
(2003) 06 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No's. 3521 of 2002 and 1444 of 2003

Anna Mahanta and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 27-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 183

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.M. Mazumdar, S.S. Dey, M. Nath, C. Bhattacharjee, A.R. Banerjee, B. Choudhury, B.P. Sinha and N. Sarkar, for the Appellant; G.A., A.R. Banerjee, B. Choudhury, B.P. Sinha, N. Sarka and D.P. Bora, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. A.M. Mazumdar, learned senior counsel for the petitioner, Mr. A. R. Banerjee, learned senior counsel for the Governing Body of Darrang College and the learned Government Advocate.

2. Both the writ petitions, namely, W.P. (C) No. 3521/2002 and W.P. (C) No. 1444 of 2003 are disposed of by this common order as in both the writ petitions, the impugned order dated 18.1.2002 passed by the Director, Higher Education Assam, has been challenged.

3. The relevant facts may be summed up as below. The writ petitioner Anna Mahanta of W.P. (C) No. 3521 of 2002 joined as Lecturer in Economics in the Darrang College, Tezpur on 3.9.1962 and subsequently she became the Vice Principal of the said college. Thereafter some dispute arose regarding the date of birth and the petitioner Anna Mahanta, hereinafter referred as the petitioner, was asked by the College authority, hereinafter referred as the College authority for the purpose of convenience, to produce certain copies of documents before then and subsequently her date of birth was changed from 18.7.1943 to 24.5.1938

vide letter No. 297/ dated Tezpur, the 29th August, 1996. The petitioner filed a civil suit. Thereafter, the petitioner was directed to retire on 31.5.1998 as per the Resolution of the Governing Body of the college and the petitioner filed writ petition challenging the change of date of birth. While the writ petition was pending, the State Government allowed the petitioner to resume her duties and the Principal of the College allowed her to resume her duties w.e.f. 30.11.1998 and she continued to serve till 26.2.1999. The Governing Body, however, did not approve the action of the Principal and the petitioner was not allowed to continue her services after the said date. The petitioner, thereafter, approached this court in W.P.(C) No. 3240/99 challenging the Resolution of the Governing Body of the College whereby her date of birth was recorded as 24.5.1938 and she was retired from 31.5.1998. The writ petition was disposed of by this court on 19.6.2001 and this court observed as follows :

"The High Court while exercising jurisdiction under Article 226 of the Constitution cannot go into this dispute between the petitioner and the Governing Body of Darrang College regarding the date of birth of the petitioner particularly documents while the Governing Body of Darrang College has relied on the school admission register of the School from where the petitioner passed her matriculation examination. Such a dispute cannot only be appropriately decided by the Appellate Authority under Sub-rule (2) of Rule 12 of the Rules, 1960, Under the said Sub-rule (2) of Rule 12 of the Rules, 1960, appeal was to be filed within 30 days from the date of receipt of the order of the Governing Body retiring the petitioner from service. But in this case, the petitioner instead of filing an appeal has filed the present two writ petitions and the said two writ petitions have been pending before this court till today. On these facts, I am of the considered opinion that if the petitioner files an appeal within 30 days from today before the Director of Higher Education, Assam under Sub-rule (2) of Rule 12 of the Rules, 1960, the same shall not be dismissed by the Director of Higher Education on the ground of limitation, but will be considered on merit after giving due opportunity of hearing to both the petitioner and the Governing Body of Darrang College and disposed of within three months from the date of receipt of the appeal from the petitioner."

4. Thereafter, an appeal was filed on 17.7.2001 and vide the impugned order, the Director of Higher Education, Assam has held that the date of birth of the petitioner will be 29th March, 1940 and she will be attaining the age of 60 years on 29.3.2000. The said order has been challenged by the petitioner by filing W.P. (C) No. 3521/2002 and the College authority by filing W.P.(C) No. 1444/ 2003. Both the writ petitions were heard analogously, as because the petitioner and the Governing Body of the College have challenged the decision of the Director of Higher Education, Assam. From the materials available on record, we find that when an appeal was preferred against the decision of the College authority disputing the date of birth, the concerning authority or the appellate authority has jurisdiction to decide the merit of the matter on consideration of the materials available and the decision of the appellate authority can be questioned

if they have disposed the matter by shutting their eyes over the available materials a non consideration of actual merit of the matter.

