

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8323 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SECRETARY VIDDHOTEJAK MANDAL

Versus

DIST EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 8323 of 1992
MR ND NANAVATI for Petitioner No. 1-2
NOTICE SERVED for Respondent No. 1
MR HJ NANAVATI for Respondent No. 2
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CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/02/2003

ORAL JUDGEMENT

1. By allowing the petition filed by the respondent

no. 2, the Gujarat Secondary Education Tribunal at Ahmedabad has ordered to change the date of birth of the respondent no. 2 from 31.7.34 to 14.1.36. The petitioners have filed this petition under Article 226/227 of the Constitution of India stating that the respondent no. 2 has no right to make an application before the authority for correction of the date of birth at the fag end of his career.

2. Ms.Mita Panchal learned advocate for Mr.Nanavati & Nanavati advocates for the petitioner has challenged the order of the Tribunal on the ground that the last minute approach to the Court for change of date of birth should not be encouraged or else many petitions will be filed by various petitioners who at the time of joining service will give a different date of birth and at later stage to remain more in service might produce further documents to change the date of birth, thereby prejudice the chances of new incumbent in job. Therefore, also this petition requires to be allowed by setting aside the order of the Tribunal.

3. Learned A.G.P. for the State has assailed the conduct of the Tribunal stating that though opportunity was given to the respondent no. 2 herein to change the date of birth earlier, till his retirement he did not do so and during the last days of his service, he produced certain letters on which the Tribunal relied on and granted the prayer as sought for. In support of his submissions, he relied on the following authorities :

1. Harisinghbhai K Kheradia V/s Principal, Virani High School, Rajkot and Anr. reported in 1997(2) G.L.R. page 1291.
2. Hindustan Lever Ltd. V/s S.M.Jadhav and another reported in (2001) 4 S.C.C. 52.
3. State of Uttaranchal & Ors. V/s Pitamber Dutt Semwal reported in JT 2001 (10) SC 568.
4. Motilal Chimnaji Harigar V/s Ahmedabad Municipal Transport Service and others reported in 1997(1) G.L.H. 886.
5. G.M.Bharat Coking Coal Ltd., West Bengal V/s Shib Kumar Dushad and others reported in (2000) 8 S.C.C. 696.

4. Mr.H.J.Nanavati, learned counsel for the respondent no. 2 has submitted that when there is a

cogent evidence for rectifying the bonafide mistake, birth date can be changed without strictly adhering to the G.R.s. as stated by the Government. In the instant case, on going through the birth register produced by the Talati-cum-Mantri, Bet Gram Panchayat and on the strength of the extract of birth register produced at Exh. A, the authority was satisfied that the correct date of birth of the respondent no. 2 is 14.1.36 and not 31.7.34. This seems to be on the strength of the date of birth entered in the general register of the school where applicant studied. Initially no date of birth was recorded. Merely approximate age was shown. Thereafter, on the strength of approximate age a date of birth has been inferred and has been recorded without any documentary evidence as 31.7.34. In view of the aforesaid circumstances, runs the submissions of Mr.H.J.Nanavati L.A. for the respondent no. 2, that the respondent no. 2 has already retired in the year 1991 and we are in 2003, the benefit which is already granted to him should not be taken back and that the order of the Tribunal is not to be quashed and set aside as prayed by the petitioner.

5. I have heard the learned advocates for the parties and also gone through the authorities cited by the State. I am also of the opinion that the Tribunal has committed a grave error in allowing the petition of the respondent no. 2 and by changing his date of birth from 31.7.34 to 14.1.36. It may be noted that in the Annexure 'B', there is no mention of date of birth but only mention of age of 7 years at the time of entering of school and below the same there is mention as of 10.10.41. In annexure 'C' , 'D' and 'E', the date of birth is mentioned as 31.7.34. Annexure 'E' is signed by the respondent no. 2 at the time of getting pension and the same is dated 9.2.92. In the same document, the date of retirement, is mentioned as 30.7.1992 and the order of the Tribunal is dated 21.10.1992. How the respondent no. 2 got the date of birth changed even after his retirement is not understandable.

6. In view of the aforesaid circumstances and in view of the binding decisions of the Apex Court as referred above, I am of the opinion that this S.C.A. is required to be allowed and the order passed by the Tribunal in Application No. 357 of 1992 is required to be set aside. Accordingly, the petition is allowed and the order passed in Application No. 357 of 1992 is set aside. Rule is made absolute accordingly.

srilatha