
(2006) 11 GUJ CK 0072

In the Gujarat High Court

Case No : Special Civil Application No. 9564 of 1996

Govindbhai M. Karshala

APPELLANT

Vs

Gujarat Electricity Transmission Corp. Ltd. and Another

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 78

Citation : (2006) 11 GUJ CK 0072

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Judgement

M.R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner who was at the relevant time working in the Gujarat Electricity Board, has prayed for an appropriate writ, direction and/or order quashing and setting aside the order passed by the respondent Board rejecting the request of the petitioner to correct his date of birth from 1st December 1938 to 11th February 1940. It is also further prayed to direct the respondent to correct the date of birth of the petitioner from 1st December 1938 to 11th February 1940 as per the circulars dated 20th June 1986 and 18th February 1974 (Annexures A and B), relying upon certificate issued by the Gondal Nagar Palika based upon the Births and Deaths Register maintained under the provisions of the Registration of Births and Deaths Act, 1969 (for short "the Act"). It is also further prayed to quash and set aside the circular dated 12th May 1989 (Annexure H to the petition) by which it has been decided and provided that for satisfactory proof of the date of birth will mean the date of birth as recorded in the SSC or equivalent examination in case of those who have passed that examination and date of birth as recorded in school leaving certificate in case of those who have not passed S.S.C.E. or equivalent examination. It is also further prayed for a declaration that the petitioner continues in service until 20th February 1998.

2. Facts leading to the petition are that the petitioner was serving in the

respondent-Electricity Board, his actual date of birth as per the record of the Nagar Palika was 11-2-1940, however, by mistake his date of birth was recorded as 1-12-1938 in the service record on the basis of the school leaving certificate. That in fact, his correct date of birth even recorded in the Births and Deaths Register maintained by the Gondal Nagar Palika maintained under the provisions of the Act was 11-2-1940 and therefore, the petitioner submitted an appropriate application dated 13-1-1987 for necessary correction in the birth date in the service record of the Board as 11-2-1940 instead of 1-12-1938, relying upon regulation 18 of the Gujarat Electricity Board Service Regulations. It is also further submitted that as per the circular dated 20th June, 1986 the extracts of Birth and Death Registration was required to be accepted as correct and final for all purposes including admission into the Government service. It is submitted that the application of the petitioner was forwarded by the Superintending Engineer (O & M), Bhavnagar to the Secretary, GEB on 21-1-1987. It is submitted that all the necessary documents were submitted to the executive Engineer. However, by communication dated 17-1-1990 relying upon the circular dated 22-5-1989, the respondent Board refused to correct the birth date and rejected the application of the petitioner. It is the case on behalf of the petitioner that subsequently the petitioner has submitted an appeal on 14-2-1990. However, the date of birth of the petitioner was not corrected in the service record and therefore, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India for the aforesaid relief.

The petitioner has also challenged the circular dated 22-5-1989.

3. Shri SP Majmudar, learned advocate appearing on behalf of the petitioner has made following submissions;

1. That the circular dated 22-5-1989 should not have been made applicable retrospectively and the application of the petitioner dated 21-1-1987 ought not to have been rejected relying upon subsequent circular.

2. That other employees, who have submitted their applications for correction/change of birth date in the service record came to be considered on the basis of the circular dated 20th June 1986 and therefore, the action of the respondent is discriminatory and violative under Article 226 of the Constitution of India.

3. The circular dated 22-5-1989 issued by the GEB deciding to only consider the date of birth as recorded in the SSC or the equivalent examination in the case of those who have passed that examination and date of birth as recorded in school leaving certificate in case of those who have not passed S.S.C.E. or equivalent examination is absolutely illegal, most arbitrary and contrary to the provisions of the Act and nullifying the provisions of the Act and/or ignoring the certificate issued by the competent authority under the provisions of the Act. It is submitted that the certificate issued by the competent authority (local authority) on the basis of the entry made in the Register maintained under the Births and Deaths Registration Act is the conclusive proof.

4. That the application of the petitioner was within the stipulated time prescribed by service regulations framed by the GEB in exercise of powers conferred by Section 78(c) of the Electricity (Supply) Act, 1948 i.e. on or before attaining the age of 50 years.

5. That the circular dated 22-5-1989 would be nullifying statutory provisions, more particularly, regulation 18 which is not permissible by issuing said circulars, as by circular, the statutory regulation cannot be amended and/or modified and/or effect of the same can be diluted. That the circular dated 22-5-1989 is even contrary to the resolution of the State Government (GAD) dated 11-8-1989 by which it has been provided that only the date of birth mentioned in the certificate issued by the competent authority on the basis of the entry made in the Register maintained under the Act should be considered and be treated as a final so far as service record is concerned.

