

(2019) 02 GAU CK 0083

In the Gauhati High Court

Case No : Writ Petition (C) No. No. 774 Of 2018

Ajit Ranjan Das

APPELLANT

Vs

Indian Oil Corporation Ltd. And 4 Ors

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 02 GAU CK 0083

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : A Ganguly, SN Sarma

Final Decision : Dismissed

Judgement

[1] Heard Mr. A Ganguly, learned counsel for the petitioner. Also heard Mr. SN Sarma, learned Standing Counsel, OIL, respondent Nos. 1 to 5.

[2] The issue to be decided in this case is whether the petitioner's date of birth should be corrected to 21.10.1960 instead of the recording made in his Service Book, which is 31.12.1958.

[3] The petitioner's case in brief is that the petitioner joined the erstwhile Assam Oil Company Corporation, which has now been taken over by the Government of India and now known as Indian Oil Corporation Limited (Assam Oil Division), Digboi as a regular Mazdoor on 27.12.1978. According to the petitioner, the respondents incorrectly recorded the petitioner's date of birth as 31.12.1958 instead of 21.10.1960 in his Service Book. The petitioner applied for correction of his date of birth vide representations dated 25.07.1983, 08.03.1995, 02.07.2003 and 14.12.2016. As the respondents rejected the prayer of the petitioner for alteration of his date of birth vide letter dated 20.12.2016, the petitioner has filed the present writ petition on 19.01.2018, praying for setting aside the impugned letter dated 20.12.2016 and for a direction to be issued to the respondents to alter the petitioner's date of birth to 21.10.1960.

[4] The petitioner's counsel submits that the petitioner's date of birth as recorded in the certificates dated 06.01.1977 and 06.08.1978, issued by the Headmaster of the A.O.C, Boy's High School, Digboi is to the effect that the petitioner's date of birth as on 06.01.1977 was 16 years 2 months 15 days. Similarly, the petitioner's date of birth as on 01.03.1978 was 17 years 4 months 10 days. He also submits that as per the Admit Card issued by the Board of Secondary Education, Assam and the High School Leaving Certificate issued in the year 1979, the petitioner's date of birth would have been 21.10.1960.

[5] The petitioner's counsel submits that the petitioner's date of birth was recorded as 31.12.1958 in his Service Book solely on the basis of the Family Dependant Certificate submitted by the petitioner's father, who was an employee of the Assam Oil Company as a Mazdoor. In the Family Dependent Certificate submitted by the petitioner's father, the petitioner's father had recorded the year of birth of the petitioner as 1958. Though the petitioner had submitted the certificate dated 06.01.1977 issued by the Headmaster of A.O.C, Boy's High School, Digboi to the authorities at the time of his appointment, the same was not taken into consideration by the authorities and they whimsically recorded his date of birth as 31.12.1958.

[6] The petitioner's counsel submits that the documents produced by the petitioner shows that the petitioner's actual date of birth is 21.10.1960, as given in the certificates issued by the Headmaster of his school and the Board of Secondary Education. He also submits that the petitioner's representation having been rejected for the 1st time vide letter 20.12.2016, there is no laches or delay on the part of the petitioner in approaching this court in the year 2018. He also submits that the petitioner having submitted representations as far back in the year 1983 with regard to the incorrect recording of his date of birth, the petitioner's case for alteration of date of birth has to be considered only on the basis of the documents issued by the competent authorities.

[7] He also submits that the Personnel Manual of the respondents, which states at para 3.4.2. that the date of birth once admitted shall not thereafter be altered on any ground whatsoever is arbitrary as the petitioner's birth certificate and other documents clearly prove the factum of the petitioner's date of birth as being 21.10.1960. He also submits that the respondents have not followed para 3.4.3(b) of the Personnel Manual while recording the petitioner's date of birth and the same should be altered on the basis of the documents proving the petitioner's date of birth as 21.10.1960.

