

SUPREME COURT OF INDIA

CIDCO

Vs.

Vasudha Gorakhnath Mandevlekar

C.A.No.3615 of 2009

(S.B. Sinha and Asok Kumar Ganguly JJ.)

15.05.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.
2. The Date of Birth of the respondent is in question in this appeal which arises out of a judgment and order dated 17.04.2008 passed by the High Court of Judicature at Bombay in Writ Petition No. 6962 of 2006.
3. Respondent herein joined the services of the appellant - Corporation on 18.01.1971. She disclosed her date of birth to be 2.10.1950.
4. According to the appellant - corporation, in the year 1975, in response to a memo dated 25.07.1975, the respondent submitted a form giving the details of her date of birth, educational qualification and experience wherein the date of birth was typed as 2.10.1948. However, the year was corrected in handwriting as 1950 by way of interpolation.
5. Respondent was posted in the Personnel Department in various capacities during the period from 14.01.1980 to 6.07.1988.
6. On 16.01.1997, a letter was issued to the respondent for production of copies of school leaving certificate, but she did not submit the same. Again, an office order was issued on 26.02.2004 and 16.06.2004 asking the respondent to submit the documents. However, the respondent did not submit copies of the school leaving certificate and claimed that her original certificates including the school leaving certificate had been misplaced.
7. On 11.04.2005, the respondent was again asked to produce the required documents and the respondent by a letter dated 19.04.2005 informed that she had submitted all the documents at the time of joining the service and these documents had been misplaced.

8. However, the respondent submitted a copy of the birth certificate dated 3.04.2000 issued by the Chief Officer, Panvel Nagar Parishad. The said certificate shows the date of birth of the respondent to be 2.10.1950 as recorded in the register of births maintained by the Parishad.

9. Respondent has also produced various documents issued by the appellant - corporation, viz., seniority list, gradation list, retirement list, etc. In all these documents, the date of birth of the respondent was shown as 2.10.1950.

10. The Manager (Personnel) of the appellant - Corporation by an order dated 26.12.2007 held the date of birth of the respondent as 2.10.1948. For arriving at the said conclusion, the appellant - Corporation took into consideration various documents, including application made at the time of admission to the school for the respondent and her sisters, the school leaving certificates of the producer and her sisters, the admission register given by the Head Mistress of the School indicating the date of birth record of the respondent, etc. In all these documents, the date of birth of the respondent was shown as 2.10.1950. The Manager (Personnel) in support of his order dated 26.12.2007 assigned the following reasons:

"She states that the birth certificate issued by the Panvel Municipal Council based on the entry in the v.f. no. 14 Register of Births and Deaths is the proof of the birth date. Similarly, these certificates are issued as per the Birth and Death Act, 1886 and the Maharashtra Birth Death Registration Rules, 1976, as such she also says that these should be accepted as proof. However, when Shrimati Mandwilkar or her sisters were born, the above mentioned Act was not in existence at all.

The v.f. no. 14 is a form of the Revenue Department and the same used to be kept with the police patil of the village for census. In this form the names of the girl children born and the dates are written with different handwriting. Therefore, it cannot be said that the name of the same girl has been written against the date of which she was born and therefore this is not a credible proof. As the Panvel Municipal Council has given the birth certificates based on that register only, those also cannot be believed. Shri Narayan Shrirang Surve, the father of Shrimati Mandwilkar has himself admitted his children in school and has stated the exact dates of birth of the daughters instead of telling approximate dates. When birth date is stated approximately at the time of taking admission in school, it is a practice to generally record 1st June as the birth date. However, it has not happened in this case. The father himself has mentioned the birth dates of his children at the time of admission in school and, therefore, those should be considered as more trustworthy."

In the said order, it was held:

"However, there is no substance in this statement of hers. The date mentioned in the seniority list or the date mentioned in the details attached with the order of the housing loan cannot be considered as a proof of the birth date. Whatever details are mentioned in the personal file of the concerned employee, the same details are

mentioned by the lower grade employees doing this work while preparing the seniority list or the order for the housing loan. If the original detail is wrong and is not corrected, it continues to be as it is. Therefore, no employee can lay claim on anything on the basis of that detail."

11. Aggrieved by and dissatisfied by the said order, the respondent filed a Writ Petition before the High Court of Judicature at Bombay which by reason of the impugned judgment has been allowed, observing:

"14. Consequently, whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, carrying the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted such certified copy issued by a public authority would stand nullified."

12. Mr. Bhasme, learned counsel appearing on behalf of the appellant, would submit:

“(i) The register of births and deaths maintaining, inter alia, the date of birth is not conclusive and in any event the Municipal Council having been constituted in the year 1976, i.e., much after the entry in service by the respondent, no reliance can be placed thereupon.

