

(2016) 03 OHC CK 0040

In the Orissa High Court

Case No : Writ Petition (Civil) No.15102 of 2005

Bijay Shankar Sarangi

APPELLANT

Vs

Orissa State Road Transport Corporation

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 CLR 331 : (2016) 122 CutLT 306

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : Mr. Somadarshan Mohanty, Advocate, for the Petitioner; Mr. Ashok Mohanty, Senior Advocate, for the Opposite Parties

Final Decision : Disposed Off

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who was working as a Driver in the Orissa State Road Transport Corporation (hereinafter referred to as "O.S.R.T.C.") has filed this application seeking to quash the order dated 28.6.2005 passed by the opposite party no.3-District Transport Manager (A), O.S.R.T.C., Sambalpur and further seeking for a declaration that his date of birth is 11.2.1940 and he has to retire from service on attaining the age of superannuation on 28.2.2000 and also to grant consequential benefits along with interest within a stipulated time.

2. The factual matrix of the case in hand is that petitioner was appointed as a Driver in the Orissa State Road Transport Corporation vide letter no.737 dated 30.1.1968 and joined as such on 5.2.1968. His date of birth was entered in the service book as 11.2.1940 as per the OGFR Vol-I and such entry has been done by the then D.T.M. (Administration). The petitioner also signed the service book as a token of his acceptance of the entries. Therefore, on attaining the age of superannuation, the petitioner has to retire from service on 28.2.2000 at the age of 60 years, but he has been retired from service on 12.12.1995 without any prior notice. Treating such premature retirement as removal from service, the

petitioner has approached this Court earlier by filing OJC No.112 of 1995 and this Court did not feel inclined to interfere with the same. Thereafter, the petitioner filed Title Suit No.35 of 1998 before the learned Civil Judge (Jr. Division), Sambalpur seeking for a direction that his retirement on 12.12.1995 is illegal and he is entitled to continue in service till 28.2.2000 with consequential financial benefits. The learned Civil Judge (Jr. Division), Sambalpur framed as many as seven issues and while deciding issue Nos.5 and 7 came to a finding that the order of retirement passed by the authority retiring the petitioner from service on 12.12.1995 without giving opportunity of hearing is violative of natural justice. He directed the authority to conduct enquiry as to the correctness of the date of birth of the petitioner by giving opportunity of hearing to him and do the needful while considering his service benefit as per law. In compliance to the same, the authority has passed the order impugned in Annexure-1 holding that the date of birth of the petitioner is 18.11.1933 and his superannuation on attaining the age of 60 years being 30.11.1993, he has already overstayed for the period from 30.11.1993 to 12.12.1995, which is treated as non-qualifying service and during the aforesaid period he will get salary, after deducting pension as after attaining superannuation, pension will be determined and paid to him. Being aggrieved by such order, the petitioner has approached this Court by filing the present writ application.

3. Mr. Somadarshan Mohanty, learned counsel for the petitioner strenuously urged that the order passed by the opposite party no.3 in Annexure-1 in compliance to the direction given by the learned Civil Judge (Jr. Division), Sambalpur in Title Suit No.35 of 1998 dated 8.3.2004 cannot sustain in the eye of law inasmuch as when the date of birth entry made in the service book is 11.2.1940 and that has been changed unilaterally by the employer to 18.11.1933 and the opposite party has acted upon the same, that itself amounts to violation of natural justice, arbitrary and unreasonable exercise of power by the authority concerned. Further the evidence which has been relied upon while causing inquiry in Annexure-1 has been considered and rejected by the learned Civil Judge. Therefore the same could not have been taken into consideration while passing the order impugned holding that the petitioner's date of birth is 18.11.1933 and his superannuation is based on the basis of 30.11.1993 and he has overstayed the period from 30.11.1993 to 12.12.1995 and the same should be treated as non-qualifying service. It is further urged that the statement of the brother of the petitioner-D.W.2 in the court below who has categorically stated that the date of birth of the petitioner is 11.2.1940 has not been taken into consideration merely on the basis that the age of the brother of the petitioner as noted in the voter list 67 years and determination has been made accordingly. Therefore, the same cannot sustain in the eye of law. To substantiate his contention, reliance has been placed on the judgments in State of Bihar and another v. Radha K. Jha and others etc., AIR 2002 SC 2755, V. Parukutty Mannadissiar and another v. State of Kerala and others, AIR 1990 SC 817.

