

(2021) 09 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 124 Of 2019

Ajit Saikia

APPELLANT

Vs

Nion Of India And 8 Ors

RESPONDENT

Date of Decision : 10-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 GAU CK 0031

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A. Ganguli, S. Baruah, S. N. Sarma

Final Decision : Dismissed

Judgement

1) Heard Shri A. Ganguli, learned counsel for the petitioner. Also heard Ms. S. Baruah, learned CGC for the respondent no.1. Shri S. N. Sarma, learned senior counsel assisted by Shri K. Kalita, learned counsel has appeared for the contesting respondent nos. 2 to 9.

2) Considering the subject matter in dispute and also the fact that exchange of pleadings are already complete, this writ petition is taken up for disposal at the admission stage.

3) The petitioner is aggrieved by the action on the respondent authorities in not considering his prayer for correcting his date of birth in his Service Book. While the petitioner claims his date of birth to be 31.05.1967, the one recorded in his Service Book is 07.05.1960 as a result of which according to the petitioner he would be deprived from his entitlement to be in service for a period of approximately seven years.

4) Before going to the issue which calls for determination, it would be convenient to place the basic facts on record. The petitioner claims to have read upon to Class IX and is equipped with a school certificate issued by the Head Master of the Bhadoi H. E. School, in which the age was stated to be 15 years 7 months.

The petitioner has accordingly deduced his date of birth to be 31.05.1967. The petitioner claims to have registered himself in the Employment Exchange, Duliajan, with registration no. 3284/87, in which the date of birth was recorded as 31.05.1967.

5) The petitioner was initially appointed in the job of Grade-I as Trade-I in the Oil India Ltd. and he claims that at the time of entering into services the school certificate and Employment Exchange Certificate were submitted. After working for a year from 1997 to 1998, the petitioner was confirmed in the job w.e.f. 24.06.1998.

6) The projected case of the petitioner is that on coming to know of the incorrect recording of his date of birth in his Service Book as 07.05.1960, he had made a representation on 11.04.2018 followed by another on 27.04.2019, which were turned down by the respondent authorities.

7) According to the petitioner, his date of superannuation should have been 31.05.2027 instead of 07.05.2020. It is the case of the petitioner that no proper opportunity was granted to him to convince the respondents regarding his correct date of birth and his prayer was rejected in a mechanical manner for which he had suffered grave prejudice in the form of loss of service for about 7 years.

8) Shri Ganguly, learned counsel for the petitioner submits that all contemporaneous records including the school leaving certificate dated 04.06.1994, the Employment Exchange Certificate, the Driving License, PAN Card, Adahar Card and even the Passport of the petitioner contains the date of birth of the petitioner as 31.05.1967, which according to him is the correct date of birth. The learned counsel accordingly, argues that in view of the overwhelming materials to substantiate his date of birth as 31.05.1967, it would be absolutely unjustified to record his date of birth as 07.05.1960 which has to be clarified to be 07.08.1960.

9) It is further submitted that the petitioner at the time of induction in the service, had submitted the school certificate. However, ignoring the same, his date of birth was recorded based on a medical examination, which is not contemplated under the law in view of the availability of a certificate. In support of his submission Shri Ganguly, learned counsel for the petitioner placed reliance on a judgement dated 31.07.2012 rendered by the Hon'ble Division Bench of this Court in WP (C) 3403/2012 in the case of Mantu Ram Talukdar Vs. The Union of India & Ors.

10) Per contra, Shri Sarma, learned senior counsel for the contesting respondent nos. 2 to 9 submits that the issue involved is no longer res integra in view of the categorical law settled by the Hon'ble Supreme Court time again. Turning it to be a usual practice on the part of an employee to raise an issue of incorrect date of birth at the verge of retirement, the learned senior counsel submits that such practices are required to be deprecated as the same is often done as an

afterthought at the verge of retirement.

11) By drawing the attention of this Court to the relevant pleadings in the writ petition, more particularly those made in paragraph 5, the learned senior counsel submits that the averments regarding non-consideration of the petitioner's school leaving certificate has been verified as being true to records and there is no record to substantiate the said statement.

12) The learned senior counsel has also referred to the first representation of the petitioner, which was submitted on 11.04.2018, which talks about an affidavit executed on 07.04.2018 to substantiate the school certificate, from where the date of birth can be deduced as 31.05.1967 and it is for the first time that such a request was made to the authorities.

13) By drawing the attention to the Modified Standing Orders of the respondent Company more particularly, the provisions relating the recording of age as laid down in Clause 5.0, the age of a incumbent, was required to be indicated at the time of engagement either from the matriculation or school leaving certificate granted by the Board of Secondary Education and or similar Educational Authority or a certificate from the school where the incumbent had studied. In the instant case, the records substantiate that no such certificate was ever submitted to the authorities.

14) The Model Standing Order also contemplates a situation where such certificate cannot be submitted in the form of Clause 5.2 which lays down that in such a case the incumbent shall be examined by the companies Head (Medical Services) whose opinion as the age shall be final and binding on the workman. The learned senior counsel has also drawn the attention of this Court to the employee's bio-data, which has been annexed as Annexure R-4 to the affidavit-in-opposition filed on 15.05.2019.

