
(1994) 09 GAU CK 0034
In the Gauhati High Court
Case No : Civil Rule No. 1001 of 1994

M.A. Jalil, Keikhoo

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Citation : (1995) 1 GLR 373

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : T . Nandkumar Singh, for the Appellant; K.I. Singh, Sr. Govt. Advocate and N. Surjamani Singh, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—By this writ petition the Petitioner has assailed the order dated 2nd September, 1994 (Annexure -A/12) rejecting the Petitioner's prayer to change the date of his birth from 18.9.1936 as originally recorded in his service book to 1.3.1941.

2. I have heard Mr. T. Nandkumar Singh, learned senior counsel for the Petitioner as well as Mr. K. Irabot Singh, learned senior Government Advocate.

3. The facts leading to the filing of the present petition are these Petitioner entered service as L.P.C. on 24.12.1956 in the Election Office. The service of the Petitioner, thereafter transferred to Youth Affairs & Sports, Govt. of Manipur Presently he is holding the post of Special Officer in the Directorate of Youth Affairs & Sports, Govt, of Manipur. The date of birth recorded in his service book at the time of entering the service was as on 18.9.1936. According to date recorded in his service book the Petitioner is due to retire on superannuation with effect from 30.9.1994. It appears from Annexure- A/3 and Annexure- A/4 the Petitioner submitted an application dated 3.11.1983 and 25.6.1985 to change his date of birth from 18.9.1936 to 1.3.1941, on the basis of Matriculation Certificate which were duly recommended by the Director, Youth Affairs & Sports, By an

order dated, 7th November, 1991 the Government of Manipur changed the date of birth of the Petitioner from 18.9.1936 to 1.3.1941, purportedly on the basis of the representation submitted by the Petitioner. The aforesaid order dated 7th November 1991 changing the date of birth of the Petitioner from 18.9.1930 to 1.3.1941 has been cancelled by another order dated 25th May, 1993 (Annexure-A/8). The order dated 25th May, 1993 was the subject matter in Civil Rule No .756 of 1993. This Court by an order dated 29th July, 1994 disposed of the writ petition by quashing the impugned order dated 25th May 1993 as being violative of the principle of natural justice. This Court further directed the competent authority to give show cause notice to the Petitioner within 15 days and passed necessary appropriate order as deem fit and proper after hearing the Petitioner. Pursuant to the aforesaid direction the Petitioner was given show cause by a Memorandum dated 10th August, 1994 (Annexure-A/10) and after showing cause and after hearing the Petitioner the impugned order dated 2nd September, 1994 has been passed (An-nexure-A/12), rejecting his claim.

4. It is now established principle of law that an application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned.

5. In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, the Apex Court observed, in paragraph 5 of the judgment:

An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain re-action, inasmuch as other waiting for years", below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as because of the correction of date of birth, the officer concerned, continues in office in some cases for years within which time many officers who are below him in seniority waiting for there promotion, may loss the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his dale of birth. As such unless a clear case an the basis of materials which can be held to be conclusive in nature is made out by the Respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible.

6. In Union of India Vs. Harnam Singh, at page 167 it was pointed out:

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 dale 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.

7. Further, in *Union of India (Supra)* the Apex Court has dealt with the interpretation of Note 5 to FR 56 (m) as incorporated in 1979. It was pointed out at page 170 that:

FR 56 was intended to discourage stale claims and belated application for alteration of date of birth recorded in the service book at the time of initial entry.

It was further pointed out at Page 170-171 that:

It is the duty of the courts, and tribunals to promote that intention by an Intelligible and harmonious interpretation of the rule rather than choke its operation.

The interpretation has to be the one which advances the intention and not the one which frustrates it.

8. Reading of the two authorities in juxtaposition would clearly show that the sole purpose of introducing Note 5 to FR 56 (m) was intended to discourage stale claims and belated applications for alteration of date of birth recorded in the service book at the time of initial entry.

9. Mr. T. Nandakumar Singh, learned Counsel for the Petitioner heavily placed reliance on the observation made by the Apex Court in *Union of India (Supra)*. It was pointed out by the Apex Court at page 171 as under:

It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those Government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority.

10. According to Mr. Nandakumar that the Petitioner has filed an application in 1983 for correction of the date of his birth from 18.9.1936 to 1.3.1941 on the basis of Matriculation certificate and the said application has been made within 5 years from 1979 and as such the case of the Petitioner deserved consideration by the competent authority, Respondents have in their counter admitted that the claim for correction of age by the Petitioner was first made in 1983. Therefore the application submitted by the Petitioner in 1983 for correction of his age was made within 5 years after Note 5 to FR-56 (m) was incorporated in 1979.

11. Reverting to the facts of the case the undisputed facts are these Petitioner entered into service as L.D.C. on 24.12.1956. His date of birth at the time of entry into service was recorded as on 18.9.1936. In 1983 he filed an application for change of his date of birth from 18.9.1936 to 1.3.1941 on the basis of Matriculation certificate.

12. At the time of hearing of this writ petition Mr. K. Irabot Singh produced the original service book of the Petitioner. On perusal, the date of birth at the time of entry in the service book has been clearly recoded as on 18th September, 1936 in his own hand. The Petitioner also filled up all the columns in his own hand, put his left thumb impressions at several places and also put his signature in the service book. At the time of hearing of this petition Mr. Nandakumar produced the original certificate of Matriculation examination dated 4th August, 1956 issued by the University of Gauhati. The Matriculation certificate as borne out from the certificate itself was issued on 4th August, 1956 the Petitioner had entered into service on 24.12.1956. i.e. after he obtained the Matriculation certificate dated 4.8.1956 Therefore, it can not be said that the Petitioner had at the time of his entry into service no knowledge about his date of birth recorded in Matriculation certificate It can not be said to be the clerical error or through inadvertance. On the other hand the claim of the Petitioner to change his date of birth was on the basis of Matriculation certificate.

13. The next question, therefore, to be considered is that whether the Petitioner is entitled any relief. Petitioner knew very well the date of birth recorded in his service book as on 18.9.1936. He also knew very well the age recorded in his matriculation certificate received on 4.8.1956. He has entered into service on 24.12.1956 after he received matriculation certificate. For the first time he made an application in 1983 for change of his date of birth from 18.9.1936 to 1.3.1941 after about 27 years of culpable delay. His past inaction for about 27 years from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was incorrect, This apart, either of the two age recorded is false to the knowledge of the Petitioner. He is not permitted to chose his age to Suit his own convenience at the cost of others, Petitioner, has not approached the Court with clean hand. In such a situation the age recorded in his service book at the time of entry of service must be accepted in computing the superannuation age of the Petitioner.

In the result, there is no merit in this writ petition and the same is accordingly dismissed, however, without costs.