[8] Mr. SN Sarma, learned senior counsel appearing for the respondents submits that the petitioner retired from service on 31.12.2018 after serving 40 years 4 days in the organization. He also submits that as per the law laid down by the Apex Court, an employee cannot be allowed to come to the court for alteration of his date of birth at the fag end of his career. Further, the petitioner's application having been rejected in the year 2016, the petitioner has approached this court only in the last year of his career, i.e. 2018, while he had the chance to approach

this court earlier. He further submits that a perusal of the signatures of the Headmaster of A.O.C, Boy's High School, Digboi as given in the certificates dated 06.01.1977 and 06.12.1978 do not tally.

[9] Learned senior counsel for the respondents has also produced original record of the Employee's Dependant Certificate submitted by the petitioner's father while working as a Mazdoor for the respondents, in which the year of birth of the petitioner is shown to be 1958. Further, the counsel for the respondents has also produced the original record of the Employee's Dependent Certificate submitted by the petitioner, which shows the petitioner's date of birth to be 31.12.1958.

[10] The respondents counsel thus submits that the date of birth in the petitioner's Service Book, i.e. 31.12.1958 was recorded on the basis of the statement made by the petitioner and also on the basis of the petitioner's father's declaration, while he was an employee of the Company. He accordingly, submits that the present writ petition should be dismissed.

[11] I have heard the learned counsels for the parties.

[12] The petitioner joined the organisation on 27.12.1978 and he made a representation to the respondents for the 1st time vide letter dated 09.08.1979, which is to the following effect:-

"Sir,

I have the honour to inform you that I have passed the HSLC Examination in third division this year (in 1978-79) under the Board of Secondary Education, Assam.

I therefore, request you to kindly record this in my service record at your end."

As can be seen from the above representation dated 09.08.1979, there is no whisper of any grievance made by the petitioner with regard to his date of birth being wrongly recorded. He has only prayed for recording of his HSLC qualification in his Service Book. If the petitioner had been aggrieved by the purported wrong recording of his date of birth, the same should have found place in his application dated 09.08.1979, as he has taken the plea in his writ petition that at the time of his appointment, the certificate dated 06.01.1977 issued by the Headmaster of A.O.C, Boy's High School, Digboi was not taken into consideration by the authorities.

[13] This court, while perusing the signatures of the Headmaster of the A.O.C, Boy's High School, Digboi in the certificates dated 06.01.1977 and 06.12.1978 finds a difference between the signatures in the certificates, which is visible even to the untrained naked eye. Further, even a normal person does not ask or take his date of birth certificates from the Headmaster of a school just because he is studying in Class-X. It is unbelievable that the petitioner, who was a purported student of Class-X, would have asked for a certificate from the Headmaster showing his date of birth when he was in Class-X, in the January 1977 and

December, 1978. In any event, the difference in the signature of the Headmaster casts a doubt on the genuineness of the certificate. The certificate would have to be proved by the maker of the certificate and as the same can only be proved in a Civil Court, this court does not accept the certificates dated 06.01.1977 and 06.12.1978 to be proof of the petitioner's date of birth. It should also be kept in mind that petitioner passed his matriculation only in the year 1979.

[14] In the case of *Gendalal -vrs- Union of India & Ors.*, reported in (2007) 15 SCC 553, the Apex Court has allowed the date of birth to be corrected 31 years after the appointment of the petitioner therein. In the above case, 2 (two) years after the petitioner had first submitted his representation for correction of his date of birth, the Railway Board had issued an order inviting representations for correction of date of birth. However, no action was taken on the petitioner's representation and the same was rejected for the first time after 31 years. There was no lack of diligence on the part of the petitioner therein for correction of his date of birth and it was in that context that the Apex Court had allowed correction of the date of birth after 31 years.

[15] The facts in the present case are however different. The date of birth certificate annexed with the writ petition, showing the petitioner's date of birth as 20.10.1960, has been issued only on 06.02.1995. The Admit Card and the HSLC certificate issued by the Board of Secondary Education, Assam had been issued only in the year 1979, while the petitioner had joined his post on 27.12.1978. The HSLC certificate has been issued on 15.07.1979, purportedly showing the petitioner to be 18 years 4 months 10 days on 01.03.1979. However, as stated above, the petitioner has not made a whisper of the same in his representation dated 09.08.1979 which has been reproduced earlier.

