

(2000) 04 DEL CK 0004
In the Delhi High Court
Case No : CWP. No. 284 of 1991

Gurcharan Singh Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 4 AD 527

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. N.N. Dhingra, for the Appellant; Mr. K.C. Dubey, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner has challenged his retirement from service w.e.f. 30.11.1989 on the ground that he has wrongly been retired as his date of birth is 29.11.1931 as per which he would have attained the age of superannuation on 30.11.1991. According to him Respondent-Bank had wrongly recorded his date of birth as 29.11.1929 which led to the aforesaid error in retiring him w.e.f. 30.11.1989 instead of 30.11.1991.

2. Petitioner joined Respondent No. 2/State Bank of Patiala on 8.2.1949. According to his averments in the petition, at the time of his initial appointment in the Bank he had submitted School Leaving Certificate to the Respondent-Bank as per which his date of birth had been specified as 29.11.1931. However, the Respondent-Bank wrongly recorded in the Regional Office petitioner's date of birth as 29.11.1929. Just before his retirement as per wrongly recorded date of birth i.e. 29.11.1929, he came to know that his date of birth had been wrongly recorded and, Therefore, he represented Respondent No.1 vide his letter dated 4.11.1989 and also submitted an affidavit regarding his date of birth. Thereafter, Regional Manager wrote a letter dated 8.12.1989 to Manager (P&A) whereby he was directed to confirm the date of birth of the petitioner from his educational certificate and also asked Regional Manager of the Branch in which the petitioner

was posted to ask the petitioner to submit an affidavit regarding his date of birth as well as School Leaving Certificate in proof of his age. In response to the above, petitioner submitted an affidavit swearing that his date of birth was 29.11.1931. However, he could not submit his School Leaving Certificate as he had allegedly already submitted the same at the time of initial appointment. However, petitioner's affidavit was not considered by the Respondent and he was relieved of his duty on 30.11.1989. Even after his retirement, on 14.12.1989 the Manager, State Bank of Patiala, Model Basti wrote a letter to him asking in proof of his age and why he had not done it earlier. Petitioner submitted reply dated 30.12.1989 wherein he stated that he had only now come to learn that his date of birth had not been corrected since he had already written to respondent-bank in 1980 and 1986 in connection with the wrong recording of his date of birth and that he had submitted his original certificate with the Staff Department of the Bank at the time of his initial appointment which was kept in his personal file. Thereafter, petitioner went to Pakistan and approached the Head Master, Government Middle School, Dhudial, District Chakwal from where he had studied and the Head Master of the said School issued Certificate to the petitioner mentioning that the date of birth as per School record was 29.11.1931. The said certificate duly attested by Embassy of Pakistan, High Commission of India at Islamabad and Chairman, Union Council Dhudial, District Chakwal was submitted with the Bank along with petitioner's representation dated 17.2.1990. This representation was forwarded by Branch Manager to the Regional Manager vide Memorandum dated 19.2.1990 recommending that the case of the petitioner be considered favourably. However, on 19.5.1990 petitioner received memorandum from Branch Manager informing that his request had not been acceded to. After receiving this memo, petitioner sent legal notice dated 7.8.1990 calling upon the respondents to change petitioner's date of birth in bank's record from 29.11.1929 to 29.11.1931 and cancel order of retirement dated 30.11.1989 failing which petitioner would be constrained to take legal recourse. No reply having been received by the petitioner, petitioner filed this writ petition in which he has made the following prayers:

"Issue a writ of mandamus directing the respondents to correct and rectify the date of birth from 29.11.1929 to 29.11.1931 in their official record and to continue the petitioner in service up to 30.11.1991 with all consequential benefits and to further issue a writ of certiorari quashing the order dated 30.11.1989 (Annexure P-4) of the respondents prematurely retiring him arbitrarily and to grant to the petitioner any other appropriate relief which this Hon"ble Court may think fit".

3. On filing this writ petition, show cause notice was issued on 30.1.1991. However, when no body appeared on behalf of respondent-bank inspire of service, Rule was issued on 15.4.1991. After issuance of Rule, respondents were served again and on 12.11.1992 Deputy Registrar recorded that service had been effected. However, nobody appeared for the respondents inspire of service even after issuance of Rule nor any counter-affidavit filed. Nobody appeared on

behalf of respondents even when the matter was heard finally.

