appellate Court and confirmed by the impugned judgment of the High Court, this appeal has been filed by the State of U.P. and Chief Medical Officers, Azamgarh and Mau.

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The respondent joined services under the State on 6th July, 1959. In the service book her date of birth was recorded to be 31.7.1929. Consequently, she was to retire on 31.7.1987. About three weeks before the date of retirement i.e. on 7.7.1987 she approached the acting Chief Medical Officer, Azamgarh claiming her date of birth to be 31.7.1939. The concerned official made the correction in her service book. On that basis, she claimed that she was not to retire on 31.7.1987. A suit was filed by the respondent-plaintiff for a declaration that her date of birth is 31.7.1939, but by mistake of an officer/employee of the department it was wrongly recorded as 31.7.1929. The suit was essentially for a declaration that her date of birth to be 31.7.1939, on consideration of the materials brought on record. The stand was resisted by State of Uttar Pradesh. Analysing the materials on record, learned 7th Addl. Munsif, Azamgarh dismissed the suit. But in appeal, learned 7th Additional District Judge, Azamgarh allowed the appeal and decreed the suit to the effect that the date of birth of plaintiff (respondent herein) to be 31.7.1939 and that she was entitled to all service benefits on that basis.

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The State and the two officials preferred Second Appeal before the Allahabad High Court which declined to interfere with the order passed by the First Appellate Court.

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Learned counsel for the appellants submitted that the law relating to change of date of birth is fairly well settled and the First Appellate Court as well as the High Court fell in grave error by making the declaration to the effect that the date of birth of respondent was 31.7.1939. Several materials of unimpeachable character were lost sight of and/or not considered, and erroneous inferences were drawn which no reasonable person would arrive at. Relevant materials were left out of consideration and irrelevant materials weighed with the First Appellate Court as well as the High Court for deciding

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A the issue in favour of respondent. Rule 2 of U.P. Recruitment of Service (Determination of Date of Birth) Rules, 1974 (in short the 'Rules') and U.P. Recruitment of Service (Determination of Date of Birth) (First Amendment) Rules, 1980 (in short the 'Amendment Rules') clearly delineate the area of permissible correction, in view of what has been stated in Rule 2. There is no scope for effecting any change, that too just a few days before the date of superannuation. The person who carried out the corrections had no authority in law to do so in the teeth of the rule referred to above.

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C In response, learned counsel for the respondent submitted that findings of fact have been recorded relating to the correct date of birth, and on taking into consideration the relevant materials the First Appellate Court as well as the High Court rightly and in accordance with law decided the issue in favour of respondent-employee and no interference is called for.

D Usually, no interference is called for when findings of fact are recorded by the Trial/Appellate Court and the High Court, more so, when the issue is decided in Second Appeal. But where the Courts below lose sight of statutory provisions or act on irrelevant or inadmissible materials, and ignore relevant materials, interference is not impermissible.

E Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

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G Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained

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after decades, especially on the eve of superannuation of such public servant. A
 In the case of *State of Assam v. Daksha Prasad Deka*, [1970] 3 SCC 624, this
 Court said that the date of the compulsory retirement “must in our judgment,
 be determined on the basis of the service record and not on what the
 respondent claimed to be his date of birth, unless the service record is first
 corrected consistently with the appropriate procedure.” In the case of B
Government of Andhra Pradesh v. M. Hayagreev Sarma, [1990] 2 SCC 682 the
 A.P. Public Employment (Recording and Alteration of Date of Birth) Rules,
 1984 were considered. The public servant concerned had claimed correction
 of his date of birth with reference to the births and deaths register maintained
 under the Births, Deaths and Marriages Registration Act, 1886. The Andhra
 Pradesh Administrative Tribunal corrected the date of birth as claimed by the C
 petitioner before the Tribunal, in view of the entry in the births and deaths
 register ignoring the rules framed by the State Government referred to above.
 It was *inter alia* observed by this Court:

“The object underlying Rule 4 is to avoid repeated applications by a
 government employee for the correction of his date of birth and with D
 that end in view it provides that a government servant whose date of
 birth may have been recorded in the service register in accordance
 with the rules applicable to him and if that entry had become final
 under the rules prior to the commencement of 1984 Rules, he will not
 be entitled for alteration of his date of birth.” E

In *Executive Engineer, Bhadrak (R&B) Division, Orissa and Ors. v
 Rangadhar Mallik*, [1993] Supp.. 1 SCC 763, Rule 65 of the Orissa General
 Finance Rules, was examined which provides that representation made for
 correction of date of birth near about the time of superannuation shall not be
 entertained. The respondent in that case was appointed on November 16, F
 1968. On September 9, 1986, for the first time, he made a representation for
 changing his date of birth in his service register. The Tribunal issued a
 direction as sought for by the respondent. This Court set aside the Order of
 the Tribunal saying that the claim of the respondent that his date of birth was
 November 27, 1938 instead of November 27, 1928 should not have been G
 accepted on basis of the documents produced in support of the said claim,
 because the date of birth was recorded as per document produced by the said
 respondent at the time of his appointment and he had also put his signature
 in the service roll accepting his date of birth as November 27, 1928. The said
 respondent did not take any step nor made any representation for correcting
 his date of birth till September 9, 1986. In case of *Union of India v. Harnam* H

A *Singh*, [1993] 2 SCC 162 the position in law was again re-iterated and it was observed:

B “A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay.”

C An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior.

E This is certainly an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong

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recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

The position was succinctly stated by this Court in the above terms in *The Secretary and Commissioner Home Department and Ors. v. R. Kirubakaran*, JT (1993) 5 SC 404.

As observed by this Court in *State of Tamil Nadu v. T.V. Venugopalan*, [1994] 6 SCC 302 and *State of Orissa and Ors. v. Ramanath Patnaik*, [1997] 5 SCC 181 when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran's* case (supra) was adopted.

In the instant case the Rules and Amendment Rules referred to above clearly indicate the permissible area for correction of date of birth. In view of the specific provisions made, it was not permissible to effect any change. Additionally, the First Appellate Court and the High Court seem to have lost sight of the fact that the person who endorsed changes was not authorized to do so. Original service book was produced before us by learned counsel for the appellants. Though learned counsel for the respondent submitted that we should not look it, for the purpose of arriving at the truth, we overruled the objection and looked at the original document, which undisputedly was exhibited during trial. The entry i.e. 31.7.1929 appears to have been made simultaneously by one and the same person at the time when other entries were made in FR Form No.13. Respondent has herself signed the page at serial No.8, whereas the entry relating to date of birth is at serial No.5.

Though learned counsel for the respondent submitted that there was no

A original entry as in 1965 and 1984 there were no entries in the service book, the documents annexed to prove the said assertion do not inspire confidence. In fact the existence of these documents is shrouded in mystery. It has to be noted that before the Trial Court as well as the First Appellate Court a definite stand was taken by the respondent that due to mistake of an employee/officer of the department, the date of birth was recorded as 31.7.1929 instead of 31.7.1939 in her service book. If the stand of respondent that there was no entry till 1984 is correct, it could not be explained as to when entry was made and by whose mistake it was wrongly recorded. The stand presently taken runs counter to the pleadings and stands before trial Court and first appellate Court.

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C Above being the factual and legal position, the conclusion is inevitable that the First Appellate Court and the High Court were not justified in their conclusions to the effect that the date of birth of respondent was 31.7.1939. The Trial Court was correct in its analysis by holding that the date of birth is 31.7.1929.

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The order of the High Court is set aside. The date of birth of respondent has to be taken for all purposes to be 31.7.1929 and not 31.7.1939 as claimed by her. The appeal is allowed to the extent indicated above. There will be no order as to costs.

N.J.

Appeal allowed.