
(1993) 01 CAL CK 0029
In the Calcutta High Court
Case No : C.O. No. 3303 (W) of 1992

Fateh Alam Khan

APPELLANT

Vs

Tea Trading Corpn. of India and Others

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Citation : (1993) 2 CALLT 284 : 97 CWN 1065 : (1994) 1 LLJ 1175 : (1993) 2 SLR 51

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : P.K. Roy and Manik Das, for the Appellant; Partha Datta, for the Respondent

Final Decision : Dismissed

Judgement

Gitesh Ranjan Bhattacharjee, J.—The dispute involved in this writ petition concerns the date of birth of the petitioner. The petitioner's case is that he was initially appointed to the post of Darwan in the Central Inland Water Transport Corporation Ltd. (CIWTC) which is a Government of India undertaking. On or about the September 5, 1972 and in the Declaration Form regarding nomination for the purpose of Provident Fund account, his age was recorded as 32 years as on September 7, 1973 and the said recorded date of birth was duly attested by the Labour Officer of the Central Inland Water Transport Corporation Ltd. His service was subsequently transferred with effect from April 1, 1974 to the respondent No. 1, Tea Trading Corporation of India Ltd. which is a Government of India Enterprise with the existing terms and conditions of service. He was subsequently promoted to the post of Jamadar with effect from March 1, 1979. According to his contention, for the first time he came to know from the office of the respondents in November 1987 that his age was recorded as 32 years on September 7, 1973 but the School Leaving Certificate which was in his possession indicates higher age than the said age recorded in the Provident Fund declaration form and then he approached the Personnel Manager of the

respondent No. 1 in connection with the said matter when he was allegedly told that the age, if any, recorded in the medical report would be taken into consideration for the purpose of superannuation after verification of the same with the age recorded in the School Leaving Certificate or School Final Certificate and in absence of such School Leaving or School Final Certificate, the age will be determined on the basis of the medical report and the petitioner was allegedly advised to submit his School Leaving Certificate, if any, for verification of his date of birth recorded in the service book. It is the further contention of the petitioner that accordingly he made a representation to the Personnel Manager of the respondent No. 1 on November 23, 1987 praying for rectification of the date of birth in his service book and the petitioner was then directed to appear before the Personnel Manager in the 1st week of July 1989 with the original copy of the School Leaving Certificate for the purpose of verification of his date of birth recorded in the service book of the company and accordingly the petitioner met the Personnel Manager who after perusing the original School Leaving Certificate directed the petitioner to deposit a xerox copy of the same along with an affidavit stating the reasons for non-submission of the same earlier.

2. The petitioner's case, as it proceeds then, is that on the basis of the said direction of the Personnel Manager he submitted further representation to the respondent No. 2, the Managing Director of the Tea Trading Corporation on July 10, 1989 along with a copy of the affidavit praying for rectification of the date of birth recorded in his service book, but on July 12, 1989 the petitioner received a letter from the respondent No. 2 intimating that the age recorded cannot be rectified on the basis of the School Leaving Certificate on the ground that the petitioner's age was determined by the Medical Board on August 17, 1972 as 38 years and accordingly the said age would be accepted for all purposes including the age of superannuation. He was further informed that no request for alteration of the date of birth was made within five years from the date of entry in the service book in accordance with the rules. Then on September 12, 1989 the petitioner submitted another representation to the respondent No.3, Manager (Admn.), Tea Trading Corporation of India with a request to consider his case afresh for rectification of the date of birth on the basis of the School Leaving Certificate. It is alleged by the petitioner that the recording of his date of birth on the basis of age (38 years on August 17, 1972) as noted in the medical report is patently illegal, arbitrary, mala fide, bad in law and without any foundation and as such the same is liable to be set aside and quashed. The petitioner's contention is that his date of birth as recorded in his School Leaving Certificate is September 2, 1938 and the same should be accepted and entered in his service book and his superannuation should be determined accordingly.

