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RESERVED

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1617 of 1986
(O.S.No.293 of 1982)

Lala Ram Gautam Plaintiff

Vs.

The Senior DPO and
two others ... Defendants.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

original

This/suit has been received by transfer
from the Court of Munsif I, Agra under Section 29
of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff was in the service of the
defendants in the Railway Department from 25.7.1944
and according to his alleged correct date of birth
3.8.1925, he was entitled to serve upto 31.8.1983.
On getting some clue that the plaintiff was wrongly
being retired w.e.f. 31.8.1982, he filed the present
suit for permanent injunction to restrain the
defendants from retiring him from the post of Welfare
Labour Inspector before 31.8.1983. The plaintiff
sought the leave of the trial Court to file the suit
without serving the defendants with a notice under
Section 80 of the Code of Civil Procedure and also
obtained an ad-interim injunction order. The injunct-
ion was vacated after some time. He filed an appeal
against the order of the trial Court vacating the
injunction order and again obtained the injunction
order from the appellate Court but after sometime

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the appellate Court too vacated the same. The plaintiff thus could not complete his service upto 31.8.1983 and the defendants also stopped the payment of his salary from 16.9.1982. The plaintiff accordingly got the plaint amended and instead of the injunction, he claimed a declaration to the effect that the plaintiff should be deemed to be in service of the defendants upto 31.8.1983 and he is entitled to get his salary from 17.9.1982 to 31.8.1983 with other benefits of service and compensation etc.

3. The defendants have contested the suit and in the written statement filed on their behalf, it has been stated by them that the correct date of birth of the plaintiff is 3.8.1924 and according to this, he was rightly retired from service w.e.f 31.8.1982 on attaining the age of superannuation. The defendants also raised some technical pleas and pleaded that the suit is bad for want of legal notice under section 80 CPC and is barred by Sections 38 and 41 of the Specific Relief Act. In the additional written statement, it was pleaded that the plaintiff is not entitled to the declaration claimed under the law and the suit is not properly valued and the court-fee paid is insufficient. The pleas of bar of Section 80 CPC and Sections 38 and 41 of the Specific Relief Act were repeated again.

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4. The main question arising for determination in this case is as to what is the correct date of birth of the plaintiff. In support of his case, the plaintiff has produced both oral and documentary evidence. Paper no.14-A is the second ^{copy of the} duplicate copy of the High School Certificate issued by the U.P. Board of High School and Intermediate, Allahabad (hereinafter referred to as the U.P.Board) mentioning 3.8.1925 as the date of birth of the plaintiff. The contention of the plaintiff is that the original certificate was lost by him and this High School Certificate is a very material document for determining his age. It has been further contended on behalf of the plaintiff that the original service record was summoned from the defendants but they did not produce the same and as such, the oral statement of the plaintiff read with the duplicate copy of his High School Certificate ^{will fully} ~~go a long way to~~ establish his case and this Tribunal should accept his contention regarding his date of birth.

5. The plaintiff Lala Ram Gautam had produced himself in the witness box as P.W.1 and it was stated by him that his date of birth is 3.8.1925. He further stated that the paper no.14-A is his original High School Certificate which he had received from the U.P.Board and he was wrongly retired by the defendants w.e.f. 31.8.1982. He has

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received the pay upto 16.9.1982 and he is also entitled ^{to} ~~for~~ promotion as a Senior Welfare Officer from Feb.1982 and the railway administration had issued the orders of his promotion in Feb.1982. In his cross-examination, it was stated by him that he knew about the date of birth from the High School Certificate. Later on he stated that even before getting the High School certificate, his date of birth was known to him but the source of his information has not been stated by him. Naturally, the plaintiff himself could not have the personal knowledge of his date of birth. He could know about it only from his parents or other elder members of the family. Neither any source was stated by him nor did he produce any other witness to state about his correct date of birth.