4. In support of his above submission, he has relied upon the decision of this Court in the case of Dipti Devi Dhirajlal Patel v.State of Gujarat and Anr. rendered on 2-12-1987 in Special Civil Application No. 5668 of 1987, another decision of the learned Single Judge rendered on 15-7-1993 in Special Civil Application No. 8846 of 1992.

5. It is also further submitted by Shri Majmudar that even the respondents have refused to verify the genuineness of the certificate issued by Gondal Nagar Palika relying upon circular dated 22-5-1989. It is submitted by him that in fact and as such once the certificate is issued by the competent authority (local authority) on the basis of the entry made in the Register maintained under the Act, it is not open for the GEB and/or any other authority to doubt the same and/or to consider the genuineness of the same. Therefore, it is requested to allow the present Special Civil Application and grant the relief as prayed for and direct the respondents to treat the petitioner in service upto 28-2-1998 considering the date of birth of the petitioner as 11-2-1940 with all other consequential benefits.

6. Petition is opposed by the respondents. An affidavit-in-reply is also filed on behalf of the respondents. Dealing with the contention on behalf of the petitioner with regard to discriminatory treatment, it is submitted that so far as persons named in the petition in whose favour earlier orders were passed to correct the date of birth relying upon circular dated 20th June 1986, their cases were reconsidered/reviewed and the orders in their favour have been withdrawn. It is also further submitted by Shri Pandya, learned advocate appearing on behalf of the respondent Board that the circulars issued by the Board are clarificatory in nature and they are not contrary to and/or nullifying the regulation 18 of the service regulations of GEB as alleged. Now meeting with the contention on behalf of the petitioner that the circular dated 22-5-1989 is even contrary to the resolution of the State Government dated 11-8-1989, it is submitted by Shri Pandya that Government circulars are not always binding upon the GEB and/or other authority. It is also further submitted that the petitioner is not entitled to any relief on the ground of delay and laches, as though the petitioner was

communicated in 1990 that his application for correction of date of birth is rejected, still the petition has been filed in the year 1996. Even at the time of first hearing, it was not disclosed by the petitioner that the petitioner has already retired. He has also further submitted that his contention with regard to delay and laches is for the purpose of granting the relief in favour of the petitioner with regard to back-wages and/or aforesaid period should be considered for retirement benefits only.

7. He has also further submitted that the petitioner joined the service in 1963. The date of birth is reflected in the record as per the instruction given by the petitioner and for 24 years, the same came to be continued. However, for the first time, he made a grievance in 1986 after obtaining certificate from the Gondal Nagar Palika. It is also further submitted by him that the petitioner is an educated person and therefore, it is not open for him to make a grievance with regard to wrong date of birth after a period of 24 years. He has relied upon the decision of the Hon''ble Supreme Court in the case of State of Punjab Vs. Mohinder Singh, , in the case of Coal India Ltd. and Anr. v.Ardhendu Bikas Bhattacharjee and Ors. reported in 2005(12) SCC 201 and in the case of Collector of Central Excise, Chandigarh v. Shivalik Agro Poly Products Ltd. reported in 2005(11) SCC 464 in support of his above submission. He has further submitted that the application of the petitioner was not required to be entertained and/or considered on merits and the same has rightly been rejected and therefore, it is requested to dismiss the present Special Civil Application.

8. Heard the learned advocates appearing on behalf of the parties.

9. It is not in dispute that the date of birth of the petitioner as per the school leaving certificate is 1-12-1938. It is also not in dispute that the date of birth of the petitioner in the certificate issued by the Gondal Nagar Palika, the competent authority under the provisions of the aforesaid Act is 11-2-1940. It is required to be noted that though the certificate which is produced on record is obtained on 24-11-2006, however, on considering the said certificate, it is borne out that necessary entry in the Register of the Nagar Palika was made on 16-2-1940 i.e. within a period of 5 days after the birth. Thus, it cannot be said that the entry in the Register was subsequently and/or recently. At the time of joining the service, the date of birth of the petitioner was mentioned in the service record on the basis of the date of birth mentioned in the school leaving certificate. As per the relevant service regulations of the Gujarat Electricity Board, framed in exercise of powers conferred by Section 78(c) of the Electricity Act, 1948, more particularly, regulation 18, the correction of date of birth of an employee was permitted subject to production of satisfactory proof and documentary evidence or subject to a rider that such a correction should not however be permitted if an employee has completed 50 years of age. Therefore, an employee upto the age of 50 years, can apply for correction in respect of age or date of birth and the same is permissible. The reason behind the said rider is that an employee may not apply for correction in respect of age or date of birth at the fag end of his service

career. Regulation 18 reads as under: (page 47).

