

(2004) 01 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (C) No. 90 (SH) of 2003

Gladis Lamare

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Citation : (2004) 1 GLT 261

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : D.K. Thapa, for the Appellant; T. Diengdoh, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The grievance made in the writ petition is in respect of an order dated 5.4.2002 by which the Petitioner was made to retire from service w.e.f. 31.12.2002 on the basis of the service records.

2. Shortly stated the facts leading to the filing of the instant writ petition is that the Petitioner was initially appointed as a Lower Primary School Teacher by an order dated 15.6.1970 issued by the Education Officer, District Council, Jowai, Autonomous District. On being asked to produce her school certificate, the Petitioner produced the same on 14.5.1974 and claimed her date of birth to be 17.12.1945. According to the Petitioner, the birth certificate was submitted in original as was issued by the school authority. According to the letter dated 14.5.1974 by which the Petitioner claimed to have forwarded her school certificate to the Education Officer, District Council, the Certificate was dated 17.2.1974 and was submitted in original. The School was taken over by the Government of Meghalaya under the provisions of "Meghalaya taking over of District Council L.P. School Act 1993". The Petitioner being apprehensive of termination of her services served the pleader notice on 27.1.2003. As per the allegations made in the said notice there was a move to retire the Petitioner from service untimely. In response to the said notice the D.I. of Schools. Jowai

directed the Petitioner to submit her school certificate in original by his letter dated 3.2.2003. The Petitioner in response to the said letter submitted a duplicate school certificate which reflects her date of birth as 17.12.1945. The duplicate certificate was issued on 5.2.2003 by the school authority certifying that the Petitioner left the School on 17.12.1964 and as per the date of birth recorded in the admission register, same is 17.12.1945. In turn, the D.I. of Schools by his letter dated 11.2.2003 once again directed the Petitioner to produce the original certificate in lieu of the duplicate one. Thereafter, pursuant to the pleader notice issued on behalf of the Petitioner, she was directed to meet the D.I. of Schools personally which the Petitioner accordingly did. Thereafter the impugned order dated 5.4.2002 was issued indicating the date of the retirement of the Petitioner as 31.12.2002 on the basis of her recorded date of birth in the Service Book as 17.12.1944. Thus the dispute is as to whether the date of birth of the Petitioner is 17.12.1944 or 17.12.1945. According to the Petitioner, the school certificate reflects her correct date of birth which is 17.12.1945 and on that basis she is entitled to continue her services upto 31.12.2003, but instead she has been made to retire from her service w.e.f. 31.12.2002 on the basis of wrong assumption of her date of birth to be 17.12.1944.

3. The Respondent Nos. 1, 2, 3 and 6 have filed a joint affidavit denying the contention raised in the writ petition. According to the averments made in the said affidavit, the Petitioner overstayed in her service forcibly. In the affidavit, the said Respondents have annexed the relevant page of the Service Book of the Petitioner depicting of her date of birth as 17.12.1944. The Petitioner put her signature on the Service Book on 13.3.1973 as a token of endorsement to the entries made in the Service Book including her date of birth as 17.12.1944. She also put her thumb impression in the Service Book.

4. The Respondent No. 4 has also filed an affidavit-in-opposition. As per the said affidavit, the records available in the office of the Respondent No. 4, the Petitioner herself had addressed a letter dated 11.3.1974 to the Education Officer of the district Council to the effect that her date of birth is 24.3.1944. The Respondent No. 4 has denied the existence of the letter dated 14.5.1974 stated to be addressed by the Petitioner to the Education Officer District Council forwarding the school certificate in original dated 17.2.1974 which depicted her date of birth as 17.12.1945. As per the averments made in the affidavit the records contained only a typed copy of the school certificate dated 17.2.1973 purportedly issued by the St. Mary's School, Shillong. The Respondent No. 4 has further stated in the affidavit that the signature of the Petitioner in the letter dated 14.5.1974 varies from her all other signature available on records. Thus a doubt has been expressed regarding the authenticity and genuineness of the said letter and purportedly written by the Petitioner on 14.5.1974 and addressed to the Education Officer by the District Council.

5. The Respondent No. 5 who is the Headmistress of St. Mary's School, Shillong has also filed an affidavit supporting the case of the Petitioner. As per the said

affidavit, the admission register being maintained by the School reflects the date of birth of the Petitioner as 17.12.1945.

6. I have heard the learned Counsel for the parties and have considered their rival submissions made on their respective cases. I have also perused the materials available on records including the records produced on behalf of the Respondent No. 4. The records produced by the Respondent No. 4 reveals a typed true copy of the school certificate issued on 17.2.1973 certifying the age of the Petitioner as 20 years on 17.12.1964 meaning thereby that her date of birth is 17.12.1944. As per the said records the Petitioner by her letter dated 11.3.1974 declared her date of birth to be 24.3.1944. However, there is some overwriting on the last digit of 1944. The original last digit of 1944 was perhaps "9" meaning thereby that her date of birth was 24.3.1949. However, as noticed above on the last digit "9" there is an over-writing for replacement of "9" as "4".

