

State Of Punjab vs Mohinder Singh on 14 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1868, 2005 (3) SCC 702, 2005 AIR SCW 1476, (2005) 2 ALLMR 505 (SC), (2005) 2 CTC 828 (SC), 2005 (1) UJ (SC) 756, (2005) 28 ALLINDCAS 117 (SC), 2005 (28) ALLINDCAS 117, 2005 (4) SRJ 364, 2005 (2) ALL CJ 1098, 2005 UJ(SC) 1 756, 2005 (2) ALL MR 505, 2005 (2) CTC 828, 2005 (3) SLT 91, 2005 (2) SERVLJ 477 SC, 2005 (3) SCALE 173, (2005) 3 JT 220 (SC), 2005 (3) JT 220, 2005 ALL CJ 2 1098, 2005 (1) BLJR 823, (2005) 4 SERVLR 683, (2005) 2 SUPREME 585, (2005) 3 ICC 597, (2005) 3 SCALE 173, (2005) 2 JLJR 129, (2005) 59 ALL LR 302, (2005) 3 CAL HN 155, (2005) 2 CURLJ(CCR) 207, (2005) 2 KER LT 126, (2005) 2 LANDLR 16, (2005) 2 CAL LJ 28, (2005) 1 WLC(SC)CVL 478, (2005) 2 ALL WC 1009, (2005) 100 CUT LT 357, (2006) 1 MAD LW 198, (2005) 2 PAT LJR 177, (2005) 2 SCT 401

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Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:
Appeal (civil) 1730 of 2005

PETITIONER:
State of Punjab

RESPONDENT:
Mohinder Singh

DATE OF JUDGMENT: 14/03/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No. 22477/2003 ARIJIT PASAYAT, J.

Leave granted.

Appellant-State calls in question legality of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the Second Appeal filed by it under Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code') holding that no question of law was involved.

The background facts are as under:

The respondent (hereinafter referred to as the 'plaintiff') was appointed as a Patwari on 5.2.1958. At the time of appointment he disclosed his date of birth to be 1.10.1934. Complaints were received and preliminary enquiry was conducted and it was held that his actual date of birth is 25.11.1931. A suit was filed by the respondent for declaration to the effect that his date of birth as recorded in service book i.e. 1.10.1934 is the correct date of birth and plaintiff is entitled to all benefits and privileges which would have accrued to him had he continued on that basis till the date of superannuation i.e. 30.9.1992 and for setting aside the punishment awarded for allegedly manipulating records and disclosing wrong date of birth.

Following issues were framed by the trial Court:

- "1. Whether the High Court was justified in observing that no substantial question of law arises in the second appeal, whereas the substantial question of law was/is whether interpretation of the expression "Government" in Rule 2.5 Note 1 of Punjab Civil Service Rules is not competent/appointing authority, who is the Deputy Commissioner in this Case?
2. Whether as per Rule 2.5 Note 1 of Punjab Civil Service Rules, the date of birth entered in the Service Book of an employee cannot be changed by the Competent Authority after conducting a regular enquiry and giving proper opportunity of hearing to the said employee?
3. Whether submission of wrong date of birth at the time of joining service amounted to misconduct on the part of the said employee?
4. Whether the date of birth entered in the matriculation certificate shall not prevail over the date of birth mentioned in the horoscope?
5. Whether entering a correct date of birth in service book after valid enquiry qua the correct date of birth of the Respondent can be challenged, which was entered after affording proper opportunity of hearing and which is final and never challenged as bad?
6. Whether the respondent, who is literate and was qualified to be appointed as Patwari was supposed to know the admissibility of document in respect of date of birth, did not tamper with documents by submitting a wrong date of birth i.e. 1.10.1934 instead of 25.11.1931?
7. Whether a long span of 33 years ought to be allowed to come in the way to correct a false entry regarding date of birth made on wrong and tampered documentation of an employee, which undoubtedly being the date of birth shall seriously affect the services of the colleagues of the said employees in the same cadre?"

Learned Civil Judge (Senior Division) dismissed the suit holding that there was no ground to interfere with the orders of the Deputy Commissioner who, on the basis of the enquiry conducted, had observed that the date of birth was 1931 and not 1934 and if he had given actual date of birth he would have been over age and would not have been eligible for the post of patwari. The enquiry report of the Additional Deputy Commissioner was submitted on 21.5.1985. The Sub-Divisional officer, Sangrur who hold the enquiry held that the charge regarding change of date of birth from 25.11.1931 to 1.10.1934 was proved. The Deputy Commissioner dismissed the respondent from service with effect from 27.7.1988 after granting opportunity of hearing. An appeal was filed before the Commissioner who by order dated 18.6.1990 dismissed the same. He, however, reduced the punishment by observing that ends of justice would be met if he is reduced by one stage in his running grade with effect from the date on which he was charge-sheeted till retirement and he will not earn any increment during the period of this reduction till the date on which respondent was superannuated from service.

