

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5543 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ABDULSATTAR A SHAIKH

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR JS BRAHMBHATT for Petitioner

MR MN DEVNANI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 30/04/1999

ORAL JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioner, since deceased, an employee of the Gujarat Road Transport Corporation preferred this special civil application under Article 226 of the Constitution and prayed for quashing and setting aside the notice of his retirement from services issued by the respondents

dated 22/1/97 at Annexure-D on the record of this case. It is the contention of the learned counsel for the petitioner that the respondents have acted arbitrarily in taking his date of birth as 1/7/39 for his retirement. His correct date of birth is 17/9/41. In support of this contention, the learned counsel for the petitioner placed on the record of this special civil application the school leaving certificate of the petitioner wherein his date of birth has been recorded as 17/9/41.

#. On the other hand the learned counsel for the respondent contended that the recorded date of birth of the petitioner is 1/7/39 in his service book and he has rightly ordered to be retired accordingly.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. In the application form, which the petitioner filed in the corporation for giving him the appointment on the post of Driver on 3/5/61, the petitioner stated his date of birth as 17/9/41. However, along with this application, there is no dispute that the petitioner has not produced any evidence in support of his date of birth of 17/9/41. As the petitioner had not produced any evidence in support of his date of birth as 17/9/41, the corporation adopted the correct procedure for entering his date of birth in his service record and sent him for medical examination. On the basis of the medical examination i.e. the certificate issued by the Medical Doctor, his date of birth in the service record was entered as 1/7/39. The date of birth, which was recorded in his service book was accepted by the petitioner and accordingly he signed in his service book. The learned counsel for the petitioner does not dispute this factual position. Along with the reply to this special civil application, the respondent filed the xerox copy of the service record of the petitioner and therein he has admitted his date of birth 1/7/39 by putting his signature therein. The petitioner has not filed the rejoinder to the reply and contents of the same stand uncontroverted. After that the petitioner is now questioning his recorded date of birth only after the notice of retirement has been given to him. This challenge to this recorded date of birth is made after more than 30 years of entry thereof into his service records, which cannot be permitted. The petitioner accepted his date of birth to be 1/7/39 and at no point of time he has disputed the same. The learned counsel for the petitioner has placed much emphasize on the document at Annexure-A i.e. the Identity Card of the

petitioner wherein his date of birth has been recorded as 17/9/41. This document is hardly of any help to the petitioner. These are the entries made by the petitioner himself or with his instruction and which are never verified from the record as what it is clear from this document. It is not the case of the petitioner that this entry is made after verifying the same from his service record. In case it would have been done certainly the petitioner's date of birth could not have been mentioned as be 17/9/41 in it. These are the document wherein the entries of these details are not a conclusive or binding evidence. Here the purpose is limited only for the Identity Card. Otherwise also, only on this ground the recorded date of birth of the petitioner in his service book duly accepted by him cannot be doubted or questioned or set aside. The petitioner has come after so many years with the copy of his school leaving certificate to challenge his recorded date of birth in his service book, which cannot be permitted.

#. The learned counsel for the petitioner prays for bringing on the record of this special civil application three legal heirs of the deceased petitioner. However, in the proceedings under Article 226 of the Constitution of India provisions of the Code of Civil Procedure are not applicable and merely on this ground hearing of this petition cannot be deferred, more so when the counsel there fully prepared with the case and arguments. The learned counsel for the petitioner if he so desire may file on the record of this special civil application names of the heirs and legal representatives of the petitioner for correction of the cause title. This matter is squarely covered by two decisions of the apex court in the case of Secretary and Home Commissioner Vs. R.Kirupankar reported in 1994 Suppl. Vol.I SCC 155 and in the case of Burn Standard Company Vs. Deenabandhu Majmudar reported in JT 1995(4) SC 23.

In the result, this special civil application fails and the same is dismissed.

Rule discharged.

(S.K.Keshote, J.)

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