

(1985) 06 CAL CK 0031
In the Calcutta High Court
Case No : C.O. 1240 (W) of 1982

Birendra Nath Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-06-1985

Acts Referred:

General Clauses Act, 1897 — Section 3(27)
Penal Code, 1860 (IPC) — Section 53

Citation : 89 CWN 1126

Hon'ble Judges : Mukul Gopal Mukherjee, J

Bench : Single Bench

Advocate : Saktinath Mukherjee and L.K. Gupta, for the Appellant; Sadhan Gupta, Addl. Advocate Genl. and B. Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Gopal Mukherjee, J.—The petitioner is a District Social Education Officer in the West Bengal Educational Service and is at present posted at Jaljaiguri. According to the petitioner, it is a Class-I, Civil Service post of Gazetted rank. He is an M. A. B. T. and claims to be a political sufferer. According to him he was sentenced to different terms of imprisonment during the British regime and was also interned for sometime. He had also to suffer imprisonment in East Pakistan (now Bangladesh) in 1951 along with some well known freedom fighters like Satin Sen and others due to his protest against the activities of the then Pakistan Administration. As a political sufferer he joined the West Bengal Government Education Department on 23.12.57 as Social Education Organiser and was gradually promoted to the present post of District Social Education Officer. He claimed to have given a merited service to the State Government where he secured appreciation also for his dedication to the cause of spreading education. However at the instance of some of his colleagues, there was disciplinary proceeding against him leading to his suspension in March 1972, as a result whereof he had to invoke the writ jurisdiction of this Hon'ble Court in Civil Rule No. 17930 (W) of 1975 and on the basis of the judgment passed by this Hon'ble

Court, later on the suspension was withdrawn in 1979. Out of four criminal proceedings started against him, he was absolved of the charges in respect of two of them which stood quashed by this Hon'ble Court and the remaining two were withdrawn by the State Government. Disciplinary proceeding initiated in 1964 against him, however continued against him. It is the claim of the petitioner that he was aged 33 years, 9 months and 22 days when he joined the government service on 23.12.57, his date of birth as per records being first of March 1924. This date of birth was subsequently corrected to 1st March, 1926 by the Calcutta University on the basis of his school records. The Finance Department of the Government of West Bengal issued an order bearing No. 5235-F dated 31.12.69 by which a political sufferer who entered government service after the age of 30 years became entitled to get extension of service beyond the normal age of superannuation until he attains the age of 65 years or completes 30 years of service, whichever is earlier, on fulfilment of certain circumstances and on certain conditions mentioned therein. A copy of the said circular dated 31st December, 69 is annexure "A" to the writ application. The circular reads specifically that only such government servants who had suffered imprisonment on political grounds (including terms spent in detention or conviction or as under trial prisoner or internment) for a period of not less than two years and who had entered government service after the age of 30 years, could continue beyond the normal date of superannuation (53 or 60 years of age, as the case may be) until they attain the age of 65 years or complete 30 years of service, whichever is earlier. Their retirement benefits would be calculated after taking into account the extended period under the normal rules. The order would take effect from 18.12.1969. However, before issue of an order in individual cases, administrative Department will have to satisfy itself that the detention was due to taking part in the struggle for freedom of the country and the officer continues to be physically fit and mentally alert. There was later circular issued by the Government of West Bengal, Finance Department, Audit Branch, bearing No. 2031-F; dated 18.3.80 in modification of the earlier circular bearing No. 5235-F dated 31-12-1969. The latter circular dated 18.3.80 gave out inter alia that the Government, took a decision that such government servants who are eligible for extension of service in terms of Memo No. 5235-F dated 31.12.1969 may be retained, even when they had suffered imprisonment on political grounds for a period of six months or more, subject to the fulfilment of other conditions as have been laid down from time to time in this regard. This order however was made effective from 1.4.80 and it was directed in the said circular that the past cases decided otherwise need not be reopened. By Memo No. 5590-F dated 24.7.81, there was yet another circular which stated that in continuation of the Finance Department letter No. 7436(30)-F dated 25-7-74, it was decided that in case of non-availability of official records or co-prisoner's certificates, certificates from prominent freedom fighters who had themselves undergone imprisonment for 5 years or more and are holders of Freedom Fighters' Pension (now termed as Swatantra Sainik Samman Pension Scheme) shall also be acceptable as proof of political suffering not only in cases of abscondence, internment and/or

