

(2018) 04 GAU CK 0029
In the Gauhati High Court
Case No : WP(C) 5780 of 2010

JADAB CHANDRA MAZUMDAR

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Citation : (2018) 04 GAU CK 0029

Hon'ble Judges : HRISHIKESH ROY

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. Matin, the learned Counsel appearing for the petitioner. The respondent Nos. 1 & 5 are presented by Mr. B. Goswami, the learned

Addl. Advocate General, Assam. The Board of Secondary Education (SEBA) is not a formal party but on Court's request, Mr. T.C. Chutia, the

learned Standing Counsel, SEBA has been appearing in this case. The SEBA has also filed their affidavit on 2.8.2013 and the additional affidavit on

13.6.2014.

2. The petitioner served as a Khalasi (R) in the Palasbari Gumi Project (WR) Division, Mirza. The employee was made to superannuate at the age of

60 years and the moot question is whether the employee's date of birth is 7.6.1949 or is 1.3.1957 as acted upon by the department, to retire him by

the letter dated 16.7.2010 (Annexure-8).

3. In the Service Book (Annexure-6), the petitioner's birth date is shown as 1.3.1957 (Page-22) with the comment that it is based on an affidavit.

The date in the Service Book was disregarded and the employee was forced to retire through the impugned communication dated 16.7.2010

(Annexure-8), which takes into account the other birth date (7.6.1949).

4.1 The learned Counsel Mr. A. Matin submits that the birth date in the Service Book should be the basis for retirement. This date was recorded on

the basis of the affidavit filed by the petitioner's father on 8.7.1983 (Annexure-1). In this affidavit, the deponent stated that, when his eldest son

Jadav Chandra Majumdar appeared in the HSLC examination in 1973, his age was incorrectly shown in the particulars forwarded to SEBA by the

Headmaster of the school. According to the affidavit, the petitioner's age was 16 years (not 23 years), when he appeared in the 1973 HSLC

examination.

4.2. The petitioner contends that the pre premature retirement could not have been ordered by ignoring the date recorded in the Service Book and if

any rectification of the birth date is to be carried out, the affected employee should have been afforded hearing.

4.3 The petitioner places heavy reliance on the 1973 HSLC examination certificate issued by the Secretary, SEBA on 21.7.1973 (Annexure-2) to

project that the employee was 16 years when he appeared in the HSLC examination in 1973 and on this basis, Mr. Matin argues that the SEBA

certificate supports the birth date recorded in the Service Book of the employee.

5. On the other hand, Mr. B. Goswami, the learned Addl. Advocate General for the Water Resource Department submits that in order to resolve the

controversy on the birth date, a verification request was made to SEBA and in turn, the Registrar of SEBA under their letter of 29.1.2010 had

informed that Jadav Chandra Majumdar, who appeared in the HSLC examination in 1973 was aged about 23 years 8 months 2 days (not 16 years), as

per the records in SEBA. On this basis, the retirement of the petitioner w.e.f. 16.7.2010 at the age of 60 years, is supported by Mr. Goswami.

6. The learned SEBA Counsel Mr. T.C. Chutia refers to the additional affidavit filed by SEBA on 13.6.2014, where the relevant particulars of the

students from Rampur Govt. Aided High School, who appeared in the 1973 HSLC examination, as submitted by the school headmaster, is enclosed.

The records of the examination centre at Mirza, is also appended to the additional affidavit of the SEBA Secretary. In both documents Mr. Chutia

projects that the petitioner's age was recorded as 23 years 8 months 2 days when he appeared in the HSLC examination in 1973. In other words,

his birth date will be 7.6.1949 and this will support his retirement from service on 16.7.2010.

7. The main obstacle in accepting the earlier date of birth (7.6.1949) as reflected from the above narrative, is the HSLC certificate dated 21.7.1973

(Annexure-2) which reflects that Jadav Chandra Majumdar was 16 year old when he appeared in the 1973 HSLC examination. The original copy of

this certificate is available with Mr. Matin and he produces this certificate in original to say that this was obtained from SEBA with deposit of requisite

fee of Rs.100/- on 24.7.2009.

8. The SEBA certificate should normally be accepted as a proof of age but here the difficulty is that the particulars in the SEBA certificate dated

21.7.1973 (Annexure-2) is not consistent with the records relating to the matriculation examination and the exam centre, which are annexed to the

additional affidavit filed by SEBA on 13.6.2014.

9. That apart, the petitioner was forced to retire, not on the basis of the birth date recorded in his Service Book (1.3.1957) but on the basis of re-

verification exercise arranged by the employer, through the SEBA authorities. But the petitioner was kept in dark about the entire exercise. He had no

opportunity to either produce the original SEBA certificate, or to justify his retirement much later with the birth date recorded in the Service Book. In

other words the adverse decision was taken in breach of the principles of audi alteram partem.

10. The controversy on the birth date on the basis of the available material is not capable of being resolved by the Writ Court and therefore, the

learned Counsel for the parties have jointly suggested that a re-verification exercise should be undertaken with participation of both stakeholders and

also the SEBA authorities. This appears to be the logical option for the Court as it is not possible to decide either way that the SEBA certificate issued

on 21.7.1973 (Annexure-2) and the date recorded in the Service Book, should have no role on determination of the retirement age for the petitioner.

At the same time, the records pertaining to the student who appeared in the 1973 HSLC examination which are enclosed to the additional affidavit

filed by the SEBA on 13.6.2014 suggest that the birth date of the petitioner is 7.6.1949 and on that basis, he was correctly made to superannuate in

July, 2010.

11. Confronted with the above scenario, it would be appropriate to direct the Chief Engineer of the Water Resource Department to undertake a re-

verification exercise on the correct date of birth for the petitioner. The participation of the petitioner as well as the SEBA authorities must be ensured

in the process and close attention must be paid to the 1973 HSLC certified issued on 21.7.1973 (Annexure- 2) by the Secretary, SEBA. The original

certificate produced by Mr. Matin is shown to everyone in Court and prima facie, no interpolation is seen in that certificate. But surprisingly the

contents of this certificate do not match with the other contemporaneous records relating to 1973 HSLC examination, which are enclosed to the

additional affidavit of the SEBA. The retirement of the petitioner on attainment of 60 years as was ordered on 16.7.2010 (Annexure-8) by the

Executive Engineer, will abide by the outcome of the finding of the Chief Engineer. It is ordered accordingly.

12. With the above order, the case stands disposed of. No cost.