(ii) Respondent being in the Personnel Department of the appellant, interpolation in the record was not brought to the notice of the authorities and when it came to their notice, they issued the memo and obtained the certificate from the school authorities.”

13. Mr. Vinay Navare, learned counsel appearing on behalf of the respondent, on the other hand, urged:

“(i) In all the records maintained by the Corporation, the date of birth of the respondent has been shown to be 2.10.1950.

(ii) Although Municipal Council came into being in 1976, but, earlier the records used to be maintained by the panchayat under the provisions of the Births, Deaths & Marriage Registration Act, 1886 and as such the entries made in terms of the statutory provisions shall prevail over the entry made in the school leaving certificate.

(iii) The reasons assigned by the Manager (Personnel) of the appellant - Corporation holding that the respondent's date of birth is 2.10.1948 are wholly perverse and are based on conjectures and surmises.

(iv) As the records of the appellant clearly show that the date of birth of the respondent is 2.10.1950, it was not necessary for him to make a representation.

(v) Entries made in terms of the statutory provisions shall prevail over the entry made in the school leaving certificate particularly when the details of dates of birth of the brothers and sisters of the respondent had clearly been provided by the Chief Officer, Panvel Municipal Council by a letter dated 28.12.2007 addressed to the Manager (Labour) of the appellant - Corporation.”

14. We have noticed hereinbefore that what for the so-called charge of interpolation of service records in regard to the year of birth, the office records categorically shown that the date of birth of the respondent was 2.10.1950. A large number of documents have been produced in support of the said contention by the respondent. We may notice some of them. In the gradation list of Field Officer as on 1.4.1986 issued on 11.4.1986, the respondent's name figured at serial No.17 showing his date of birth to be 2.10.1950. The same date of birth has been shown in the seniority list as on 1.4.1987 published on 11.4.1986 (sic) at serial No.16. Yet again, in the retirement list of CIDCO employees, the respondent's date of birth has been shown to be 2.10.1950.

15. A list of employees retiring in the year 2006 was published on 30.9.2005 wherein the respondent's name did not figure. In fact, it was shown that in other documents, the year of her superannuation was shown to be 2008. Appellant had issued a memo. The respondent replied thereto by a letter dated 19.4.2005 wherein she categorically mentioned that she had produced the copy of the birth certificate issued by the Panvel Municipal Council on many occasions. She had also produced copy of the graduation certificate and birth certificate from the said Council. She, therefore, requested the appellant to accept her date of birth as 2.10.1950.

“Although criticism has been made by Shri Bhasme in regard to the certificate issued by the Panvel Municipal Council on the premise that it having itself been constituted in the year 1976, could not have issued the said certificate; we may notice that the Municipal Council in its letter dated 28.12.2007 issued to the Manager (Labour) CIDCO, not only disclosed the date of birth of the respondent but also her other sisters brothers. Veracity and/or genuineness of the said certificate is not in question.”

16. Mr. Navare furthermore appears to be right in contending that although the Municipal Council came into being in 1976, the statutory records of birth and death used to be maintained by its predecessor, the Gram Panchayat. The said statement appears to be correct as would appear from a letter dated 3.11.2006 by the Panvel Municipal Council addressed to the Manager (Labour) of the appellant stating that the said certificate is issued as per the original record of deaths and birth with the Municipal Council.

17. It is of some significance to notice that the appellant for the first time, by its office letter dated 4.10.2006 stated that the employees mentioned therein including the respondent would retire in the month of October 2006.

“We have been taken through the order dated 26.2.2007 passed by the Manager (Personnel) of the appellant holding the date of birth of the respondent as 2.10.1948 which runs into 23 pages.

We may, however, notice that the reasons assigned by the said authority are wholly unacceptable. Some of the reasons assigned by him are perverse.”

18. Only because the respondent for some time had been working in the personnel department, the same by itself, in our opinion, cannot be held to constitute sufficient proof to show that an interpolation was made at her instance particularly when the certificate issued by the Panvel Municipal Council was available with the Corporation as far back as in the year 1976.

“If an allegation is made that a lower grade employee was responsible for withholding the said document from the higher authorities, proof therefor was necessary. It is wholly unlikely that the seniority list of the officers which are prepared by the higher authorities would contain the same mistake as purported to have been committed by the lower authorities.”

19. Appellant prima facie is bound by its own records. If any fraud is alleged, it must be proved. Only because there appears to be a so-called interpolation, the same by itself would not lead to a conclusion that the respondent had supplied a wrong date of birth.

20. The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. [See *Birad Mal Singhvi v. Anand Purohit*¹]

21. For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly with costs. Counsel's fee assessed at Rs.50,000/-.

¹AIR 1988 SC 1796