extemment but also in cases of imprisonment where it is not possible to furnish documentary evidence for the purpose of grant of extension of service in terms of G.O. No. 5235-F dated 31.12.69 read with G.O. No. 2031-F dated 18.3.80. A copy of this circular was forwarded to the Education Department where the petitioner was employed. On 23rd September, 1981, the petitioner made an application addressed to the Deputy Secretary (Appointment), Education Department, Government of West Bengal, praying for extension of his service beyond the normal age of superannuation in terms of the aforesaid circulars and claimed that he might continue till he completed 30 years of service.

2. It is the petitioner's contention that he would complete 30 years of government service on 22.12.87 and would attain the age of 65 years on 1.3.89, if his Matriculation Certificate as it originally stood is taken into consideration and he would attain the age of 65 years on 1.3.91 if his corrected Matriculation Certificate is taken as the basis of his date of birth. In any view, the petitioner's specific case is that he could not be retired on any date prior to 22.12.87. A copy of the petitioner's representation dated 23.9.81 is annexure "D" to the writ application. Having received no reply to the said representation, the petitioner sent another representation dated 11.12.81 to the respondent no. 1, State Government, through the Deputy Secretary, Education Department, inter alia seeking a decision of the government regarding the date on which he would attain his normal age of superannuation and also wanted a decision of the government on the basis of his representation dated 23.9.81 as earlier referred to, claiming extension of service on the basis of his political sufferings. If the petitioner is held not entitled to the extension of service on the ground of his political sufferings on the basis of the aforesaid circulars and according to his initial Matriculation Certificate, he was to retire on 1.3.82 and if the corrected Matriculation Certificate is taken into consideration he was to retire on 1.3.84. Since the petitioner did not get any specific decision from the government regarding his exact date of superannuation in the context of his claim as to extension in service on the basis of circulars pertaining to political sufferers as earlier referred to, the petitioner had to file the present writ application on 19.2.82 which on being moved on 23.2.82 before the Hon"ble Mr. Justice G.N. Ray, the petitioner was granted, interim order to continue in the cost he was holding at the relevant, time "until further orders". His writ application was heard by a single judge of this Hon"ble Court for three consecutive dates in 1984 but ultimately the matter was not treated as heard in part by the said learned judge.

3. When the matter ultimately came up before me on 22.1.85, on the State respondents filing an application for vacating the interim order of injunction. I vacated the interim, order dated 23.2.82 passed by G.N. Ray, J. On my prima facie satisfaction that some of the documents used by the petitioner as Jail Certificates differed with the original certificates as granted by Jail authorities and were found palpably tampered with and thereafter used as evidence in the affidavits. This I could verify on an examination of the original document which I asked the learned advocate for the petitioner to produce before me. I was

however not convinced as to whether such tampering was done by the petitioner or by other persons who are behind the screen but the fact that the petitioner used such fabricated documents or forged ones as genuine would be manifest enough on a plain reading of the original jail certificates handed over to me by the learned advocate for the petitioner, on comparison with the jail certificates, copies whereof had been produced from the jail records and handed over to me by the State Government through the learned Addl. Advocate General. I, therefore directed the petitioner to appear in person before me on 12.3.85 so as to explain away the discrepancies and also to show cause as to why the jail certificates dated 15.3.83, 10.9.83 and 7.9.83 should not be taken to have been fabricated by the petitioner himself or it would not be construed that the petitioner had used forged and fabricated documents as genuine. I directed that the jail certificates, four in number, produced by the learned advocate for the petitioner to be kept in the custody of the Court and directed the learned Additional Advocate General to produce the original documents from the jail authorities on the date of hearing.