Against the order passed by the trial court an appeal was preferred before the District Judge who held that the materials on record do not show that there was any change in the true date of birth and the claimed date of birth i.e. 1.10.1934 is the actual date of birth as recorded. Second Appeal filed by the appellant as noted above was dismissed on the ground that no substantial question of law was involved.

Learned counsel for the appellant submitted that the approach of the first Appellate Court is not proper. On the basis of materials on record and after enquiry it was held that the date of birth was 25.11.1931 and not on 1.10.1934 as claimed. School register and the connected records were produced which clearly show that the date of birth was 25.11.1931. The evidentiary value of these documents was discarded by the first Appellate Court primarily on the ground that a horoscope was produced according to which the date of birth was 1.10.1934.

In response, learned counsel for the respondent submitted that on evaluation of evidence the first Appellate Court held that the date of birth was 1.10.1934 and when a horoscope is available merely because a different date is indicated in the school record same is of no consequence.

During the course of hearing of the matter we directed the respondent to produce the original school leaving certificate which was sought to have been brought from the Government High School, Gujjarwal. It was filed by the respondent. A perusal thereof shows that the date of birth has been clearly indicated to be 25.11.1931. Stand of the respondent as noted above was that the date of birth was entered in the service record by relying on the horoscope. It is to be noted that respondent claimed that both school leaving certificate and the horoscope were produced and the date of birth was recorded by relying on the horoscope. It has not been explained as to how varying dates remained. If according to the respondent, the horoscope reflected the actual state of affairs it has not been explained as to why no steps were taken to get the school records corrected. The first Appellate Court was not justified in its conclusion that there was no material adduced by the present appellant to substantiate its stand regarding the date of birth. One thing further significant is that a school leaving certificate was produced at the time of appointment. On enquiry it was found that the same was forged one. Apart from the fact that there was no effort to reconcile the discrepancy in the

so-called horoscope and the school record is a factor which has rightly been taken note of by the Trial Court. Without any plausible reason the first Appellate Court took a different view.

In terms of Section 32, clause 5 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'), the evidentiary value of a horoscope has to be considered. No evidence was led by the respondent to prove authenticity of the same. In any event the same was not to be given primacy over the school leaving certificate. It was not shown as to how the entry therein was wrong. The onus was on the respondent to prove that the same was not correct, which was not discharged. Two photostat copies of the school leaving certificate were produced before the enquiry officer. He compared them and found that even to naked eye change of figure "31" to "34" was visible. Interestingly in the said copies the date of birth was indicated even after the change to be 25.11.1934 and not 1.10.1934 as claimed.

Horoscope is a very weak piece of material to prove age of a person. In most cases, the maker of it may not be available to prove that it was made immediately after the birth. A heavy onus lies on the person who wants to press it into service to prove its authenticity. In fact, a horoscope to be treated as evidence in terms of Section 32 Clause (5) must be proved to have been made by a person having special means of knowledge as regards authenticity of a date, time etc. mentioned therein. In that context horoscopes have been held to be inadmissible in proof of age. (See *Ram Narain Vallia v. Monee Bibi* (ILR 9 Cal.613), *Mst. Biro v. Atma Ram* (AIR 1937 PC 101), *Satish Chandra Mukhopadhyaya v. Mohendra Lal Pathak* (ILR 97 Cal. 849).

On the contrary, the statement contained in the admission register of the school as to the age of an individual on information supplied to the school authorities by the father, guardian or a close relative is more authentic evidence under Section 32, Clause (5) unless it is established by unimpeachable contrary material to show that it is inherently improbable. The time of one's birth relates to the commencement of one's relationship by blood and a statement therefore of one's age made by a person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32 Clause (5).

As observed by this Court in *Umesh Chandra v. State of Rajasthan* (1982 (2) SCC 202), ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam.

Therefore, the school records have more probative value than a horoscope. Where no other material is available, the horoscope may be considered but subject to its authenticity being established. These aspects were not considered by the first appellate Court and the High Court.

The High Court was, therefore, not justified in dismissing the Second Appeal by observing that there was no substantial question of law involved.

Since the first appellate Court acted on irrelevant materials and left out of consideration relevant materials question of law was involved. The suit that was filed was rightly dismissed by the Trial Court.

Accordingly the appeal is allowed. No costs.