7. As per the Service Book of the Petitioner her admitted and recorded date of birth is 17.12.1944 which the Petitioner herself accepted by putting her signature and thumb impression on 13.3.1973. She never made any complaint alleging wrong recording of her date of birth in the Service Book. The only certificate available on record is the typed copy of the School Certificate as noticed above on the basis of which also her date of birth is 17.12.1944. The whole claim of the Petitioner as originated from her alleged letter dated 14.5.1974 stated to be addressed to the Education Officer of the District Council. As per the contents of the said letter the Petitioner forwarded her school certificate in original dated 17.2.1974 certifying her date of birth as 17.12.1945. The Petitioner had left the School on 17.12.1964 and there is no explanation as to why there was a long delay of about 10 years in obtaining the school certificate in original on 17.2.1974. There is also no explanation as to what for the original certificate was parted with by the Petitioner without retaining a copy of the same. The duplicate certificate was issued on 5.2.2003 by the school authority certifying her recorded date of birth as 17.12.1945. No fault can be attributed to the Respondents if the Petitioner has been made to retire w.e.f 31.12.2002 on the basis of her recorded date of birth in the Service Book. The Respondent asked for original certificate from the Petitioner which admittedly she could not produce. Even if she could produce the same or even if the duplicate certificate produced by the Petitioner which certified her date of birth to be 17.12.1945 are admitted to be corrected, same will not come in aid of the case of the Petitioner. The admitted position is that the Petitioner accepted the recorded date of birth as 17.12.1944 and as a token of such acceptance she put her signature and thumb impression in her Service Book way back in 1973. Even if the letter dated 14.5.1974 addressed by the Petitioner to the Education Officer, District Council forwarding therewith the school certificate dated 17.2.1974 is accepted, then also there is no explanation on the part of the Petitioner as to why she did not make any claim for alteration of her date of birth from 1944 to 1945 on the basis of the school certificate. It is not the case of the Petitioner that she was unaware of the recorded date of birth as 1944 in her service Book. The only plea taken by the Petitioner on the basis of

her alleged letter dated 14.5.1974 is that the original school certificate having been produced before the District Council, the date of birth recorded in the said certificate would hold the field irrespective of date of birth recorded in her Service Book and accepted by her way back in 1973.

8. Time and again, the Apex Court has reiterated that cautious approach is to be adopted in the case of alteration of date of birth and the claim made for such alteration at a belated stage. Never before the Petitioner made any claim for alteration of her date of birth in the Service Book. It was only on 27.1.2003 i.e. after the retirement of the Petitioner w.e.f. 31.12.2002, the Petitioner lodged her claim by way of a pleader notice. Even in her alleged letter dated 14.5.1974 addressed to the District Council forwarding the school certificate dated 17.2.1974 depicting her date of birth as 17.12.1945, the Petitioner did not make any claim for alternation of her date of birth as 17.12.1944. The Petitioner having given her endorsement as a token of acceptance of the entries made in the Service Book which included her date of birth as 17.12.1944 by putting her signature and thumb impression on 13.3.1973 could have very well disowned the same in her purported letter dated 14.5.1974 more particularly when her memory was fresh. However, nothing was done by the Petitioner and she lodged her claim only at fag end of her service career if not after the retirement from service on attaining the age of superannuation w.e.f. 31.12.2002.

9. Learned Counsel for the Petitioner relied upon a judgment of the Apex Court as reported in 2003 (8) SBR 436 (State of U.P. and Ors. v. Smt. Gulaichi). The observations made by the Apex Court in the said case do not support the case of the Petitioner, rather the same support the case of the Respondents. The Apex Court in the said case after noticing its earlier judgment in Union of India Vs. Harnam Singh, observed that an application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction inasmuch as others waiting for years, below the person concerned for their respective promotions are affected in the process. Unless a clear case is made out which can be said to be conclusive in nature, the writ court will be reluctant to grant the relief as has been sought for in the instant case. A claim for alteration of date of birth must be made within a reasonable time. In the instant case not to speak of making any claim for alternation of date of birth as recorded in the Service Book within a reasonable time, the Petitioner did not even pray for such alteration at any point of time. Her whole claim is based on the letter dated 14.5.1974 existence of which the Respondents have denied. Even assuming that the Petitioner in fact had forwarded a school certificate regarding her date of birth as 17.12.45 in absence of any claim made by her for alteration of her recorded date of birth in the Service Book, the Petitioner is not entitled to any relief.

10. The learned State Counsel appearing for the Respondents have relied upon a decision of the Apex Court as reported in State of T.N. Vs. T.V. Venugopalan, and

argued that inordinate delay on the part of the Petitioner in making the claim for alteration of her date of birth as recorded in the Service Book itself would disentitle the Petitioner from any relief. The Petitioner having declared her date of birth as 17.12.1944 and as entered in the Service Book cannot be permitted at the fag end of her Service career to raise a dispute as regards the correctness of the entries made in the service Book. Although the learned Counsel for the Petitioner submitted that it is not a case of correction of her recorded date of birth, but it is a case of correct recording of her date of birth on the basis of the concrete evidence which she claims to be the school certificate, I find force in the submissions of the learned Counsel for the Respondents that whatever might be the arguments, acceptance of the date of birth of the Petitioner as 17.12.1944 and granting consequential relief to the Petitioner would require alteration of the recorded date of birth of the Petitioner in the Service Book which is not impermissible at the fag end of the service career of the Petitioner. Even in the writ petition, the Petitioner has not prayed for a declaration that her date of birth is 17.12.1945 and not 17.12.1944. If the Petitioner is made to retire on attaining the age of superannuation on the basis of her recorded date of birth in the Service Book no fault can be attributed to the Respondents. The impugned order was issued indicating the date of retirement of the Petitioner as 31.12.2002. The prayer made for setting aside and quashing of the same cannot be granted for the simple reason that even thereafter also the recorded date of birth of the Petitioner in the Service Book will remain as 17.12.1945.

11. In view of the foregoing discussion, and on perusal of the materials on records I do not find any infirmity in the impugned order dated 5.4.2002 and accordingly the writ petition is dismissed. No order as to cost.