
(2016) 03 GAU CK 0045
In the Gauhati High Court
Case No : W.A. No. 72 of 2016

Jogeshwar Baruah

APPELLANT

Vs

State of Assam & Others

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Citation : (2016) 4 GauLJ 5 : (2016) 3 GauLR 812

Hon'ble Judges : Ajit Singh, C.J. and Manojit Bhuyan, J.

Bench : Division Bench

Advocate : D. Das, H. Nath, R. Sharma and R. Sensua, Advocates, for the Appellant; B. Goyal, Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, C.J.— Heard Mr. D Das, learned counsel for the appellant and Mrs. B. Goyal, learned Govt. Advocate for the respondents on admission of this writ appeal.

2. This intra-court appeal is directed against the order dated 16.12.2015 passed by the learned Single Judge of this Court whereby, he has dismissed the appellant's WP(C) No. 2414/2015.

3. In 1973, the appellant had appeared in the High School Leaving Certificate Examination conducted by the Board of Secondary Education, Assam. As per the matriculation certificate issued by the Board, his age, as on 1.3.1973, was 17 years 11 months, meaning thereby that his date of birth was 31.3.1955. After about more than 10 years, the appellant appeared before the Assam Public Service Commission in the Combined Competitive Examination. He, in the application submitted for examination, disclosed his date of birth as 31.3.1955. Not only this, when he entered Government service, in the service book also his date of birth was recorded as 31.3.1955. On the basis of this entry made in the service book his date of retirement was 30.4.2015. It is to be noted that the appellant is well educated and has served the State of Assam on the posts of

Additional Deputy Commissioner and Joint Secretary to the Govt. of Assam, Sports and Youth Welfare Department. And at the fag end of his career i.e. one year prior to the date of retirement, he made a representation for correction of his date of birth. He submitted therein that his correct date of birth is 26.3.1957 and not 31.3.1955. The representation however was rejected on the ground that under Rule 8(c) of Fundamental Rules and Subsidiary Rules request for correction of date of birth should not be entertained within 3 years of superannuation.

4. The appellant had even approached the Board for correction of his date of birth in the matriculation certificate. And its Chairman vide order dated 10.4.2015 declared that the age of the appellant as on 1.3.1997 was 15 years 11 months 25 days instead of 17 years 11 months which was certified earlier. The Chairman also directed for the correction of entry in the record. Consequently, duplicate matriculation certificate was issued in favour of the appellant on 17.4.2015 wherein, his age, as on 1.3.1973, has been declared to be 15 years 11 months 25 days. It is on the basis of this change made in the matriculation certificate the appellant filed a writ petition for a direction that he be allowed to continue in service upto 31.3.2017 instead of 30.4.2015. But the learned Single Judge disagreed with the appellant and by the impugned order has dismissed the writ petition.

5. As already seen above, the appellant is well educated. He has also served the State Government in high cadre posts. As per initial matriculation certificate, his age, as on 1.3.1973, was shown to be 17 years 11 months i.e. his date of birth as 31.3.1955. For long 40 years, he did not take any steps to get the matriculation certificate corrected. He also did not make any request to the Personnel Department for correction of his date of birth prior to 3 years of superannuation. It is not in dispute that in the record of Personnel Department, the entry regarding his date of birth was made on the basis of his own declaration and the matriculation certificate issued by the Board. His date of superannuation as per official record was 30.4.2015. The matriculation record of the appellant was corrected after 42 years. Therefore, merely on the basis of altered record of Board after 42 years, the Personnel Department could not have changed the service record of the appellant.

6. It is well settled that date of birth as recorded in the service book at the time of entry in Government service is deemed to be correct date of birth when the Government employee had himself declared his date of birth. It is difficult to believe that a well educated employee having remained in service for many decades on reaching the date of superannuation would discover that his age was incorrectly recorded.

7. In *Union of India v. Harnam singh*, reported in (1993) 2 SCC 162, the relevance of date of birth in the context of superannuation was summarised by Dr. A.S. Anand, J. as follows:

"A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its power regulating conditions of service, unless the services are dispersed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment, is of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allowed the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam v. Daksha Prasad Deka*, reported in (1970) 3 SCC 624, a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him." (See PP 952-953 of *Samaraditya Pal on Law Relating to Public Service*, Third Edition).

(emphasis supplied)

8. For these reasons, we find no good ground to interfere with the impugned order. The appellant has also now been superannuated. The appeal has no merit and is accordingly dismissed.