

(1998) 07 OHC CK 0036

In the Orissa High Court

Case No : Original Jurisdiction Case No. 570 of 1998

Gayadhar Pati

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 OLR 269

Hon'ble Judges : Susanta Chatterji, J; P.K. Misra, J

Bench : Division Bench

Advocate : Jatindra Kumar Mohapatra and B.K. Patnaik, for the Appellant; R.K. Mohanty, Additional Government Advocate (OPs. 1-3), Sukanta Kumar Nayak-2, K.K. Rout, B.K. Sahoo and Pravati Mishra (OP-4), for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The present writ petition at the instance of the petitioner, claiming himself to be a social worker, challenges the impugned order copy whereof is Annexure-4. For better appreciation, Annexure-4 is quoted herein below :

"OFFICE OF THE INSPECTOR OF SCHOOLS : BHADRAK CIRCLE, BHADRAK.

OFFICE ORDER No. 11433, dated 8.12.1997.

Sri Kamalakanta Mohanty, Headmaster, Motto High School who was to retire on 30.11.1997 is allowed to continue up to 30.11.1998 being his date of birth 23.11.1940 (Twenty third November Nineteen forty) which was ascertained on verification of H.S.C. Certificate in the office of the Board of Secondary Education, Orissa and approval order No. 10417 (R.S. 162) dated 25.9.1980 of the Inspector of Schools, Bhadrak Circle, Balasore. The period from 1.12.1997 to the date he joins will be treated as leave and will be debited from his leave earned during the incumbency.

Sd/- B. N. Behera Inspector of Schools, Bhadrak."

2. It is contended on behalf of the petitioner that the Inspector of Schools, Bhadrak, has got no jurisdiction to recall his own order and to permit a retired person to continue and such exercise of jurisdiction is irregular and illegal and moreover, it is not bonafide. In support of his contention, the learned counsel for the petitioner has drawn our attention to the decision of the Apex Court reported in Union of India and others Vs. Kantilal Hematram Pandya, , which considered failure of employee to mention alleged correct birth date in option forms declaring his date of birth and while filing provident fund withdrawal - Representation for correction made three decades after joining service - Correctness and genuineness of certificate produced was not free from doubt - Unexplained and inordinate delay in filing application, and it was held that in such circumstances, the applicant-employee would not be entitled to relief.

Another decision of the Apex Court is Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, , wherein it was held that writ petition by a Government servant or a servant of Government instrumentality for correction of date of birth at fag end of service with object of continuing in service should not ordinarily be entertained by the High Court. The facts of the latter decision are that a Division Bench of the High Court of Calcutta dismissed Appeal No. 149 of 1991 directed against the order dated 18.4.1991 of a learned Single Judge of the same Court. The learned Single Judge issued a writ of mandamus to correct the date of birth of the writ petitioner recorded by the respondents in his Service and Leave Records and allowed him to continue in service beyond his superannuation age commutable according to his date of birth entered in that Service and Leave Record at the time of his appointment. The learned Single Judge relied upon the Admit Card produced by the petitioner which was issued to him at the time of matriculation examination. In view of the fact that the date of birth recorded in the Admit Card was taken notice of and the employer was asked to correct the service records and other relevant papers, the Division Bench did not interfere. The Apex Court allowed the appeal and set aside the judgments of both the Division Bench and the learned Single Judge" by observing, inter alia : -

"Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their service, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement

according to date of birth accepted by their employers, placing reliance on the so-called newly found material....."

(quoted from head note)

Another decision of the Supreme Court was cited at the Bar in support of the claim of the petitioner, reported in 84 (1997) CLT 355 (SC) (State of Orissa and Ors. v. Sri Ramanath Patnaik). The Supreme Court allowed the appeal by special leave holding that when entry was made in the service record and when the employee was in service, he did not make any attempt to have the service record corrected and, therefore, any amount of evidence produced subsequently would be of no avail.

3. Mr. Mohanty, learned Additional Government Advocate, has, however, tried to distinguish the aforesaid reported decisions. He says that the facts of the instant case are quite different and distinct. Here there is no attempt by opposite party No. 4 for correction of his date of birth. The Inspector of Schools concerned had issued an incorrect notice without any basis and subsequently, on perusal of the service records as well as the matriculation certificate incorporating the real date of birth, recalled his erroneous order and allowed opposite party No. 4 to continue in service. In order to dispel all doubts, we asked for the production of the original service records as well as the original matriculation certificate of opposite party No. 4. The Headmaster of the school who is present in Court has produced both the service record as well as the matriculation certificate of opposite party No. 4. On proper scrutiny, we find that in the service record, the date of birth of opposite party No. 4 is 23rd November, 1940. The same date is also consistent with the High School Certificate issued by the Board of Secondary Education, Orissa. In both the service record and the High School Certificate, the age of opposite party No. 4 is consistent and pursuant thereof, he should have retired on proper calculation. The earlier communication is wrong and the said communication was recalled by Annexure-4. Upon proper appreciation of the facts at issue, we do not find that Annexure-4 suffers from any irregularity or illegality. In view thereof, we are not inclined to interfere in the matter. The writ petition is thus dismissed. There will, however, be no order as to costs.

P.K. Misra, J.

4. I agree.