3. The contention of the respondents on the other hand is that the petitioner gave declaration of his age which was not supported by any evidence and as such his age was decided according to the decision of Medical Board at the time of joining the service. It is the contention of the respondents that the Form for appointment specifically required proof of age and that as the petitioner could

not produce any evidence in support of his age or date of birth at the time of entry in the service his age was determined on the basis of medical examination held on August 17, 1972. The said medical examination report is Annexure-X to the affidavit-in-opposition filed on behalf of the respondents. The medical examination report contains the signature of the petitioner. It is the contention of the respondents that the age of the petitioner was determined by medical examination at the time of his entry into the service to the knowledge of the petitioner as would be evident from the fact that the medical examination report was signed by the petitioner also. On the other hand, it is contended on behalf of the petitioner that although in the said medical examination report the age of the petitioner has been recorded as 38 years on August 16, 1972 yet the age was not determined by holding any ossification test and in fact the said medical examination report was rather a report about the physical fitness of the petitioner. It is the contention of the respondents that before joining the C.I.W.T.C. the petitioner served under M/s. Bal-mar Lawrie and Company and there his date of birth was recorded as January 12, 1933 which fact has been suppressed by the petitioner in the writ petition. The petitioner relies upon a certificate which purports to be a School Leaving Certificate in Hindi issued by one Umasankar High School, Maharaj Ganj, Bihar showing that the petitioner read upto Class-IX and his date of birth was September 2, 1938. The said School Leaving Certificate purports to have been issued on August 7, 1965. It is contended on behalf of the respondents that if really the said School Leaving Certificate had been in his possession since August, 1965 the petitioner would have produced the same at the time of entry in the service instead of waiting till 1987.

4. However, the representations of the petitioner dated November 23, 1987 and July 10, 1989 for correction of his age on the basis of the said School Leaving Certificate were considered by the authorities and by letter dated July 12, 1989 (vide Annexure-E to the writ petition) the Manager (Admn.) of the Tea Trading Corporation informed the petitioner that his plea for correction of the age on basis of the alleged School Leaving Certificate could not be entertained for reasons mentioned therein. In the said letter it was mentioned that the petitioner on his first appointment with the C.I.W.T.C. had declared on August 17, 1972 in the application for Employment Form that his age was 32 years and he did not submit any birth certificate or any other authentic official proof of his age even though it was specifically asked for. It is also mentioned therein that the petitioner was medically examined on August 17, 1972 and his age was determined as 38 years on that date and the medical certificate was duly initialed in English by the petitioner as token of acceptance. As regards the School Leaving Certificate, it is stated therein that the petitioner remained silent over all these years and on November 23, 1987 he submitted a representation enclosing a xerox copy of the School Leaving Certificate which certificate was however not acceptable because the rule provides that the request for alteration of the date of birth should be made within 5 years of entry into the service. It is further

mentioned therein that the petitioner should have submitted his proof of age on August 17, 1972 while filling up the application form which had specifically provided for such proof. In reply to the petitioner's notice of demand of justice dated December 24, 1991 the respondents also issued another letter dated January 6, 1992 explaining the reasons as to why the petitioner's claim for correction of his date of birth could not be accepted (vide Annexure-H to the writ petition). There also it is reiterated inter alia that if the School Leaving Certificate was in the possession of the petitioner he could or should have submitted the same along with the Form for Employment on August 17, 1972. Reading these two letters dated July 12, 1989 and January 6, 1992 issued by the authorities of the Tea Trading Corporation of India regarding the contention of the petitioner about his date of birth it appears that the respondents chose not to rely on the alleged School Leaving Certificate firstly, on the ground that it was not produced at the time of entry in the service although allegedly the petitioner had the same in his possession at the time and no plea for change of date of birth can be entertained more than 5 years after the entry into the service and secondly, the genuineness of the School Leaving Certificate was not beyond doubt. The respondents therefore preferred to stick to the age of the petitioner as determined by medical examination at the time of his entry in the service and act on such age as medically determined for ascertaining his date of birth.

5. Now the question that is posed before the court is whether this is a fit case for the writ court to undertake the determination of the date of birth of the petitioner or to interfere with the decision of the respondents regarding the determination of age of the petitioner. So far as the question of determination of age or, for that matter, the question of ascertaining the date of birth is concerned, the same is a question of fact and in the present case, a highly disputed fact. The court may in certain circumstances embark upon ; the determination of facts on a writ petition if the same can be done on the basis of clear materials produced for the purpose. Where however the materials are doubtful or disputed and rather shrouded with dusts and mists of controversies that cannot be resolved without meticulous investigation on evidence. The court may find it inexpedient to hazard a decision on a dispute question of fact in exercise of its writ jurisdiction. This view is also sustained by the decision of the Supreme Court in *P. Radhakrishna Naidu and Others Vs. Government of Andhra Pradesh and Others*, . In the present case several dates of birth of the petitioner have been projected at different times. According to the records of the Balmar Lawrie Ltd. where the petitioner served earlier his date of birth is January 12, 1933. According to the declaration of the petitioner made in his Provident Fund Declaration Form while in service under CIWTC his age was 32 years on September 7, 1973 which projects September 7, 1941 as his date of birth. In the application Form for Employment under the CIWTC the petitioner's age was mentioned as 32 years on August 17, 1972 thereby making out August 17, 1940 as his date of birth. According to the document purporting to be his School Leaving Certificate the petitioner's date of birth is September 2, 1938 and

according to the medical examination report prepared at the time of his joining the service in CIWTC his age was 38 years on August 17, 1972 which shows his date of birth as the August 17, 1934. Each of the said materials projects a different date of birth for the petitioner.

