

(2000) 09 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 5015 of 1998

Gajendra Ch. Kakati

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Financial Rules — Rule 162(6)

Citation : (2000) 3 GLT 360

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : B. Devi, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Jain, J.—The Petitioner by way of this petition as challenged the order of the Assam Administrative Tribunal, Guwahati dated 4.7.98 in which it has been held that the date of birth of the Petitioner was 1st August. 1937 and not 1.4.1943. The Petitioner was submitted in the writ petition that he was initially appointed as Electrical Jogali in the pay scale of Rs. 80/- vide appointment letter dated 7.5.65 (Annexure-A). Thereafter he was promoted to the post of work-charge Electrical Mistry vide office order dated 14.11.1980 of the Executive Engineer, P.W.D. Guwahati (Annexure-B). Thereafter he was brought Under regular cadre as Electrical Mistry vide Annexure-C with effect from 15th December, 1986. It is further the case of the Petitioner that he was confirmed as Electrical Mistry vide order dated 3.3.93 (Annexure-D) and after regularisation of his services he was allowed to put his signature in the service book. According to the direction of the Head Assistant of the concerned office till that time, the Petitioner was never advised to produce age certificate for his date of birth. Even at the initial stage of his appointment, he was never directed to submit any age certificate. It is further his case that he is illiterate. It has further been averred in the writ petition that after confirmation of the service of the Petitioner he was directed by the Head Assistant to submit his age certificate and affidavit which he did. According to

him, his date of birth was on 1.4.43 but it was to his utter surprise that he was shown to have retired on 31.7.95 as his date of birth was shown as 1st August, 1937 in the Service Book. The factual; position as narrated by the Petitioner has been denied by the Respondent before the Tribunal. May be no affidavit-in-opposition has been filed in the present case, it would not make any difference as this Court has got the benefit of the order of the Tribunal who has gone into question of fact as to what is the exact date of birth of the Petitioner. The learned tribunal after minutely examining the entire documentary evidence on record has come to affirm conclusion that the date of birth of the Petitioner was 1st August, 1937 as was recorded in Service Roll. The relevant observations of the learned Tribunal are reproduced below:

All his personal particulars including his date of birth were obviously furnished by the Appellant (Shri. Kakati) to the concerned authority of Guwahati P.W.D. Division at the time of his recruitment as a work Electrical Jogali on 21.9.59 and these were recorded on the opening page of his Service Roll opened on 11.1.61. These are all matters of record. It is also a matter of record that the Appellant (Shri. Kakati) had signed on the opening page of the Service Roll against the item of the signature of the employee on the opening page. The opening page also has been duly authenticated by the then concerned Sub Divisional Officer of the P.W.D. In his appeal petition, the Appellant (Shri. Kakati) has mentioned that the Service Roll had been opened by the then P.W.D. authority as a matter of procedure and as per this procedure, he had also signed on the opening page of it. In this connection, it is pertinent to mention that we found from our examination of the Service Roll that it had been duly opened and properly maintained. The entries on the opening page, including the signing by the Appellant (Shri. Kakati) against the item "Signature of the employee" on the opening page had been duly made. We are satisfied that there is no incongruity or any disorder in the same and on the other hand, the Service Roll of the Appellant (Shri. Kakati) had been duly opened and maintained as per the Government rules and procedures.

As regards the date of birth entry on the opening page of the Service Roll of the Appellant (Shri. Kakati) is concerned, we find that the opening page of the Service Roll mentions 1st August, 1937 as his date of birth. The signing of the Appellant (Shri. Kakati) on the opening page of the Service Roll against the item "signature of the employee" on this page implies the Government servant's endorsing the correctness of the entries relating to all personal particulars including the date of birth of the Government servant, stated on the opening page. Therefore, there is absolutely no doubt that, in so far as the Appellant (Shri. Kakati) is concerned, he had claimed and declared 1.8.37 as his date of birth at the time of his recruitment as Work Charged Electrical Jogali and at the time of opening his Service Roll in January, 1961. The Appellant (Shri. Kakati) has read upto Class VI. An ordinary person of his general back ground certainly can not have any problems, what so ever, in understanding the various items stated on the opening page of the Service Roll.

Date of birth is a matter of record. Therefore, in so far as the item of date of birth is concerned, it is logical that the date of birth entry of the opening page of the Service Book of the Appellant (after he was brought into the regular establishment under the P.W.D. of the State Government) is to mention the same date of birth as had been recorded in his Service Roll and on point of fact, we find that the reconstructed Service Book of the Appellant (Shri. Kakati) (his original Service Book not being traceable) does mention 1.8.37 as his date of birth as per his Service Roll against the item "Date of Birth" on the opening page. Although the Appellant (Shri. Kakati) has not signed on this opening page of the reconstructed Service Book against the item "Signature of the employee", it makes no difference as to the authenticity of 1.8.37 being the date of birth of the Appellant (Shri. Kakati), because this entry in the opening page of the reconstructed Service Book is based on the entry 1.8.37 as the date of birth of the Appellant (Shri. Kakati) on the opening page in his Service Roll, while he was a Work Charged employee immediately prior to his being brought into the regular establishment of the P.W.D. under the State Government.

