
(2004) 01 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 324 of 2003

Bela Rani Kar (Datta)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 22-01-2004

Acts Referred:

Citation : (2004) 2 GLR 576 : (2004) 1 GLT 273

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : C.S. Sinha, for the Appellant; S. Chakraborty, for the Respondent

Judgement

T. Vaiphei, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner seeks to quash the impugned memo No. F.3(3736)-DSWE/ ESTT/ 2003 dated 29.8.2003 and to direct the respondents to declare that her date of birth is 17.1.1945 as recorded in her service book.

2. The case of the petitioner in a nut shell in that she was appointed as School Mother on a fixed pay under the Social Welfare and Social Education Department of the Govt. of Tripura on 15.7.1959 and her service was regularised with effect from 1.8.1982. It is the case of the petitioner that at the time of her entry into service, her educational qualification was Class-VIII and that her date of birth was recorded at that time was 17.1.1945. In the year 1994, the Directorate of Social Welfare and Social Education published tentative seniority list in respect of School Mother/Gram Laxmi as on 1.2.1985 wherein the name of the petitioner appeared at Sl. No. 8 with her date of joining as 15.7.1959. In the year 1966, the petitioner appeared in School Final Examination, but could not get through. Again in 1966, the final seniority list for the post of School Mother was published wherein her name appeared at Sl. No. 8. While working as School Mother at Kumarghat Social Education Center, the Inspector, Social Welfare, and Education, Kumarghat, North Tripura served upon her the letter dated 24.1.2003 stating, inter alia, that as per service book, her date of birth was recorded as 17.1.1945 but as per the seniority list referred to earlier, it was recorded as 17.1.1943, and,

therefore, required her to explain the discrepancy within a period of three days from the date of receipt of the letter. The petitioner accordingly made necessary clarification. Thereafter, the Inspector, Social Welfare and Education, Kumarghat, North Tripura by the letter dated 27.1.2003 informed the Directorate of Social Welfare and Social Education about the receipt of the said clarification and the production of the original school certificate and affidavit by the petitioner in respect of her claim that her date of birth is 17.1.1945. However, the respondent No. 3, i.e., the Inspector of Social Welfare and Education by the letter dated 31.1.2003 addressed to the petitioner stated that as per final seniority list, her educational qualification and date of birth were entered as school final and 17.1.1943 respectively for which she had failed to produce the admit card or citizenship certificate and also made no objection regarding date of birth published in the final seniority list, and accordingly decided that the petitioner's actual date of birth is 17.1.1943, and, as such, she had to retire from service with effect from 1.2.2003. Ultimately by the letter dated 13.3.2003, the respondent No. 2 required the petitioner to submit an attested photo copy of admit card for school final examination along with photo copy of the citizenship certificate issued by the competent authority. The petitioner, accordingly, made the reply to the aforesaid letter with a copy endorsed to the respondent 3 in which she had referred to her earlier letters dated 10.1.2003, 27.1.2003 and 10.3.2003 and categorically informed him that all her documents were gutted by fire which occurred on 14.1.1996 and 15.11.2001 and, as a result, she could not produce such documents. She, however, submitted along with her letter dated 28.3.2003, a copy of the school certificate and a copy of the affidavit showing her date of birth as 17.1.1945. Apparently not satisfied with her explanation, the respondent 2 by the impugned order dated 29.8.1993 gave compulsory retirement to the petitioner with effect from 1.2.2003 and also directed that her total monitory liabilities from 1.2.2003 be deducted from her pensionary benefits. It is against this order that the petitioner has approached this Court for the aforesaid direction.

3. The respondents resisted the writ petition by filing their counter-affidavit. In the counter-affidavit it is pointed out by the respondents that though the date of birth of the petitioner was recorded as 17.1.1945, in the tentative seniority list and final seniority list published in 1994 and 1996, her date of birth was shown as 17.1.1943 which were never objected to by the petitioner. Her only objection was directed against her qualification mentioned in those two lists. It is also pointed out by the respondents that the respondent 2 wrote to the West Bengal Board of Secondary Education under which the petitioner appeared for School Final Examination to furnish him the correct date of birth of the petitioner. The Deputy Secretary of the West Bengal Board of Secondary Education by the letter dated 12.8.2003 (Annexure R2) informed the respondent that the date of birth of the petitioner was recorded in the said examination as 1.2.1943. It is also submitted by the State-respondents that if the claim of the petitioner that her date of birth was accepted as 17.1.1945, then she would be under-aged at the

time of her entry into service. It is also contended by the State-respondents that in the absence of any documentary evidence, such as Admit card of School Final Examination, Citizenship Certificate, etc., produced on behalf of the petitioner, her claim that her date of birth is 17.1.1945 could not be accepted. It was under such circumstances that her date of birth was treated as 1.2.1943 and not as 17.1.1945, and as such, the impugned order was rightly issued.