6. As regards the School Leaving Certificate of the petitioner certain new facts have appeared which also deserve consideration in connection with the dispute involved in this matter. In the School Leaving Certificate as produced the name of the district where the school is situated has been mentioned as Saran but in the seal affixed thereto the name of the district is mentioned as Siwan. It appears from Annexure-X2 to the affidavit-in-opposition that the Manager (Personnel and Administration), Tea Trading Corporation wrote a letter to the District Magistrate, Siwan on February 19, 1992 in reply to which the said District Magistrate informed that Siwan was given the status of a district with effect from December 3, 1972. From the submissions made before me it appears that formerly there was only one district Saran which was divided into two districts, one going by the former name Saran and the other with the new name Siwan with effect from December 3, 1972. It is the contention of the respondents that the very fact that the alleged School Leaving Certificate bears the seal mentioning the district as Siwan clearly indicates that the purported certificate must have been issued after the new district Siwan was formed in 1972 and therefore the said School Leaving Certificate could not have been issued in the year 1965 as it purports to have been issued and therefore this must be a concocted document unworthy of reliance. Undoubtedly this poses a formidable aspect putting one to a great caution in the matter of readily accepting the said document as a reliable one. With a view to obviating this situation the petitioner affirmed a supplementary affidavit on August 10, 1992 wherein it is stated inter alia that the relevant matters have not been properly dealt with in the affidavit-in-reply of the petitioner due to lack of experience of the learned Advocate on record of the petitioner and that is why it was necessary to present the real state of affairs by affirming the supplementary affidavit-in-reply. In the supplementary affidavit-in-reply it is stated by the petitioner that the Personnel Manager of the respondent No. 1 refused to accept the School Leaving Certificate when produced (obviously not earlier to November, 1987) on the ground that it did not contain any seal of the school disclosing the identity of the person who issued the certificate and the said Personnel Manager advised the petitioner in November, 1987 to obtain a proper seal of the said school disclosing the identity of the person who issued the same on August 7, 1965 and thereafter submit the same along with an affidavit declaring the date of birth of the petitioner. It is also the contention of the petitioner in the said supplementary affidavit-in-reply that accordingly the petitioner took necessary steps in the month of November, 1987 and sent his son-in-law to the school authority in Bihar for the purpose of obtaining a proper seal on the School Leaving Certificate and the son-in-law approached the school authority and got the seal affixed on the certificate but as at that time the district Siwan had already come into existence the seal

mentioned the name of the district as Siwan and that is how the name of the district Siwan appeared in the seal on the said certificate although the certificate was issued as far back as in 1965.

7. The said supplementary affidavit-in-reply although it purports to cure some omission stated to have been caused by lack of experience of the Advocate on record in drafting the affidavit-in-reply, actually also conflicts with some of the averments made in the writ petition itself. In paragraphs 7,8,9 and 10 of the writ petition it is stated that the petitioner made a representation to the Personnel Manager of the respondent No. 1 on November 23, 1987 and the petitioner was directed to appear before the said Personnel Manager in the 1st week of July, 1989 with the original copy of the School Leaving Certificate and at that time (when he met the Personnel Manager in July, 1989) the latter after perusing the original School Leaving Certificate directed the petitioner to deposit a xerox copy of the same along with an affidavit stating the reason of non-submission of the same earlier and accordingly the petitioner made further representation to the respondent No. 2 on July 10, 1989. But in the supplementary affidavit-in-reply it is stated by the petitioner in paragraph 2 that in November, 1987 the Personnel Manager refused to accept the School Leaving Certificate and advised the petitioner to obtain proper seal of the school on the same and thereafter submit the same along with an affidavit declaring the date of birth of the petitioner. Therefore, according to the averment made in the writ petition the petitioner was asked in July, 1989 to affirm affidavit whereas according to the supplementary affidavit-in-reply the affidavit was asked for in November, 1987. This conflict of averments is not resolved by the mere plea of inadvertence or lack of experience of the learned Advocate on record in mentioning certain facts in the affidavit-in-reply. Incidentally, it may be mentioned here that the affidavit was affirmed by the petitioner on July 8, 1989 only two days before the second representation dated July 10, 1989 was submitted by the petitioner as it appears from Annexure-D to the writ petition. If the affidavit was asked for in November 1987 as alleged in the supplementary affidavit-in-reply, it was expected that the same would have been affirmed soon thereafter on getting the seal of the school affixed on the certificate instead of waiting till July, 1989 for affirmation of the same. It is also to be mentioned here that in the original representation dated November 23, 1987 there is an endorsement, written in hand, to the effect that this is a fit case for favourable consideration and necessary action and it is the case of the petitioner that the said endorsement was made by the Personnel Manager while forwarding the same whereas the case of the respondents is that the said endorsement by way of a recommendation was made by the union leader. Since the representation itself was addressed to the Personnel Manager it does not stand to reason that the said handwritten endorsement would be made by the Personnel Manager or he would have any occasion or purpose to make such endorsement. Moreover, it also appears from the endorsement made on the representation that the same was received on November 26, 1987 whereas the handwritten endorsement stated above was made on November 24, 1987.