4. On 12.3.85 the petitioner was present in person before me. Mr. Saktinath Mukherjee, learned advocate appearing on behalf of the petitioner inspected the documents which were produced in Court in a sealed cover. After the inspection was over, I directed the Deputy Registrar to keep the documents in a sealed cover over again for production in Court on the next date of hearing. It is at this stage, the petitioner wanted an opportunity to file a supplementary affidavit dated 15th March, 1985. He admitted to have used the following documents in support of his claim to be political sufferer when he did swear an affidavit-in-opposition on 8.9.83 in answer to the application for vacating the interim order of injunction as filed by the State Government. He also admitted to have used the said documents in the supplementary affidavit affirmed on 11.11.83. In the affidavit-in-opposition dated 8.9.83, the petitioner used copies of a jail certificate under the signature of the Superintendent, Jalpaiguri District Jail dated 15.3.83, a jail certificate under the signature of the Superintendent Jailpiguri District Jail bearing Memo No. 292 dated 15.3.83 and a Memo bearing No. 4476 F.F. dated 23.8.83 under the signature of the Superintendent, Presidency Jail, Alipore, In the supplementary affidavit dated 11.11.83 the petitioner admitted to have used the copies of two documents viz. Memo No. 1008/W.O. dated 7.9.83 under the signature of Superintendent, Jalpaiguri District Jail and the certificate bearing Memo No. 5545(2) R.B. dated 10.9.83 under the signature of Superintendent, Dum Dum Central Jail. The said documents related to Sri Rabindra Nath Sikdar, a former M.L.A. and former M.L.C. of West Bengal. The petitioner gave out inter alia that he obtained the said documents from Sri Rabindra Nath Sikdar and he preserved those documents in the same condition in which he received the same. Copies of those documents were made out for the purpose of the present writ proceeding long before those documents were handed up to Court in the same condition in which they were received by the petitioner from the said Sri Rabindranath Sikdar. He however did not take a candid stand and sought, to by

pass the issue by giving out that he was not in a position to ascertain whether the copies of those documents as annexed to his affidavit-in-opposition dated 8.9.83 and supplementary affidavit dated 11.11.83 were correctly prepared or not. In the application for vacating the interim order of injunction as also in the affidavit-in-opposition filed on behalf of the State Government, it was given out inter alia that the petitioner was disentitled to claim extension on the ground of his political sufferings. The petitioner was to retire on 28.2.82, taking his date of birth as 1.3.24 as recorded officially and he was asked to retire accordingly. At the time of joining the service the petitioner gave out his date of birth as 1.3.24 on the basis of the original Matriculation Certificate produced by him and on that basis the petitioner was asked to retire on 28.2.82. The representation made by him for Correcting the date of birth contains inter alia the averment that his date of birth would be 1.3.26 in place and instead of 1.3.24 and since Calcutta University had also corrected the date of birth, the State Government should accept the corrected dated of birth to be 1.3.26. Assistant Secretary (Appointment Branch) Education Department has sworn an affidavit to the effect that the matter was verified at the end of the University of Calcutta. The University of Calcutta informed the Education Department that no correction of age had been made in the tabulation book in respect of the petitioner who appeared in Matriculation Examination in 1940 bearing Roll No. Khulna 430 and his age as recorded on 1.3.40 was 16 years. The communication sent by the University of Calcutta was annexed to the affidavit-in-opposition as annexure "C". It was further given out in the said affidavit as also in the application for vacating the interim order of injunction, that the certificates as produced by the petitioner in respect of his claim as political sufferer could not be considered since on scrutiny it was found that Sri Narendra Nath Kanjilal, Sri Rabindra Nath Sikdar and Sri Benode Behari Ghosh whose certificates were forwarded by the petitioner in support of his claim, had not undergone imprisonment individually for 5 years or more as required by the Government order No. 5590-F dated 24.7.81. By virtue of the interim order the petitioner continued to remain in service till the interim order stood vacated on 26.2.85, so even if the petitioner could claim the advantage of his corrected dated of birth as per University records from 1.3.24 to 1.3.26, he was due to retire, if he is not otherwise entitled to the benefit and advantages of being¹ a political sufferer according to criterion laid down in the different government order's as referred to herein before, on 28.2.84. It thus becomes a matter of no relevance whatsoever as to whether the petitioner validly did effect the correction of his Matriculation Certificate and as to whether the State Government was bound to accept the corrected Matriculation Certificate where he gave out his corrected date of birth to be 1.3.26.