Any correction in respect of age or date of birth of an employee may be permitted subject to production of satisfactory proof and documentary evidence with the permission of the Superintending Engineer of the Circles for field offices and the Secretary in case of staff working in Head Office. Such a correction should not however, be permitted if an employee has completed 50 years of age.

By circular dated 20th June 1986, it was provided by the GEB that while considering the application of an employee for correction of date of birth, the extract of Birth and Death Register should be accepted as conclusive and final for all purposes and all such applications should be decided accordingly. Such a circular was issued relying upon the circular issued by the State Government dated 18-2-1974. Relevant portion of the circular dated 19-2-1974 are produced and which reads as under:

SCIRCULAR

In amplification of orders issued in the above mentioned Government Circulars, Government is pleased to direct that in the event of any change in birth dates recorded in the School Leaving Certificates, Matriculation Certificates, Secondary School Certificates, Examination Certificates or the Extracts from Birth and Death Registers of the local bodies or Municipalities etc. the birth dates as recorded in the Extracts of Birth and Death Registers should be accepted as correct and final for all purposes including admission into Government Service.

By order and in the name of the Governor of Gujarat. R.H. Buch Under Secretary to the Government of Gujarat, General Administrative Department.

The relevant portion of the circular dated 20th June 1986 issued by the GEB relying upon circular dated 18-2-1974 of the State Government reads as under:

SCIRCULAR:

Attention is invited to the Service Regulation No. 18 whereunder it has been provided that correction in respect of age or date of birth of an employee may be permitted subject to production of satisfactory proof and documentary evidence, with the permission of the Superintending Engineers of the Circles for Field Offices and the Secretary in case of staff working in Head Office.

Of late this office is receiving representations from the employees concerned as also letters from the Field Offices seeking clarification as regards what should be the exact documentary evidence be considered as a satisfactory proof for carrying out such corrections in age or date of birth of the employees concerned.

We are enclosing herewith a copy of the Government Circular bearing No. RTR-1073/1215-K dated 18th February 1974 specifically laying down instructions for determination of correct birth date and directs that the extracts of Birth and Death Registers should be accepted as correct and final for all purposes including admission into Government service. All cases of corrections of age or date of

birth of an employee be examined in light of this circular and decided accordingly. Other terms and conditions of Service Regulation No. 18 remains unchanged.

Dy. General Manager (P)

Now relying upon the aforesaid regulation 18 as well as the circular dated 20th June 1986, the petitioner submitted an application for correction of his age and date of birth in the service record as 11-2-1940 instead of 1-12-1938 by application dated 21-1-1987 before completion of 50 years of age i.e. within the prescribed time limit. It also appears from the record that the Executive Engineer (O & M) sent his application to the Secretary, GEB on 17-1-1987 and 18-2-1987 along with necessary documentary evidence. It also appears from Annexure G, the correspondence dated 2-2-1987 that Asst. Secretary (II), GEB, Baroda informed the Superintending Engineer that on production of original birth date certificate of Gondal Nagar Palika along with original school leaving certificate, action will be taken. In the meantime and before any decision could be taken on the application submitted by the petitioner, impugned circular dated 22-5-1989 came to be issued by the General Manager (HRD), GEB by which it was provided that satisfactory proof of date of birth will mean the date of birth as recorded in the SSC and in the school leaving certificate. Therefore, even the case of the petitioner was not considered on merits. Thus by circular dated 22-5-1989, it was suggested to consider the aforesaid two documents only and not the certificate issued by the competent authority and/or the birth date as recorded in the extracts of Birth and Death Register. Now considering the provisions of the aforesaid Act, the date of birth mentioned in the Register maintained under the aforesaid Act and the certificate issued on that basis is the conclusive proof and it is only for the authority mentioned in the aforesaid Act to consider the date of birth and/or make necessary correction. Thus, the impugned circular dated 22-5-1989 is contrary to the provisions of the aforesaid Act and is without jurisdiction. The GEB has no jurisdiction to ignore the certificate issued by the competent authority issued under the provisions of the aforesaid Act. The GEB has also no jurisdiction even to doubt the genuineness of the certificate issued by the competent authority under the provisions of the aforesaid Act. Even such powers are not vested with the GEB. Not only that but such a decision is also contrary to the circular of the Government dated 18-2-1974 and the Government resolution dated 11-8-1989 issued by the GAD by which it was provided that whenever there is a discrepancy in the date of birth in the school leaving certificate and/or SSC examination certificate and the certificate issued by the competent authority under the aforesaid Act, in that case, the date of birth mentioned in the certificate issued by the competent authority under the provisions of the aforesaid Act on the basis of the entry in the relevant Register should be considered as final and conclusive. Therefore, the impugned circular dated 22-5-1989 requires to be quashed and set aside. At this stage, it is also required to be noted that a similar view has been taken by this Court in its judgment and order dated 2-12-1987 rendered in Special Civil Application No.