4. As per the facts narrated above, there is no dispute that in service record of the petitioner maintained by the respondents, the date of birth of the petitioner was recorded as 29.11.1931. As per this date of birth, on attaining the age of 60 years petitioner was superannuated w.e.f. 30.11.1989. It is only when petitioner was about to retire that the petitioner made representation dated 4.11.1989 and thereafter submitted an affidavit mentioning that his actual date of birth was 29.11.1931 and not 29.11.1929. Communication dated 8.12.1989 was written by Regional Office-I, Delhi to Manager, Personnel Administration him to confirm date of birth from his educational certificate kept in his personal file. A copy of this communication was addressed to Manager, State Bank of Patiala, Model Basti, Delhi where the petitioner was posted last, with the following endorsement :

"He is advised to submit an affidavit in original of Sh. G.S. Sethi for necessary action at our end. Please advise the above named employee to submit a school certificate in support of proof of age also. Please advise him that he could do this much earlier as he knew the facts. The Bank does not have any responsibility".

5. After this Office Letter dated 14.12.1989 was written to the petitioner in which he was asked to submit School Leaving Certificate in respect of proof of age and also mention as to why he could not do this much earlier although he was aware of his age. In reply dated 30.12.1989 he submitted that at the time of his appointment in the bank he had submitted certificate in original with the Staff Department which was kept in his personal file. Thereafter, he brought certificate from the School in Pakistan where he had studied and made representation again but the same is rejected by the bank and then present writ was filed.

6. From these facts, it is clear that the petitioner approached the Court for relief much belatedly and in fact after his retirement. He has not at all explained as to why he has not approached the Court, or for that matter even the bank in time for this purpose. In fact the averments made by the petitioner in this respect in the writ petition are rather contradictory inasmuch as in para-6 of the writ petition he mentioned that he came to know about alleged wrong recording of date of birth in Bank's record just before his retirement. Para-6 of the writ petition to this effect mentions as under:

"6. That just before his alleged retirement, when the petitioner came to know that his date of birth has been wrongly recorded by the respondent bank, he represented to respondent No.1 vide his letter dated 4.11.1989 and also submitted an affidavit regarding his date of birth".

7. However, when he was asked vide letter dated 14.12.1989 as to why he did not approach the bank earlier for correction of date of birth he stated in his reply dated 30.12.1989 that he had already written to the respondent-bank in 1980 and 1986 also in connection with the wrong recording of his date of birth. This is what he states in para-11 of the writ petition, which is as under:

"11. Petitioner replied on 30.12.1989 stating that he had only now come to learn that his date of birth had not been corrected since he had already written to the respondent bank in 1980 and 1986 in connection with the wrong recording of his date of birth".

8. Exact averments to this effect in para-3 of reply dated 30.12.1989 of the petitioner are as under :

"3. I had also given in writing in the year 1980 and 1986 in connection with wrong recording of my date of birth but since then no action has been taken".

9. Thus on one hand petitioner states that he came to know about the wrong recording of date of birth by the Bank just before his retirement and on the other hand he states that he had made representation for correction of date of birth way back in 1980 and 1986. Therefore, the petitioner has not come to this court with clean hands and has made contradictory statement. In any case he has not given any satisfactory Explanation as to why he did not approach the bank in time. If he had made representation for correcting his date of birth in 1980 and 1986, this means that he had come to know about the alleged wrong recording of date of birth in the year 1980 i.e. almost 10 years before his retirement. If no action was taken in correcting the date of birth as alleged by him in para-3 of his letter dated 30.12.1989 why he kept quiet till the date of his retirement and made representation few days before his date of retirement i.e. 4.11.1989 is not at all explained by him. He approached this court by filing the present writ petition much after his retirement. In such circumstances, this writ petition is bound to fail on this short ground itself.

10. In the case of Union of India and others Vs. Kantilal Hematram Pandya, Supreme Court emphasised that claim for alteration of date of birth after inordinate and delay of 25 years on the eve of retirement unexplained must be scrutinised carefully and interference made sparingly. To the same effect is the judgment of Apex Court in the case of Burn Standard Co. Ltd & Ors. Vs. Dinabandhu Majumdar & Anr. 1995 (30) ATC 206. In this case the Supreme Court made the following pertinent observations:

"The extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution is not meant for enabling the employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly-found material. The fact that an employee of Government or its instrumentality who remained in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in Service Record, the very conduct of non-raising of an objection in the matter by the employee should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue

delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application".

11. In same circumstances belated request for change of date of birth was not allowed in the case of Visakhapatnam Dock Labour Board Vs. E. Atchanna and Others, and in the case of State of Orissa and others Vs. Ramanath Patnaik, .

This writ petition, accordingly, fails and is hereby dismissed.