5. The only question that needs a decision is as to whether the petitioner is entitled to take advantage of his status as a political sufferer and continue in service till 23.12.87 when he would complete 30 years of service. In order to take advantage of the benefit conferred by the circular dated 31.12.69 read

along with the circular bearing No. 2031-F dated 18.3.80 and the circular No. 5593-F dated 24.7.81, the petitioner has to satisfy the State Government on production of certificates from Prominent Freedom Fighters who had undergone imprisonment individually for 5 (years or more and are holders of Freedom Fighters" Pension which would also be acceptable as proof of the petitioner"s political suffering where it is not possible for the petitioner to furnish documentary evidence otherwise.

6. Mr. Saktinath Mukherjee, learned advocate for the petitioner by placing before me different English Dictionaries wanted to stress the point that if a person giving certificate to the petitioner is otherwise not a person who had suffered imprisonment for 5 years or more individually but had been interned by the British Government for sometime the total period of internment be added up to the period the said person suffered imprisonment and if the same totalled 5 years or more, a certificate from that person would also be eligible for consideration by the State government as a certificate in due compliance with the government orders. Mr. Mukherjee argued that the terms of "internment"" should also be reckoned as a period in detention which is almost equivalent to imprisonment. Here the word "imprisonment" as used in the circular should not be strictly so construed and must have a liberal construction so as to cover the period that the political sufferer had been actually "interned" by the British government. The learned Addl. Advocate General representing the State Government argued on the other hand that there was no scope of liberal interpretation as urged by Mr. Mukherjee and it being a government circular, it should be strictly construed and a term of imprisonment really means and includes under the Code of Criminal Procedure on imprisonment in jail and not otherwise. The period of detention or period of "internment" should not be taken as equivalent to "imprisonment".

7. Mr. Saktinath Mukherjee by referring to Halsbury"s Laws of England, 3rd Edition, Vol. XXXVII at page 765 submitted before me the various implications of the concept of imprisonment and contended that any total restraint on the liberty of the person for however short a time by the use or threat of force or by confinement, is an imprisonment and to compel a person to remain in a given place or to go in a given direction against his will, is also an imprisonment and because of this wider meaning given to the concept according to Laws of England, period of "internment" would also be taken as a period of imprisonment so as to give the benefit to a political sufferer who can produce a certificate from a person who has himself undergone a period of internment as an integral part of the total period of imprisonment. I cannot persuade myself to agree that the government order really meant to include the period of internment as well. In the different government orders at very many places there were clarifications given in other context where the period of internment should also be taken into consideration for the purpose of computing the total period of detention. But in the present case of granting of a certificate, there not having been any such clarification given in the circular, I cannot read in the said government order a

meaning which was never contemplated or thought of.

8. According to Section 3(27) of the General Clauses Act, the word "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code. The Indian Penal Code however contemplates in Section 53 in its 4th Clause that imprisonment is of two descriptions viz. (1) rigorous i.e. with hard labour and (2) simple. Simple Imprisonment connotes however simple confinement in jail and does not indicate the liability to hard labour. By no stretch of imagination can it be said that a period of internment or a period of detention otherwise in jail would be construed as a period of imprisonment for the purpose of the present government order.

9. I however direct the State Government to consider the representation of the petitioner in the light of other certificates if any, produced by the petitioner in this context granting him a fresh opportunity to adduce further documentary evidence, (if available) in support of his representation, within a period of two months from today. In case such evidence be adduced by the petitioner to the satisfaction of the State government, the State government would be bound to re-open the matter over again and consider the case of the petitioner on its own merits.

10. As the matter stands now, the petitioner is not entitled to any relief. The writ application is therefore dismissed subject to the observation as indicated above. There will be no order as to costs. I grant liberty to the State government to take appropriate proceeding against the petitioner for using forged documents as genuine in the present proceeding, if so advised and for this purpose the original certificates on the basis of which the affidavits were sworn by the petitioner and which are now in the Court's custody in a sealed cover may be kept by the Registrar, Appellate Side of this Court for being handed over to the proper authorities and sanction in this regard is accorded to take a proceeding against the petitioner in consonance with law.