

[2011] 2 S.C.R. 535

NARINDER KAUR

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V.

PUNJAB & HARYANA HIGH COURT & ORS .

(Civil Appeal No (s) . 1380 of 2011)

FEBRUARY 04 , 2011

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[J.M. PANCHAL AND H.L. GOKHALE , JJ .]

Service Law - Date of birth - Change in service record
 - Application by appellant - Civil Judge within two years from
 date of her entry into Government service to correct date of C
 birth from 26.01.1971 to 09.01.1972 - Rejection of , by the
 Registrar of the High Court - Writ petition also dismissed -
 On appeal held : No material was produced on record to show
 that the appellant took undue advantage of the recorded date
 of birth After receipt of the application for change of birth
 date , no inquiry undertaken by the High Court - It was
 preposterous on the part of the High Court to assume that the
 members of the Selection Committee while selecting the
 appellant as Civil Judge must have been influenced by the
 age of the appellant declared by her in the application form
 for selection - Director , Health & Family Welfare - cum - Chief
 Registrar , Births and Deaths filed affidavit to the effect that the
 correct date of birth of the appellant as per births and deaths .
 record was 09.01.1972 - Presumptive value is attached to
 birth and death records - Thus , application made by appellant
 to change her date of birth from 26.01.1971 to 09.01.1972 is
 allowed - Punjab Financial Volume I Rules , 2001 - Punjab
 Financial Volume I (Haryana First Amendment) Rules , 2001 .

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.

1380 of 2011 .

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From the Judgment & Order dated 20.04.2006 of the High
 Court of Punjab & Haryana at Chandigarh in CWP No. 16151
 of 2003 .

A P.N. Mishra , Harikesh Singh , T. Singh , Sohovan , Kamal Mohan Gupta for the Appellant .

Manjit Singh , Ajay Pal , Abha Jain , Naresh Bakshi for the Respondents .

B The following order of the Court was delivered

ORDER

Leave granted .

C This appeal is directed against the judgment dated
20.4.2006 rendered by the High Court of Punjab & Haryana at
Chandigarh in CWP No.16151 of 2003 by which the prayer
made by the appellant to quash order dated 12.5.2002 passed
by the Punjab & Haryana High Court at Chandigarh on its
D administrative side declining the request made by the appellant
for effecting change in her date of birth from 26.1.1971 to
9.1.1972 is rejected .

From the record of the case , it is evident that the appellant
E was selected to the Haryana Civil Services (Judicial) and was
posted as Civil Judge (Jr. Division) Ambala City . She joined
her duties on 20.5.2000 . The case of the appellant is that her
date of birth is 9.1.1972 but it was wrongly mentioned in the
records as 26.1.1971 , on the basis of factually incorrect birth
F certificate wherein her date of birth was shown to be 26.1.1971 .
The Governor of Haryana in exercise of powers conferred by
clause (2) of Article 283 of the Constitution made Punjab
Financial Volume I (Haryana First Amendment) Rules , 2001
amending certain provisions of Punjab Financial Vol.I Rules
2001 providing inter alia that in regard to the date of birth , a
G declaration of age made at the time of , or for the purpose of
entry into Government service , shall as against the Government
employee , be deemed to be conclusive unless he applies for
correction of age as recorded within two years from date of his
H entry into Government service and when such an application

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is made a special inquiry shall be made to ascertain correct A age by making reference to all available sources of information such as certified copies of entries in the municipal birth register , university or school certificate indicating age , Janam Patrika , horoscopes etc.

The appellant realising that her date of birth was wrongly recorded in the birth certificate , as 26.1.1971 made an application dated 12.4.2002 i.e. within two years from the date of her entry into Government service , requesting the authority concerned to change her date of birth from 26.1.1971 to 9.1.1972 . By communicating a non - speaking order dated 12.5.2002 , the appellant was informed by the Registrar of Punjab and Haryana High Court , Chandigarh that the representation made by her seeking change in her date of birth was rejected by the High Court .

Feeling aggrieved , the appellant filed CWP No.16151 of 2003 before the High Court . The High court by the impugned judgment has dismissed the petition giving rise to the present appeal .

This Court has heard the learned counsel for the parties and considered the documents forming part of the instant appeal .

The main reason assigned by the High Court for dismissing the writ petition filed by the appellant is that the appellant had failed to show satisfactorily that she had not taken any advantage of the recorded date of birth . It was further held by the High Court that the appellant belonged to a mature class and her age as declared in the application Form for selection must have influenced the mind of the Selection Committee and , G therefore , the principle of estoppel would apply to the facts of the case . The High Court also held that notification dated 13.8.2001 is discretionary in nature and the appellant is not entitled to change in her birth date on the basis of the said notification .

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A It may be mentioned that the State of Punjab and Punjab
and Haryana High Court had filed reply affidavit before the High
Court . However , no material was produced on the record of the
case to show that the appellant had taken undue advantage of
the recorded date of birth . The proceedings relating to the
B selection of the appellant as Civil Judge never formed part of
the instant case and , therefore , it was preposterous on the part
of the High Court to assume that the learned High Court
Judges who were members of the Selection Committee while
selecting the appellant as Civil Judge (J.D.) must have been
C influenced by the age of the appellant as declared by her in the
application form for selection . The record does not indicate that
after receipt of the application from the appellant regarding
change of her birth date , any inquiry , much less a special inquiry
as contemplated by amended Rules of 2001 was undertaken
D by the High Court . It is true that the amended Rules of 2001
are discretionary in nature but that fact by itself does not justify
the High Court on its administrative side to ignore them
altogether and then to come to the conclusion that on the basis
of the discretionary rules , the appellant is not entitled to claim
change in her date of birth .

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In the present appeal , Dr. J. P. Singh , Director , Health &
Family Welfare - cum - Chief Registrar , Births & Deaths , Punjab
has filed an affidavit on 26.8.2010 mentioning that as per the
record maintained by the office of Local Registrar , Births &
F Deaths , Municipal Council , Rajpura , Tehsil Rajpura , Distt .
Patiala , Punjab , the entry of the birth of the appellant is recorded
with particulars as Annual Sr. No.10 , Date of Registration
11.1.1972 , Date of Birth 9.1.1972 . Thus , the State of Punjab
has now admitted in this affidavit that the correct date of birth
G of the appellant as per births and deaths record was 9.1.1972 .
The contents of the affidavit filed by Dr. J. P. Singh , Director ,
Health & Family Welfare - cum - Chief Registrar , Births & Deaths ,
Punjab are not disputed or controverted in any manner by the
Punjab and Haryana High Court .

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In view of the presumptive value which attaches to the birth A
and death records , this Court is of the opinion that appeal
deserves to be allowed .

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For the foregoing reasons , the appeal succeeds . The
judgment dated 20.4.2006 rendered by Division Bench of the
High Court of Punjab and Haryana at Chandigarh in CWP No.
16151 of 2003 , is hereby set aside . CWP No. 16151 of 2003
filed by the appellant in the High Court is allowed . The order
dated 12.5.2002 passed by Punjab and Haryana High court on
its Administrative side rejecting the application dated 12.4.2002
made by the appellant to the High Court with a request to
change her date of birth from 26.1.1971 to 9.1.1972 is also set
aside . The application dated 12.4.2002 made by the appellant
to the High Court to change her date of birth from 26.1.1971
to 9.1.1972 stands allowed . Both the respondents are hereby
directed to carry out necessary changes in service record of
the appellant by mentioning her date of birth to be 9.1.1972 .
The appeal accordingly stands disposed of .

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N.J.

Appeal disposed of .