
(2007) 09 GAU CK 0046
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 97 of 2006

K.Thanmawia

APPELLANT

Vs

State of Mizoram and Ors.

RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Citation : (2008) 1 GLR 555

Hon'ble Judges : A.B.Pal, J

Bench : Single Bench

Advocate : Rosy Lalnuntluangi , M.Zothankhuma, N.Sailo, R.Laltanpuia,
Advocates appearing for Parties

Judgement

1. I have heard learned counsel for the parties.

2. The petitioner was appointed to the post of Lower Division Assistant in the Department of Agriculture. He passed High School Leaving Certificate (HSLC) examination in 1970. This certificate issued by the Board of Secondary Education, Assam indicates his age as 16 years 10 months in March 1970. This would mean that he was born on 1.5.1953. Though at the time of entry into the service he submitted all the documents including copy of the HSLC, unfortunately in his service book the date of his birth was wrongly recorded as 1.3.1950. This wrong entry came to his notice only in 1987 when he submitted a representation to the Head of the Department seeking correction of his date of birth. On the basis of the HSL Certificate the correction was done in the service book in 1988 showing his date of birth as 1.5.1953. Long thereafter, on 8.3.2006 Under Secretary, DP & AR(GSW) made a communication to the Under Secretary, Secretary Service Wing that DP & AR has accepted 1.3.1950 as the correct date of birth of the petitioner. No reason has been recorded in the said communication why all of a sudden, after a long period of about 17 years, occasion had arisen for the DP & AR to revert to the wrong entry which was corrected by the administrative department of the petitioner in 1988. Thereafter, on 27.3.2006 a formal office order was issued by the DP & AR department which reads:

"The Government of Mizoram has accepted the first March, Nineteen fifty (1.3.1950) as the correct date of birth in respect of Pu K. Thanmawia, k Assistant, Dte. of Health Services. This issues with the approval of DP AR(GSW) vide I.D. No. GSW.22/2006/1959, dated 8/3/2006."

3. Knowing about this decision of the Government accepting a wrong date of birth, the petitioner submitted a representation on 28.4.2006 that his date of birth was corrected on the basis of the HSL Certificate which should be recorded as the only genuine document with respect to date of birth and that the office order accepting his wrong date of birth has been done without affording any opportunity to defend him. His representation was forwarded by the Additional Director of Health Services to the Secretary, Government of Mizoram, DP & AR(SSW) stating that his date of birth as per his matriculation certificate is 1.5.1953 and, therefore, the point raised by him being genuine his representation maybe considered. Thereafter, on 17.5.2006 the DP & AR requested the SA department to furnish the Register maintaining name of the Government servant and the date of birth in respect of the petitioner. In response thereto the SA department again informed the DP & AR by communication dated 23.6.2006 that in the record maintained by SAD the date of birth of the petitioner is 1.5.1953. After all these correspondence, on 25.8.2006 the Under Secretary, DP & AR has informed the Director of Health Services, where the petitioner is serving, about its inability to alter date of birth recorded in the service book of the petitioner. Aggrieved, the petitioner has approached this court for appropriate remedy.

4. The respondents have filed an affidavit in opposition contending, inter alia, that the change of the date of birth was done only in 1987 after a lapse of 14 years from the date of entry in the service on 9.2.1973 which is contrary to the provision contained in Note 6(a) under FR 56. According to the said provision such alteration should be made within a period of five years from the date of entry into the Government service. It is, thus, contended that modification of his date of birth done on the basis of representation and the matriculation certificate after such a long lapse of time cannot be sustained. The other contention is that the expert of the Forensic Science Laboratory after examination of the service book expressed the opinion that 1.3.1950 was the original entry and 1.5.1953 was the later entry regarding the date of birth of the petitioner. The other contentions adumbrated in the affidavit in opposition, have failed to explain why after a period of more than 17 years the DP & AR had occasion to accept an entry which was found to be wrong by the original department of the petitioner and which was corrected on the basis of the matriculation certificate about which there is no dispute.

5. After hearing the learned counsel at length the admitted position which has emerged may be noticed, thus:

(i) The petitioner passed matriculation examination in 1970 and the certificate which is not in dispute would show that his date of birth is 1.5.1953.

(ii) In his service book initially the wrong entry 1.3.1950, was recorded. How that wrong entry could be recorded and on what basis could not be explained by the respondents, though presumably the petitioner had submitted all his documents including the matriculation certificate at the time of entry into the service. It is the settled legal position that date of birth or age recorded in matriculation certificate shall prevail over all other documents and should be accepted as the correct date of birth of an employee. This being the position it can be safely assumed that the original entry in the service book of the petitioner was wrongly made due to oversight, which had escaped notice of the all concerned including the petitioner for quite a long period.

(iii) When this wrong entry came to his notice, the petitioner immediately made representation which was examined by the competent authority in his department on the basis of the matriculation certificate and it was found that the date of birth was wrongly recorded. Accordingly, it was corrected showing the date of birth as 1.5.1953. The petitioner was promoted to the post of Assistant in the year 1989 by an office order issued from the DP & AR and at that time there no question was raised about the correctness of the date of birth altered and recorded in his service book.

(iv) The DP & AR by (i) the communication dated 8.3.2006 (Annexure9), (ii) the office order dated 27.3.2006 (Annexure10) and (iii) the letter dated 25.8.2006 (Annexure16) which have been impugned herein have finally decided that the original wrong entry "1.3.1950" in the service book shall be the accepted date of birth of the petitioner though no reason there for has been recorded. Even in the affidavit in opposition nothing has been stated why probative value of matriculation certificate has been ignored by the DP & AR while insisting for the initial entry, which was found to be wrong by the administrative department of the petitioner.

6. It would appear from the above that the action of the DP & AR in altering the date of birth of the petitioner after 17 years is highly arbitrary, illegal and unsustainable in law for the reason that in support of such alteration it had no materials in its possession to nullify evidentiary value of the matriculation certificate and no opportunity to the petitioner was afforded before such alteration to enable him to defend his correct date of birth rectified 17 years ago on the basis of a most credible document. Arbitrariness is an element, which has no place in exercise of executive authority in accordance with the rule of law. There is and cannot be any law nor even FR 56 which puts permanent embargo in rectifying a bona fide error. The powerful authority must not run amok and abuse power. "Abuse" carries no innuendo of malice or bad faith. Government departments may misunderstand their legal position because the law they administer is often complex and uncertain. Abuse is, therefore, inevitable so is the necessity to keep them within their legal bounds. The impugned decision of the DP & AR in communication dated 8.3.2006, 27.3.2006 and 25.8.2006 suffers from this vice. It is, therefore, unsustainable in law and liable to be set aside and

quashed, which I hereby do.

7. In view of the above, the writ petition is allowed. There shall be no order as to cost.