We agree with the learned Government counsel that the affidavit, dated 6.7.94 of the Appellant (Shri. Kakati) does not provide any additional strength as an independent piece of evidence regarding the date of birth of the Appellant (Shri. Kakati) and it is only his school certificate dated 1.5.55, issued by the Headmaster, Azara M.E. School, where the Appellant (Shri. Kakati) last studied upto Class- VI but had to leave the school on 31.3.55 without passing Class-VI is, in essence, the main basis of the present claim of the Appellant (Shri. Kakati) for treating 1.4.43 as his date of birth. We agree with the learned Government counsel that his claim of 13.7.94 of the Appellant (Shri. Kakati) on the basis of this certificate, dated 1.5.55 has little strength. The learned Counsel for the Appellant (Shri. Kakati) has stated that, at the time of his recruitment as a Work Charged Electrical Jogali in September, 1959 and at the time of the opening of his Service Roll in January, 1961 the Appellant (Shri. Kakati) had not instructed to produce his school certificate and if asked for, he would have produced this school certificate, dated 1.5.55 at that time. We find that this contention has absolutely no force. It is plainly obvious that it is the Appellant (Shri. Kakati), who is to declare his date of birth and other personal particulars at the time of his recruitment as Work Charged employee and the date of birth being a matter of fact, it could be supported by not merely school certificate but by other evidences viz. birth certificate, solemn declaration by the parents/guardian of the persons concerned, etc. and this is particularly so far a candidate for a job with general academic qualification lower than Matriculation.

Only in case of a candidate, who is a Matriculate or above for jobs requiring the minimum qualification of Matriculation or above, Matric or equivalent certificate, which, by general practice, usually makes a mention of the date of birth of a candidate is look for as the supporting document regarding the date of birth of the candidate. In other cases, one can as well look for various other evidences, such as birth certificate, solemn declaration of the parents/guardian of the

candidate, etc. other than the school certificate. In the present case, nothing prevented the Appellant (Shri. Kakati) to produce this school certificate dated 1.5.55 at the time of his recruitment as a Work Charged Electrical Jogali in September, 1959 and at the time of the opening his Service Roll in January, 1961. We would like to emphasise that producing this certificate or any other certificate regarding his date of birth is not the main issue. The main issue is as to what the Appellant (Shri. Kakati) himself believed, claimed and declared as his date of birth at the time of his recruitment as a Work Charged Electrical Jogali in September, 1959 and at the time of opening his Service Roll in January, 1961. As stated earlier, the Appellant (Shri. Kakati) claimed and declared 1.8.37 as his date of birth and not 1.4.43 at that time . If he believed 1.4.43 as his date of birth, nothing prevented him in those days to declare it so. On the other hand, it was his duty to declare 1.4.43 as his date of birth, if he believed and claimed it as his date of birth. The fact that he declared 1.8.37 and not 1.4.43 as per his school certificate dated 1.5.55 clearly proves that the Appellant (Shri. Kakati) himself did not believe 1.4.43 to be his date of birth and he believed 1.8.37 as his date of birth but also he simultaneously disowned 1.4.43 as his date of birth. Further, taking 1.4.43 as the date of birth, his age on the date of his joining on 21.9.59 works out to be 16 years 5 months 21 days and this also raises the question as to whether he, having been 16 1/2 years could have been allowed to be recruited as a Work Charged employee at this immature age. Under the circumstances, the authenticity of the date of birth entry as recorded in his school certificate dated 1.5.55 is subject to grave doubt and question. We find that the Appellant (Shri. Kakati) has not produced any cogent evidence to remove this doubt and establish successfully that this entry of his age of 12 years as on 1.4.55 in this school certificate (implying his date of birth to be 1.4.43) is his genuine date of birth in supersession of his earlier claim and owned date of birth of 1.8.37, which he had declared to the then P.W.D. Divisional Authorities, who, on that basis, had duly incorporated the same in his Service Roll and he had also duly endorsed the same in as much he had duly endorsed the correctness of the entries of all his personal particulars including the date of birth, when he duly signed on the opening page of his Service Roll (opened on 11.1.61)

Apart from this point, the main point is that the Appellant (Shri. Kakati) himself had claimed and declared 1.8.37 and not 1.4.43 (as per his school certificate dated 1.5.55) as his date of birth and he gave out to the world that he believed and claimed 1.8.37 to be his date of birth and not 1.4.43 as his date of birth. This firmly holds the ground inasmuch as he declared the same at the time of his recruitment as Work Charged Electrical Jogali in September, 1959 and at the time of opening his Service Roll in January, 1961 despite the school certificate, dated 1.5.55 showing his age, which implied 1.4.43 as his date of birth.