4. Mr. Ashok Mohanty, learned Sr. Counsel appearing for the opposite party-

Corporation strenuously justified the order passed by the opposite party no.3 in Annexure-1 and stated that the petitioner after repeated notice has not produced any record to substantiate his date of birth as entered in the service book. However, on 9.5.2005 he appeared before the opposite party no.3 and in the meantime, opposite party no.3 ascertained that the petitioner was a student of Cherupada Primary School vide serial no.158 dated 16.1.1939 of the admission register of the said primary school, wherein his date of birth was recorded as 18.11.1933. The Headmaster of Cherupada Primary School intimated the office vide letter no.457 dated 6.12.1995 pursuant to the letter of opposite party no.3 dated 20.11.1995 that the date of birth of the petitioner was recorded in the school register as 18.11.1933. Accordingly, necessary correction was made in the service book and the petitioner was directed vide Annexure-2 dated 12.12.1995 to retire from service on attaining the age of 60 years on 30.11.1993 but by that time he has already overstayed the period from 30.11.1993 to 12.12.1995 and therefore, he was made to retire from service on that date. Further reliance has been placed on the statement made by his brother in T.S. No.35 of 1998 and the letter received during inquiry conducted by opposite party no.3 from the headmaster of the school that the date of birth of the petitioner is 18.11.1933. Therefore, no illegality and irregularity has been committed by the authority in passing the order impugned and accordingly he seeks for dismissal of the writ petition.

5. On the basis of the facts pleaded, it is to be considered whether the order passed in Annexure-1 is in due compliance to the judgment passed in T.S. No.35 of 1998 or not. As it appears, the date of birth of the petitioner entered in the service book is 11.2.1940 and the said entry has been made by opposite party no.3 and the petitioner is only a signatory to the first page of service book stating that the entry made is correct. But subsequently the date of birth was found to be as 18.11.1933 according to - Petitioner was to superannuate from service on attaining the age of 60 years on 30.11.1993. But by the time the correct date of birth was ascertained, the petitioner has already continued in service till 12.12.1995 and therefore, the overstayed period from 30.11.1993 to 12.12.1995 was treated to be non-qualifying service. If the learned Civil Judge (Jr. Division), Sambalpur passed the judgment declaring the retirement of the petitioner as illegal and violative of natural justice and directed opposite party no.3 to conduct inquiry as to the correctness of date of birth of the petitioner by affording opportunity of hearing, opposite party no.3 has to look into the entry made in the service book itself.

6. Law has been well settled by the apex Court in *State of Orissa v. Dr. (Miss) Binapani Dei and others*, AIR 1967 SC 1269, wherein the apex Court held as follows:-

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first

respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

7. In view of the aforesaid provisions, if the authority wants to change the date of birth entry made in the service book, due opportunity has to be given to the petitioner and without giving opportunity to the petitioner, action has been taken for retirement by antedating his date of birth. Therefore the order so passed cannot sustain in the eye of law. Reliance is placed on V. Parukutty Mannadissiar and another (supra), wherein the apex Court held that Government can not alter the decision by the administrative order when there is specific direction of the High Court. The ratio of the said judgment is applicable to the present context. When the learned Civil court directed for consideration of the grievance of the petitioner, opposite party no.3 should have considered the same in accordance with law and passed the order inasmuch as when there is change of date of birth recorded in the service book, the authority should have followed the principles of natural justice before taking any action. But here is a case where action has already been taken and subsequently such action having been challenged, the learned Civil Judge (Jr. Division), Sambalpur directed for compliance of natural justice. Without doing so, the order impugned in Annexure-1 has been passed. With regard to the reliance placed on State of Bihar and another mentioned (supra), this Court is of the considered view that the same is not applicable to the present context.

8. In view of the aforesaid facts and circumstances, it appears that while passing the order impugned in Annexure-1 changing the date of birth of the petitioner, there is non-compliance of principles of natural justice. The ratio of State of Orissa v. Dr. (Miss) Binapani Dei and others squarely applies to the present context and in absence of adherence to the same, the order impugned in Annexure-1 cannot sustain. In that view of the matter, the order dated 28.6.2005 in Annexure-1 is hereby quashed and the matter is remitted back to opposite party no.3-District Transport Manager (Administration), Sambalpur for reconsideration of the same in accordance with law by affording opportunity of hearing to the petitioner within a period of three months from the date of communication of this judgment.

9. Accordingly, the writ petition is disposed of. However, there would be no order to costs.