
(1995) 01 OHC CK 0030

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5387 of 1991

Karunasindhu Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 1 OLR 541

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : P.C. Acharya and J. Gupta, for the Appellant; Addl. Standing Counsel for Opp. parties 1 to 3, for the Respondent

Judgement

A. Pasayat, J.—This is the fifth journey of the petitioner to this Court on the question of his date of birth. According to the authorities, his date of birth is 25-7-1930, but the petitioner claims it to be 10-5-1934. He places reliance on several certificates issued by institutions where he claims to have prosecuted studies at different points of time. Since the authorities proposed to superannuate him on his completing 60th year, on the basis of the date of birth as recorded in the service records i.e., 25-7-1930, petitioner moved this Court earlier for interference. Earlier writ petitions were disposed of with directions. The Inspector of Schools was directed to deal with petitioner's case on consideration of all relevant materials. The Inspector of Schools before whom the petitioner was making his grievance, initially did not decide the case on merits and had not granted adequate opportunity to the petitioner. On that basis, on the four earlier occasions, matter was sent for reconsideration by the Inspector of Schools. By the impugned order dated 27-9-1991, Inspector of Schools, Bhadrak Circle, Bhadrak has found petitioner's actual date of birth to be 25-7-1930, and not 10-5-1934 as claimed by him.

2. Mr. P. Acharya, learned counsel for the petitioner submits that notwithstanding direction of this Court for considering the matter on merits, the Inspector has

failed to do so. The learned counsel for the State, however, submits with reference to the impugned order that Inspector of Schools on consideration of relevant document has concluded that the date of birth has been correctly recorded as 25-7-1930.

3. What is the exact date of birth of a person is a question of fact. In the matter of determination of the date of birth, the authority has to take note of several factors.

4. As observed by the Apex Court in the case of Director of Technical Education and another Vs. Smt. K. Sitadevi, the question relating to what is the exact date of birth, is a question of fact and the writ Court should not interfere with the finding recorded by authorities, unless the same is perverse, or unreasonable, and is not supported by any material. Date of birth of a person is intermingled with his status which is directly connected with the civil right of that person such as the right to office, right to exercise franchise, right to continue in service up to a particular age. Normally, a civil right is to be enforced in a suit since what is the date of birth of a person being an inference from proved facts is a question of fact. When an enquiry into complicated questions of fact would arise, the High Court in its discretion in appropriate cases would decline to enter upon enquiry into the same in a petition under Article 226 of the Constitution and leave the party seeking the relief to approach an appropriate Court. As observed by this Court in Laxman Swain v. Managing Director. Steel Authority of India Ltd. Rourkela and another 60 (1985) CLT 10 the date of reaching age of superannuation must be determined on the basis of service record and not on what the employee claims unless service record is first corrected. Both the employee and the employer can dispute the date of birth indicated in the service record of the concerned employee; maintained by the employer. Such a dispute is to be resolved by the employer. Where employer seeks to effect change which shall result in employee reaching age of superannuation earlier, concerned employee has to be informed of the case of employer, material in support of the case, and an opportunity has to be granted to the employee to meet the materials. Where employee seeks to change the date to gain an advantage of postponing the date of superannuation, he has to substantiate it by placing material to establish his stand.

5. In the case in hand, the Inspector has not relied on the certificates produced by the petitioner, as according to him, the certificates appeared not to be genuine. His conclusion was based on the finding that the certificates produced by the petitioner were in respect of 3 different schools, where he was shown to be a new entrant to the concerned school on first admission. Obviously the statement cannot be correct, if earlier transfer certificate was accepted to be correct. Additionally, the Inspector of Schools found that the petitioner had signed on each page of the service book wherein the date of birth was recorded as 25-7-1930, on the basis of the certificate issued by the Orissa Association of Sanskrit Learning and Culture, Puri, the copy of which, was duly, attested by a

Gazetted Officer on 12-1-1974. The petitioner had also signed on relevant pages of the service book at the time of periodic increments sanctioned by the school authorities. There was no challenge to the date of birth till 9-11-1989, when the date of superannuation was fast approaching. The conclusion of the Inspector of Schools cannot be said to be perverse or unreasonable. We find no scope for interference as the conclusions are essentially of facts.

Though not pleaded in the writ petition, petitioner prayed for a direction to the authorities to finalise his entitlements relating to pension and other retirement benefits. Even though such a prayer has not been made in the writ petition, in view of the simple nature of the prayer, we direct the authorities to work out his entitlements, if any, relating to pension and other benefits. Let the Inspector of Schools, (opp. party No.3) work out the entitlements, if any, of the petitioner within four months from the date of receipt of this order.

6. Writ application is accordingly disposed of. No costs. Requisites for communication of this order shall be filed by Monday.

P.C. Naik, J.

7. I agree.