The date of birth of a person is a matter of fact and it does not change with the change of official status of a person, whether he rises from the Work Charged status to the regular establishment employee status or he rises from the non-

gazetted status to the gazetted status etc. In the present case, the date of birth of the Appellant (Shri. Kakati), recorded in his service record (viz. his Service Roll) is 1.8.37 as furnished by the Appellant (Shri. Kakati), when he furnished his personal particulars including his date of birth at the time of his recruitment as a Work Charged Electrical Jogali in September, 1959 and these personal particulars including this date of birth of 1.8.37 have been duly recorded on the opening page of his Service Roll, opened on 11.1.61 and duly endorsed by him as to their correctness by way of his signing on the opening page of his Service Roll against the item of the signature of the Government employee on this opening page. This date of 1.8.37 holds good, irrespective of whether the Appellant (Shri. Kakati) continued as a Work Charged employee till his retirement or was taken to regular establishment of the P.W.D. of the Government. The change of his status from Work Charged employee to regular establishment employee does not give any opportunity to claim on that basis an occasion for fresh record of his date of birth.

Thus, on the whole, in the present case, we find there is absolutely no cogent ground for accepting 1.4.43 (First April Nineteen forty three) as the Appellant (Shri. Kakati)'s date of birth in place of 1.8.37 (First August Nineteen thirty seven). The contention of the Appellant (Shri. Kakati) that his date of birth is 1.4.43 fails and is rejected. His date of birth is 1.8.37 (First August Nineteen thirty seven) and we reiterate the same.

As per 1.8.37 as the Appellant (Shri. Kakati)'s date of birth, his date of superannuation fell due on 31.7.95 (afternoon) but we find that he had been allowed to continue in service upto 6.4.96. Under the circumstances, the Appellant (Shri. Kakati) shall be deemed to have superannuated on 31.7.95 (afternoon) and we order that, for the period from 1.8.95 to 6.4.96, the Appellant (Shri. Kakati) shall be deemed to have been on reemployment under the P.W.D. of the Government of Assam, his pay during the reemployment period being his last pay, drawn in the month of July, 1995 and the payment of his monthly pension and other retirement benefits (Such as Death cum Retirement Gratuity, etc.) during the period of reemployment shall be deemed to have been kept in abeyance.

2. The counsel for the Petitioner while attacking the aforementioned findings of the Tribunals has vehemently argued that upto the year 1994 when service book was opened by the department, the Petitioner was never asked to furnish any proof regarding his age and it was for the first time in the year 1994 that the Petitioner was asked to produce the school leaving certificate and affidavit which he did.

3. I have given my deep thought to the arguments of the counsel for the Petitioner but the same is not acceptable for more than one reason. On an earlier occasion when the case was heard by me, I thought it appropriate to ask the State counsel to produce the original service roll which has been produced today. Service Roll opened at the time of entry into service mentioned as many as ten

(10) columns and the form appears to have been prepared under Financial Rules 162 Sub-rule (6). In column No. 5 of the printed form the words date of "birth" by Christ era are printed and therein it has been written 1st August, 1937. This service roll in original pertains to inferior service. After seeing the original service roll I am feeling more than satisfied that the same can be relied upon for coming to a final conclusion about the date of birth of the Petitioner. There cannot be any manner of doubt that this Court while deciding a writ petition is not to sit in judgment as an appellate court over the order of the tribunal. The tribunal has recorded a firm finding of fact after appreciating entire evidence. Above all service rolls appeared to be part and parcel of the service book which is ultimately opened for a Government servant after his services are regularised and this appears to be the mandate of fundamental Rules 162(6) which reads as follows:

162(6) The term "service book" includes "service roll", which is maintained in Financial Rule For No. 16 and 16-A.

4. In view of the aforementioned sub Rule 6 of Rule 162, it cannot be successfully maintained that the Service Roll has got no legal basis or the same has to be ignored by a Court of Law. The Service Roll opened at the time of entry of a Government servant can always be relied upon for determination of the date of birth of a Government servant particularly when the same is thumb marked or signed by such a Government servant in Column No. 8 of the service roll. The Petitioner has put his thumb impression. A Division Bench of this Court in Swadesh Ranjan Dey Vs. State of Tripura and Others, has observed that the date of birth given at the time of entry into the service can be held to be correct and justified. The Division Bench in Swadeshranjan's case (supra) was dealing with a situation where different dates of birth figured in the service book but the authorities teated the date of birth given by the Government servant at the time of entry into service as correct one. The aforesaid case is fully applicable to the facts of the instant case because in that case also the Government servant relied upon the date of birth in his school final certificate but the same was not relied upon by the Hon"ble Division Bench. The Division Bench relied upon some judgments of the Hon"ble Supreme Court in Swadeshranjan's case (supra). In view thereof the appeal takes merit.

5. If any retiral benefits are due to the Petitioner on the basis of the date of birth of 1st August, 1937 the same be released to the Petitioner without any further loss of time.

6. For the reasons recorded above I do not find any merit in the writ petition which is dismissed with no order as to costs.