Therefore the said recommendation must have been made by someone else before the same was received by or in the office of the Personnel Manager.

8. It appears from the affidavit-in-opposition to the affidavit-in- reply that on January 3, 1992 the Assistant Manager of the respondent wrote a letter to Umasankar High School, Maharaj Ganj about the School Leaving Certificate and he received a reply in the matter dated March 14, 1992 purportedly issued by the Headmaster of the school confirming the date of birth of the petitioner as October 2, 1938. The genuineness of this letter has been very much doubted by the respondents. In view of the letter received from the District Magistrate, Siwan the Manager (Personnel and Administration) issued a letter dated February 19, 1992 to the Headmaster of the said school requiring him to verify the accuracy of the School Leaving Certificate dated August 7, 1965 in view of the seal mentioning Siwan district although the district came into existence much later. It also appears from the postal correspondence that the said letter was delivered by the postal department to the addressee on February 28, 1992 but the same has not been replied by the Headmaster as is the contention of the respondents nor is anything about the matter mentioned in the said letter purportedly issued by the Headmaster on March 14, 1992. It is submitted on behalf of the respondents that this is a circumstance which raises grave suspicion about the genuineness of the School Leaving Certificate as well as the genuineness of the letter dated March 14, 1992 purportedly issued by the Headmaster without explaining or clarifying the query of the respondents as to how the seal with the name of the district Siwan was appearing in the School Leaving Certificate.

9. I have already mentioned that as regards the petitioner's date of birth several dates have appeared in the scene at different times. Ultimately, however, the conflict precipitated for choice between two dates, one on the basis of the medical report prepared at the time when the petitioner joined the service in 1972 and the other appearing in the document purporting to be a School Leaving Certificate of 1965 disclosed in 1987. The respondents acted upon the medical examination report for determining the age of the petitioner while the petitioner relies upon the purported School Leaving Certificate. It was indeed incumbent upon the respondents to ascertain the date of birth of the petitioner for his service purposes and they preferred to act upon the medical examination report which was there in the record from the very time of joining of the petitioner in service. It cannot be said that the respondents acted arbitrarily or mala fide in determining the date of birth of the petitioner on the basis of the medical examination report. The reasons for which the respondents could not accept the purported School Leaving Certificate of the petitioner have been projected by respondents in the hearing of the writ petition also which I have already stated. The material on record which I have already discussed are indeed not of such clear nature as can lead this court even at this stage to any clear conclusion that the purported School Leaving Certificate can be or ought to have been accepted as an unimpeachable piece of evidence on the point. What I mean to say is that

it cannot be stated in view of the facts and circumstances obtaining in relation to the affair that the respondents acted arbitrarily or mala fide in refusing to act upon the same, it being primarily the responsibility of the respondents to take a decision about the age or date of birth of the petitioner for his service purposes and their decision in the matter not being found arbitrary or mala fide as I have.....

10. In view of the facts and circumstances obtaining in this case the exercise of the writ jurisdiction on the present writ petition so as to upset the impugned decision of the respondents is not warranted. The writ petition stands dismissed accordingly. The respondents will release all retiral benefits and arrears salaries and other dues to the petitioner as may be admissible to him, if he has already been superannuated, preferably within a period of one month from the date of communication of this order to the authorities concerned. No order is made as to costs in this writ petition.