5886 of 1997 and judgment and order dated 15-7-1993 rendered in Special Civil Application No. 8846 of 1992, wherein a view has been taken that whenever it is found that there is discrepancy in the date of birth in the school leaving certificate and/or SSC certificate and the certificate issued by the competent authority under the provisions of the aforesaid Act, the date of birth mentioned in the certificate issued by the competent authority/local authority under the provisions of the aforesaid Act should be considered as final and conclusive.

10. There is another reason also why the circular dated 22-5-1989 is required to be struck down. As stated above, regulation 18 which is a statutory regulation confers right in favour of an employee of the GEB for getting the date of birth corrected, provided the application is submitted before completion of 50 years of age subject to production of satisfactory proof and documentary evidence with the permission of the Superintending Engineer of the Circles for Field offices and the Secretary in case of staff working in Head Office. Such a right cannot be taken away by issuing circular and/or effect of such regulation cannot be diluted by such circulars. By impugned circular dated 22.5.1989 the resultant effect would be that even if genuine certificates are produced, the same will not be considered by the superintending Engineer and/or the authority mentioned in the regulation 18 for its subjective satisfaction and the same is required to be ignored and only the SSC certificate and / or school leaving certificate will have to be considered. By submitting that the aforesaid circulars are clarificatory in nature and therefore, the same is not in conflict with the regulation 18 cannot be accepted.

11. So far as decisions relied upon by the learned advocate appearing on behalf of the respondents in the case of State of Punjab (supra), Collector of Central Excise (supra) and Coal India Ltd. (supra), the same will not be applicable to the facts of the present case, as in all those cases, the Hon''ble Supreme Court was considering the case where the applications were submitted at the fag end of the service career. In the present case, there is a statutory regulation which permits correction of age and date of birth, provided the same is submitted before completion of 50 years of age. In the present case, the application was submitted by the petitioner before completion of 50 years of age.

12. Now, so far as the contention on behalf of the respondents that the certificate obtained by the petitioner is dated 22-11-1986 and by making such submission, the learned Counsel tried to doubt genuineness of the certificate, it is required to be noted that the authority has not considered the said certificate at all considering the circular dated 22-5-1989. Even otherwise, on going through the said certificate issued by the Gondal Nagar Palika, it appears that necessary entry in the Register was made within 5 days as stated herein above. As stated above, the GEB has no authority to doubt the correctness of the certificate and/or the contents of the said certificate. So far as the contention on behalf of the respondents that the necessary entry was made in the revenue record in the year 1969 and it continued for 24 years and the petitioner

submitted an application in 1987 and, therefore, the prayer of the petitioner for correction of date of birth should not be considered, it is required to be noted that relevant statutory regulation provides for correction of date of birth, provided the application is submitted before completion of 50 years of age. Under the circumstances, the prayer of the petitioner to change the date of birth cannot be rejected on that ground.

13. Now, therefore, the question which remains to be considered by this Court is what relief the petitioner is entitled to. It is not in dispute that the petitioner was informed in the year 1990 that his application is rejected to change date of birth relying upon circular dated 22-5-1989 and still the same was not challenged till 1996. Therefore, the learned Counsel appearing for respondent NO. 4 is justified in submitting that even if the date of birth of the petitioner is required to be corrected as 11.2.1940 instead of 1.12.1938, then in that case, the petitioner is not required to be paid any back wages. Not only the petitioner has not worked but on the ground of aforesaid delay also, he is not entitled for the back wages and at the most petitioner will be entitled to the benefit of the aforesaid two years for the purpose of other retirement benefits.

14. For the reasons stated above, petition succeeds in part. The respondents are directed to correct the date of birth of the petitioner in the service record as 11-2-1940 instead of 1-12-1938 and the petitioner is to be treated in service upto 20.2.1998. However, the aforesaid service is to be counted notionally for all other retirement benefits etc. However, petitioner shall not be entitled for any back wages for the interregnum period. The circular dated 22-5-1989 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.