

# SUPREME COURT OF INDIA

Manoj Kumar

Vs.

Govt.of NCT of Delhi

C.A.No.5999 of 2010

(R.V.Raveendran Gyan Sudha Mishra JJ.)

26.07.2010

## JUDGEMENT

### **R.V.Raveendran, J.**

1. Leave granted. Heard the counsel.
2. The appellant claims that his date of birth is 8.9.1988. He passed the matriculation examination in the year 2004. The matriculation certificate dated 12.5.2004 issued by the Haryana Board of School Education showed his date of birth as 8.11.1989 thereby making him one year and two months younger. According to appellant, the date of birth entered in the matriculation certification was erroneous and therefore he approached the school authorities for correction of his date of birth. When his request was pending, vacancies in respect of the post of Constables (Executive) in Delhi Police were advertised in May, 2007. The appellant applied for the said post mentioning the correct date of birth, that is, 8.9.1988 in the application hoping that by the time he was appointed, the date of birth in the matriculation certificate could be got amended. In pursuance of his application, he was selected and appointed on 21.5.2008 and sent for training.
3. In the meanwhile on 17.12.2007, the appellant also made an application to the Haryana Board of School Education for correction of his date of birth. In the said application, he gave the particulars of the schools where he studied and the date of birth entered in the school records. He stated that when he was admitted to MAGSS School in 1999 for 6th standard, his date of birth was rightly shown as 8.9.1988, but when he was shifted to another school, the date of birth was wrongly entered as 8.11.1989 which was reflected in the matriculation certificate. He relied upon the School Leaving Certificate dated 30.4.2000, issued by MAGSS School, Jind, wherein his date of birth was shown as 8.9.1988. As there was no response from the Board, he filed a suit on 26.5.2008 for correcting his date of birth.
4. The third respondent issued a notice dated 20.8.2008 to the appellant calling upon him to show cause why his services should not be terminated under Rule 5(1) of the CCS

(Temporary Service) Rules, 1965 for showing his date of birth wrongly as 8.9.1988, instead of 8.11.1989, in his application for employment. The appellant submitted a reply dated 9.9.2008 stating that his correct date of birth was 8.9.1988; that the matriculation certificate contained a wrong date; and that he had already approached the authorities for correction and that he had also filed a suit in that behalf. However the third respondent did not accept the explanation and terminated the appellant's services by order dated 5.12.2008.

5. On 2.1.2009, the Civil Judge, Jind, decreed the appellant's suit directing the Board of School Education, Haryana to correct the date of birth of appellant as 8.9.1988 in the matriculation certificate. In pursuance of it, the Board of School Education had issued a corrected matriculation certificate dated 13.1.2009 showing his date of birth as 8.9.1988.

6. The representations dated 7.1.2009 and 21.1.2009 submitted by the appellant against the termination order were rejected by the fourth respondent, by order dated 19.3.2009. Aggrieved thereby, the appellant approached the Central Administrative Tribunal challenging the termination.

“The Tribunal dismissed his application on 14.5.2009. The review application filed by him was also dismissed by the Tribunal on 8.7.2009. The appellant filed a writ petition challenging the orders of the Tribunal and the High Court dismissed the writ petition by order dated 20.10.2009. The said order is challenged in this appeal by special leave.”

7. The High Court was of the view that if appellant's date of birth was 8.11.1989 as per matriculation certificate, he would have been under-aged when he applied for appointment and apparently to overcome the minimum age requirement, he had wrongly given his date of birth as 8.9.1988; and that after securing employment, he took steps to have the date of birth changed; that if he had disclosed the true date of birth shown in the matriculation certificate, he would not have been eligible for employment; and that in the circumstances the appellant should be treated as having furnished false information.

8. There is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information.

9. But the question here is whether the appellant had given false information or suppressed any relevant or material information. The records of MAGSS School, Jind, Haryana where he studied in the sixth standard shows his date of birth as 8.9.1988. Therefore that date was not something that was created for the purpose of securing employment. Further, the matriculation certificate issued by the Board of School Education, Haryana, to appellant's sister shows her date of birth as 23.11.1989. Obviously therefore the appellant's date of birth shown as 8.11.1989 in his matriculation certificate, was erroneous. He was pursuing his request for correction of the date of birth in the matriculation certificate and also filed a suit

for correction of his date of birth. The Civil Court decreed the suit and the Board of School Education accepted the decision and corrected the date of birth. If all the facts and circumstances are taken note of, it is evident that appellant's date of birth was 8.9.1988 and not 8.11.1989. The appellant was all along making efforts to get the date of birth corrected and in fact, got it corrected. This is not a case where a wrong date was given to have a longer period of service and thereafter an attempt to justify it. There was obviously a mistake in the date of birth and the Haryana School Education Board corrected it. The explanation offered by the appellant with supporting documents, was not considered either by respondents 3 and 4, or by the Tribunal and the High Court. They ignored the relevant material and decided against the appellant only because the matriculation certificate as it stood at the time of the employment application was different from the date given in the application for employment. While the matriculation certificate is a strong material, other equally relevant material cannot be ignored, particularly when the matriculate certificate has been corrected. The case of an entrant seeking correction of date of birth should not be equated with cases of government servants at the tail end of their service trying to get extension of service by alleging wrong date of birth. We should also not lose sight of the fact that many service Rules provide for change of date of birth in the Service Register, on production of satisfactory proof, provided that the change is sought within the first few years of entering service. Be that as it may.

10. We are therefore of the view that the termination cannot be sustained.

“The appeal is therefore allowed, the order of the High Court, the orders of the CAT and the order of termination are set aside. As a consequence the appellant shall be taken back into service within two months, with continuity 7 of service and permitted to complete his training. The appellant will not be entitled to any backwages.”