15) The said document which has been signed on each page by the petitioner clearly states that the date of birth of the petitioner is 07.08.1960 along with other details of the petitioner of his residential address, family members and other antecedents. The said bio-data is also accompanied by a solemn declaration that the information given are true to the best of the knowledge of the petitioner.

16) To substantiate the argument that the school certificate was not given at the time of entering into service, the senior counsel has referred to the part of bio-data, which relates to "certificates produced and seen". Under the said heading, the following certificates appear to have been submitted by the petitioner :

- i. Employment Exchange Registration 3284/87
- ii. OBC certificate
- iii. Son's birth certificate
- iv. Verification report

v. Local man certificate

vi. PRC

17) By specifically dealing with the Employment Exchange Certificate though the same is not a prescribed document for ascertaining the age, the learned senior counsel points out that the same would reveal that the original registration was done on 28.12.1980 at Tinsukia and the certificate annexed though registered on 16.11.1987 indicates the original registration no. 28.12.1980.

18) The learned senior counsel submits that if the said certificate is required to be believed, it appears that the petitioner got himself registered with the Employment Exchange at Tinsukia at the age of 13 years which is an absurd proposition.

19) Shri Sarma, learned counsel accordingly submits that apart from the fact that the conduct of the petitioner in approaching the authorities at a belated stage at the verge of retirement, even on merits, the petitioner does not deserve any consideration before this Court, as no convincing materials could be placed on record to accept the projected case of the petitioner.

20) Shri Sarma, learned senior counsel submits that law in this field is well settled and has been summarised by the Hon'ble Supreme Court in its recent decision reported in the case of Bharat Coking Coal Ltd. Vs. Shyam Kishor Singh reported in (2020) 3 SCC 411 wherein the following observation has been made:

"9. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in State of Maharashtra vs. Gorakhnath Sitaram Kamble wherein a series of the earlier decisions of this Court were taken note and was held as hereunder: (SCC pp. 428-29, paras 16-17 & 19)

"16. The learned counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in State of Uttaranchal v. Pitamber Dutt Semwal relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment⁷ of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

* * *

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion

of the judgment in Home Deptt. v. R. Kirubakaran reads as under: (SCC pp. 158-59, para 7)

"7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book."

21) Ms. S. Baruah, learned CGC endorses the submission of the learned senior counsel for the respondent nos. 2 to 9 submits that the petitioner is not able to make out a case for interference by this Court.

22) The rival submissions learned counsel for the parties have been duly considered and the materials before this Court have been carefully examined.

23) This Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is primarily required to examine the decision making process and rather than the decision itself. Though the power of this Court under Article 226 is unlimited, the restrictions are self imposed and would confine within the decision making process. Only on certain conditions when such decision has been arrived at by taking into consideration, irrelevant factors or by ignoring the relevant factors or when the principles of natural justice has been grossly violated or in a case where the decision arrived at does not appeal to a reasonable mind, a scope for interference can be there.

24) Apart from the above conditions, which are not exhaustive in nature, this Court will be loath to interfere in such decision.

25) In the instant case, the projected case of the petitioner is that his date of birth was wrongly recorded while entering into service. However, there is nothing on record to substantiate that the school leaving certificate was placed before the authorities. On the other hand, the contrary appears to be correct as the option

of medical examination had to be opted in view of absence of the documents prescribed under the Model Standing Orders. Though, a statement has been made in paragraph 5 of the writ petition, the same as pointed out by the learned senior counsel for the respondents, has been verified as true to records. In absence of any records to substantiate the claim, such statements cannot be accepted. At this stage, it is to remind ourselves that in absence of any scope to adduce evidence who are open for cross-examination, a writ court has to base its findings based on the pleadings and materials, which are to be verified by an affidavit. The importance of such verification is sacrosanct as the entire claim by contesting parties are to be deduced from the pleadings itself.

26) Regarding the recording of the date of birth, this Court has found that contrary materials are available on record in the form of the entries into the biodata which records the date of birth as 07.08.1960 and has been duly solemnly affirmed by the petitioner. The facts of Mantu Ram Talukdar (Supra) are distinguishable in view of the categorical finding that at the time of entering into service, the incumbent had submitted a certificate, wherein the date of birth was reflected. However in the instant case, the Model Standing Orders which specifies the nature of certificates to be submitted at the time induction into the service no such certificate could be submitted as would be evident from the fact that the authorities had to resort a medical examination to ascertain the age. Such recording has not been put to challenge at any earlier point of time and has been done only for the first time in the year 2018, which itself raises a serious doubt on the bona-fide of the petitioner. It is also a fact that the petitioner has, in the meantime retired from service by calculating his date of birth as year of birth 1960.

27) Under the above facts and circumstances, there is hardly any scope for this Court to interfere with the impugned decision and accordingly the writ petition is dismissed.

28) No order as to cost.