

(2024) 04 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3227 Of 2017

Arpana Devi

APPELLANT

Vs

State Of Assam And 4 Ors.

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Citation : (2024) 04 GAU CK 0017

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : D. Borah, K. Kalita, D. K. Roy

Final Decision : Dismissed

Judgement

1. The instant writ petition has been filed impugning an order dated 07.03.2017 by which the petitioner, who was appointed as a Stenographer in the ARTFED was stated to be attaining the age of superannuation w.e.f. 31.03.2017. It is the case of the petitioner that a wrong date of birth was recorded in her Service Book as 01.03.1957 whereas the correct date of birth of the petitioner should have been 03.09.1963. In support of her contention, the petitioner has relied upon a horoscope and also a sworn affidavit.

2. While issuing notice, this Court vide order dated 31.05.2017 had made certain observations which is extracted herein below for the sake of convenience:-

" The petitioner had joined service in the Assam Apex Waivers & Artisans Co-operative Federation (ARTFED) on 16.6.1994 and the Stenographer is aggrieved by her retirement w.e.f. 31.3.2017 (page-47), under the impugned order dated 7.3.2017, of the M.D. of the ARTFED.

Mr. D. Borah, the learned counsel submits that the petitioner's date-of-birth was incorrectly recorded in the service book as 1.3.1957 and also in the HSLC certificate (page-19), issued on 11.6.1978. Therefore the employee applied on 6.9.20 13 (Annexure-K), for correction of her date of birth as 3.9.1963 (instead

of 1.3.1957). To justify the correction, the applicant had produced her Janam Kundali and also sworn an affidavit. But it is submitted that those have been ignored and the petitioner is made to prematurely retire on 31.3.2017, on the basis of the date of birth of 1.3.1957, as recorded in her service book.

Correction of date of birth at the fag end of the service career is not permissible, under S.R. 8(a) but Mr. D. Borah, the learned counsel submits that in the instant case, the representation was filed on 6.9.2013, around 3½ years before the scheduled retirement, on 31.3.2017.

In view of above, let notice returnable in 4 weeks be issued.

Ms. M. Bhattacharjee, the learned Addl. Sr. Govt. Advocate accepts notice for respondent Nos.1 & 2. The notice for the respondent No.5 is received by Mr. T.C. Chutia, the learned standing counsel for the Board of Secondary Education, Assam (SEBA). Necessary extra copies be furnished to them.

Petitioner to ensure service on the remaining respondents by Regd. Post."

3. I have heard Shri D. Borah, learned counsel for the petitioner. I have also heard Shri K. Kalita, learned counsel for the respondent no. 3, namely, the Managing Director, ARTFED and Shri D. K. Roy, learned counsel for respondent no. 5, SEBA. Shri R. Dhar, learned Standing Counsel, Handloom and Textile Department appears for the respondent nos. 1 & 2.

4. Shri Borah, the learned counsel for the petitioner has submitted that the representation for correction of her date of birth was filed on 06.09.2013 which cannot be deemed to have been filed in the fag end of her career and therefore there would be no embargo in consideration of the said representation. On a specific query made by this Court regarding the document relating to the date of birth of the petitioner, Shri Bora, the learned counsel has submitted that though there is a HSLC Certificate of the year 1978 issued by the SEBA (Board of Secondary Education Assam), the age has been given as 21 years as on the 1st of March, 1978. On a deduction from the said document, the date of birth comes to 01.03.1957. It is submitted that an application to SEBA was also made by the petitioner for correction of the date of birth on 16.10.2013.

5. The learned counsel accordingly submits that an appropriate directions be issued to correct the date of birth of the petitioner and consequently modify the date of retirement.

6. Per contra, Shri Kalita, the learned counsel for the respondent no. 3 has raised a preliminary objection that the employer as such namely, ARTFED has not been made a party respondent and therefore the writ petition itself is not maintainable. He otherwise submits that the entire attempt of the petitioner clearly appears to be an afterthought inasmuch as the Matriculation Certificate clearly reflects the date of birth of the petitioner as 01.03.1957 which was correctly recorded in the Service Book. He has also pointed out that all throughout the service career, there was no representation for any such

correction and only on 06.09.2013 such an application was made. He further points out that the writ petition itself was instituted after the retirement of the petitioner. He submits that when the certificate by SEBA was available and the petitioner was in a post of Stenographer which requires certain minimum qualifications, there is no occasion to even refer to the horoscope. It is further submitted that an affidavit would not make any difference regarding the date of birth of an individual.

7. Shri Roy, the learned counsel representing the SEBA has submitted at the outset that the applications stated to have been submitted before the SEBA on 16.10.2013 does not bear any receipt and the only application found in the record is one dated 15.03.2017. He otherwise submits that though there is a mechanism for correction of date of birth in the SEBA Certificate in a given case, a time limit is fixed and in the instant case, the application was filed long thereafter without any explanation.

8. The issue of employees applying for change of date of birth when they are nearing the age of retirement is seen to be a common practice which is deprecated by the Hon'ble Supreme Court in a catena of decisions. Of course, in a given case when such application is filed bona fide and within the time prescribed, the matter would require some examination. However, in the instant case, the certificate of SEBA clearly reflects that the date of birth of the petitioner is 01.03.1957.

9. The contents of the said certificate issued in the year 1978 was not questioned by the petitioner at any point of time and even if it is assumed that an application was filed as claimed by the petitioner, it was in 2013 which is much beyond the time prescribed for such correction. There is no explanation regarding the delay in filing of such application. This Court had further taken note of the contention of Shri Roy, the learned counsel that as per records, the application was filed before the SEBA only in the year 2017, which was the year of retirement of the petitioner.

10. This Court on consideration of the facts and circumstances is of the view that the petition does not warrant any merits and the decision making process in issuing the retirement order of the petitioner does not suffer from any legal infirmity. Further, this Court is also of the opinion that the attempt of the petitioner for correction of her date of birth including the institution of the writ petition does not appear to have been done in a bona fide manner.

11. The writ petition accordingly stands dismissed.