5. The service book of the petitioner shows that her date of birth was recorded as 18.7.1943 and the said date was subsequently changed or corrected as 24.3.1938 mainly on the basis of the certificate issued by the principal, Tezpur Govt. Girl's H.S. M.P. School, whereby the college authority was informed that as per the Admission Register of the said school, the date of birth of the petitioner was 24.5.1938. The learned counsel for the college authority has submitted that the above correction was made after issuing notice to the petitioner and there was no violation of the principles of natural justice as enumerated in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*,

6. In this case, we find that recording of date of birth as 18.7.1943 is somewhat mystery as we find no basis for the same. At the relevant time when the petitioner passed the Matriculation examination, there was no requirement of law to record the age in the Matriculation examination and hence, the age of the petitioner was not reflected in the Matriculation the petitioner obtained a birth certificate from the Municipal Corporation in the year, 1992 but the College authority refused to act on the said birth certificate as fake one mainly on the ground that the date of birth was recorded after almost 50 years and that to at the instance of the petitioner. We find that the petitioner also produced a copy of the said birth certificate before the Principal, Tezpur Govt. Girl's H.S. M.P. School for making necessary correction in the Admission Register and the date of birth was changed to 18.7.1943. From the documents produced by the petitioner shows that recording of date of birth as 18.7.1943 first came into existence in the year 1992 only when she obtained a birth certificate by registering her birth after 50 years. In this case, we find that so far the Admission Register maintained by the Principal, Tezpur Govt. Girl's H.S. M.P. School is concerned the subsequent correction was made by them after relying on two different entries made therein.

7. Placed with such a situation at the time of hearing of the appeal, the concerned authority was informed by the petitioner Smt. Anna Mahanta that she took admission at the Silver Jubilee L.P. School, Tezpur on 9.4.1945. This fact was not mentioned by her in the earlier writ petition. During the course of argument, the petitioner was present in the court and the learned counsel for the petitioner of firms that the petitioner took admission on 9.4.1945 at Silver Jubilee L.P. School, Tezpur. As per the direction of the Director of Higher Education, the Dy. Director of Higher Education had made physical verification of the record by meeting the Headmaster of the said L.P. School. The admission Register shows that Smt. Mahanta took admission in the said L.P. School on 9.4.1945 and that time her age was shown as 5 years 10 days on the date of admission. This was accepted by the appellate authority and accordingly the date of birth was calculated and it was determined as 29.3.1940. We, therefore, find that the appellate authority had acted on the basis of the materials that came to

their information and knowledge during the course of hearing of the appeal and this being the first record in original regarding the date of birth of the petitioner, the appellate authority accepted the same as true and passed the impugned order on the basis of the entry made in the Admission Register of Silver Jubilee L.P. School. The petitioner claims that she was not 5 years 10 days old at the time of admission at the said L.P. School. If we accept the contention of the petitioner that she was born on 18.7.1943 in that case on the date of admission in the said school, she will be around 1 year 8 months old and it was rightly rejected as not probable when it is established that she took admission in the year 1945. If the petitioner's contention is accepted, it will be soon that she had passed the Matriculation examination at the tender age of 12 years and hence, we find that the said contention was rightly rejected.

8. So far the contention of the petitioner, we find that the petitioner wants to correct the age on the basis of the school admission register of the Tezpur Govt. Girl's H.S. School but the petitioner had studied in Silver Jubilee L.P. School prior to her study in Higher Secondary School and when there is a dispute regarding the date of birth recorded in the Admission Register of the two schools, the first entry may be relied upon and hence as the admission register of the Silver Jubilee L.P. School is the first registering authority, we find no illegality or infirmity in the impugned order passed by the Director of Higher Education, Assam and as the said decision was passed after hearing both sides and on perusal of the records.

9. In view of the above, both the writ petitions stand dismissed. The petitioner shall stand retired on superannuation with effect from 31.3.2000. If the petitioner is entitled to any arrear salary during that period, the same shall be paid to her. There is no order as to costs.