[16] The impugned letter dated 20.12.2016, rejecting the petitioner's request for alteration of the petitioner's date of birth states that the petitioner had approached the respondents in the past for alteration of his date of birth which had been turned down by the Management. The above clearly goes to show that the petitioner's prayer for alteration of his date of birth had been earlier turned down by the respondents. In any event, nothing has been produced by the petitioner to show that the respondents had asked the petitioner to prove his date of birth at any point of time. The petitioner's first representation having been submitted in the year 1983, the subsequent submission of representations in the year 1995, 2003 and 2016 cannot be held to be a satisfactory explanation for the delay in filing the writ petition. The petitioner has filed this writ petition only in the last year of his service and he has retired in the meantime, i.e. on 31.1.2018.

[17] In the case of *State of Orissa -vrs- Prayarimohan Samantaray & Ors.*, reported in (1977) 3 SCC 396, the Apex Court has held that making repeated representations after the rejection of the first representation, could not be held to be a satisfactory explanation for the delay.

[18] In the case of State of Madhya Pradesh & Ors. -vrs- Premlal Shrivastava, reported in (2011) 9 SCC 664, the Apex Court had held at para 15 and 16 as follows:-

"15. In Commr. of Police v. Bhagwan V. Lahane, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him.

16. Again, in Union of India Vs. C. Rama Swamy, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded."

In this case, the petitioner's date of birth was recorded on account of his father's certificate and statement made by the petitioner himself.

[19] In the case of G.M. Bharat Coking Coal Ltd. West Bengal -vrs- Shib Kumar Dushad & Ors., reported in (2000) 8 SCC 696, the Apex Court had held at para 22 as follows:-

"22. In the case of Burn Standard Co.Ltd. & Ors. vs. Dinabandhu Majumdar & Anr., (1995) 4 SCC 172, this Court sounded a caution regarding entertaining writ petitions by High Courts for correction of date of births. This Court observed:

"Entertaining by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so- called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applicants on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the

High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his "Service and Leave Record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have not hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement."

[20] In the present case, as this Court holds that the certificates dated 06.01.1977 and 06.12.1978 issued by the Headmaster of A.O.C, Boy's High School, Digboi cannot be the basis for proving the petitioner's date of birth as 21.10.1960, the facts show that the other documents were procured by the petitioner only after he had been appointed. The same cannot be said to prove the petitioner's date of birth as the Employee's Dependant Certificates submitted by the petitioner and his father state otherwise.

[21] Clause 3.4.3(b) states as follows:-

"When an employee/candidate is a non-Matriculate, any of the following may be accepted for admitting date of birth:

- i. Municipal Birth Certificate.
- ii. School Leaving Certificate.
- iii. Service Certificate granted by the previous employer provide it was a Government/Semi-Government Organisation.
- iv. Certificate of age as determined by the Corporation's Medical Officer at the time of employment."

[22] As the petitioner did not have any of the above certificates at the time of his appointment, this court does not find any infirmity with the recording of the petitioner's date of birth as 31.12.1958, on the basis of Employee's Dependant Certificates, as submitted by the petitioner and his father which shows that the petitioner's year of birth as 1958. Secondly, the petitioner had himself signed the later Employee's Dependant Certificate, which shows the petitioner's date of birth as 31.12.1958.

[23] Further, it is settled law that a judgment is only an authority for what it decides and not what logically follows from it. A slight difference in facts lessens the precedential value of a judgment. This court also finds that the facts in this case are not similar to the facts of Gendalal (supra). Accordingly, this court is of the view that the judgment in Gendalal (supra) is not applicable to this case.

[24] In view of the reasons stated above and as there is delay and laches in filing

the present writ petition, this court does not find any merit in the writ petition. The same is accordingly, dismissed.