4. It is an admitted position that the date of birth of the petitioner was recorded as 17.1.1945 in her service book maintained by the State-respondents, which again was based on the School Certificate, i.e., Class-VIII apparently furnished by the petitioner as evidenced from the service book. In the instant case, the petitioner is not challenging her date of birth recorded in the service book. On the contrary, it is her claim that her retirement age should be fixed in accordance with her date of birth recorded in the service book.

5. Normally, in public service, with entering into service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service book. In the case of State of Assam and Another Vs. Daksha Prasad Deka and Others, the Apex Court has observed that the date of the compulsory retirement must be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure. In other words, the date of superannuation is normally determined on the basis of the date of birth as recorded in the service records at the time of the appointment with reference to date of birth mentioned in the educational certificate produced by the applicant concerned at the time of making application for his appointment.

6. That being the legal position, the date of birth of the petitioner entered as 17.1.1945 in her service book is presumed to be correct. Accordingly, the petitioner has a legitimate expectation that she can continue in service till she attains the age of 60 years with effect from 17.1.1945, i.e., till 17.1.2005. But the State-respondents have given her marching order with effect from 31.1.2003, thereby shortening her tenure by two years on the basis of their findings that she failed to submit her original Admit Card of School Final Examination in the year 1966 and also the information collected from the West Bengal Board of Secondary Education, Kolkata that the date of birth of the petitioner is 1.2.1943. It is not disputed that the petitioner was never informed about the collection of the said information from the West Bengal Board of Secondary Education before issuing the impugned order dated 29.8.2003. Since this information was the basis for terminating the service of the petitioner, failure to give opportunity to the petitioner to defend herself in respect of the said information amounts to violation of principle of natural justice and has the effect

of defeating her legitimate expectation to continue in her service on the basis of her date of birth recorded in her service book.

The impugned order is administrative in nature, but even then an administrative order which involves civil consequences must be made consistently with the rules of natural justice after informing first the petitioner of the case of the State-respondent, the evidences in support thereof and after giving her an opportunity of being heard admitting or explaining the evidence against her (see, *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, In that case some preliminary enquiry was made by the Enquiry Officer, but the report of the Enquiry Officer was never disclosed to the petitioner. Thereafter, the petitioner was required to show cause why April 16, 1907, should not be accepted as date of birth and without recording any evidence the order was passed. In that circumstances the Apex Court held that the enquiry and the decision were contrary to the basic concept of justice and cannot have any value. Accordingly, the Apex Court affirmed the judgment of the Orissa High Court setting aside the order of the State-respondent. The facts of the instant case are somewhat similar to the facts of the case in *Dr. (Miss) Binapani De (supra)*. Under the circumstances, the impugned order dated 29.8.2003 is not sustainable in law.

7. It is next contended by the learned counsel for the State-respondents that if the claim of the petitioner that her date of birth is accepted as 17.1.1945, then she would have been under aged at the time of her entry into service. This contention of the learned counsel for the State-respondents is also to be examined by the State-respondent after giving due opportunity to the petitioner to defend herself. It may be noted that in this kind of cases, it can be contended by the petitioner that in view of her long service the State-respondents are estopped from raising this issue.

8. In the result, the impugned order dated 29.8.2003 (Annexure-10) is hereby quashed. The petitioner shall be reinstated to the post of School Mother with back wages within a period of one month from the date of receipt of this order. Liberty is however, given to the State-respondents to pass a fresh order in accordance with law by giving adequate opportunity to the petitioner to defend herself by making available to her the adverse materials being relied upon by them. The parties are directed to bear their own costs.

9. The writ petition stands disposed of with the above direction.