6. On further cross-examination, it was stated by the plaintiff that in his school record, 3.8.1925 was recorded as date of birth by his father. He did not summon the school record in support of his contention and stated that he did not feel the necessity of seeing the school record for this purpose. As the paper no.14-A is not the original certificate of the High School and is merely the second ^{copy of the} duplicate copy, ^{and} when this thing was put to him, the plaintiff was bold enough to say in his opinion, there is no difference between the original and the copy and the certificate 14-A filed by him is his original High School certificate. This statement is absolutely false. On the top of the certificate, 14-A, there is a rubber stamp of " द्वितीय प्रतिलिपि " (second

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copy) and the certificate of the Joint Secretary given at the bottom of this certificate further clearly states "certified second copy of the duplicate of the certificate issued on 15.7.1982". In view of this, no weight can be attached to the oral testimony of the plaintiff who is a highly interested witness in this case.

7. On the other hand, the defendants have filed the proforma service book, paper no.21-A, of the plaintiff in which 3.8.1924 has been recorded as his date of birth. This proforma bears the signatures of the plaintiff. He has not explained as to how this date of birth was recorded in his service book. Paper no.22-A is the original letter of the Secretary, U.P. Board addressed to the Divisional Railway Manager, Allahabad, defendant no.2 stating that the plaintiff had passed his High School examination in 1944 and in the record of the Board, 3.8.1924 has been recorded as his date of birth. The same date of birth 3.8.1924 was recorded in his original High School certificate and its duplicate was issued on application on 29.11.1949. It was further stated that in the counter-foil of the certificate, by erasing one digit, 3.8.1925 was made in place of 3.8.1924 and as the same could not be detected while issuing the second copy of the said duplicate, the date of birth was inadvertently written as 3.8.1925. The defendants have filed 3 more documents received from the U.P. Board. Paper no. 36-C is the photostat copy of the duplicate certificate

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issued on 25.11.1949 mentioning 3.8.1925 as the date of birth. Paper no.87-C is the photostat copy of one sheet of the tabulation register of High School examination of 1944 of about 30 candidates of the School from which the plaintiff had passed his High School. His name also finds place in this sheet and his date of birth is recorded to be "3rd Aug.1924" therein. Paper no.88-C is the report dated 17.12.1924 of the Secretary U.P. Board in respect of the inquiry held in connection with the erasure and interpolation in the date of birth of the plaintiff in the counter foil of his certificate holding that there was an interpolation. One of the two officials against whom the inquiry was held was punished and the other was given the benefit of doubt. It was argued on behalf of the defendants that the original service record of the plaintiff is not available in the office of the defendants and has been lost or misplaced and an affidavit to this effect was stated to have been filed.

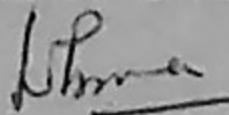
8. Having given our anxious consideration to the whole material placed before us we find that the plaintiff is supposed to have his original High School Certificate with him, which he has not produced. Its loss has also not been alleged and proved by him. He obtained the duplicate High School certificate on 29.11.1949 but the same has also not been filed. As the counter foil of the

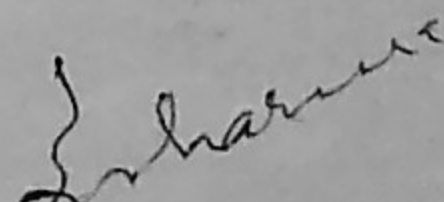
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original certificate was tampered with as informed by the Secretary, U.P. Board, no reliance can be placed on the copy of the duplicate certificate obtained by the plaintiff for the purpose of this case in 1982 and placed on the record. Its falsity has been amply proved by the sheet of the tabulation register, paper no. 87-C, discussed above. The plaintiff did not take any step to summon the record of his school in which ~~this~~ date of birth would have been recorded. On the other hand in his proforma service book, paper no. 21-A, which bears his signature, his date of birth is recorded as 3.8.1924. He has thus, miserably failed to prove that his correct date of birth is 3.8.1925 as mentioned in the copy of the duplicate High School certificate, paper no. 14-A. He had, therefore, no right to continue in service after 31.8.1982 and only on the basis of the temporary injunction obtained by him, he continued in service for a few days more but he is not entitled to get any pay, allowances or other benefits of service for any period subsequent to 31.8.1982.

9. We accordingly dismiss his suit with costs, which are assessed to be Rs.250/- (Rupees Two Hundred and Fifty) only.


1.5.1987
MEMBER (A)


1.5.1987
MEMBER (J)

Dated 1.5.1987
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