

(1973) 08 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 409 of 1971

Makradhwaj Singh

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 08-08-1973

Acts Referred:

Citation : (1978) ILR (MP) 654 : (1974) JLJ 71 : (1974) MPLJ 31

Hon'ble Judges : M.L. Malik, J;G.P. Singh, J

Bench : Division Bench

Advocate : R.P. Pandey, for the Appellant; K.K. Adhikari, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.

Petitioner Makradhwaj Singh joined the Rewa State service in the year 1940 as a clerk. He was transferred to the Revenue Department in January, 1941, and came to be appointed as Naib Tahsildar on 11th March, 1949. He was a confirmed Naib Tahsildar when the Rewa State was merged into Vindhya Pradesh. He was later promoted as Assistant Settlement Officer (a rank equivalent to that of a Tahsildar) on 31-10-1956.

Upon the formation of the new State of Madhya Pradesh on 1-11-1956, the petitioner was absorbed in the services of the new State and was promoted as Deputy Collector on 13-2-1969.

The petitioner continued in service till 22nd April, 1971. By order of the Government dated the 12th July, 1971 [Order No. 4703/2777/1(2)] the petitioner was retired from service with effect from the 22nd of April, 1971. By an earlier order dated the 27th January, 1970 (Annexure "E"), he was granted an extension in service for a year, with effect from the 8th April, 1970. When the petitioner received this order of extension, he made a representation in February, 1970, that his date of birth according to his Service Book Was of the year 1917

and he would complete the age of superannuation in July, 1972; there appeared some mistake as regards his date of birth which needed correction.

In response, probably, to this representation, the Government sought clarification from the petitioner by their letter dated the 3rd April, 1970, to explain how the date of birth was shown as of the year 1917 when as per matriculation certificate the date of birth was 8th April, 1915.

The petitioner gave his explanation on 15-5-1970 reiterating that 1917, the year of birth, shown in the service book was as per horoscope which was produced at the time of entry into service. That the matriculation certificate recorded incorrect age. The school teacher, at the time of admission, noted the date of birth as per his estimation without verifying it from any document or without obtaining a declaration from the petitioner's guardian. That the Rule 84 of the Financial Code Volume I made the record of the date of birth in the Service Book absolutely conclusive and no alterations could be made by agitating the issue.

The explanation offered by the petitioner did not find favour with the Government. The Government had already communicated to the Accountant General that they had accepted the petitioner's date of birth to be 8th April, 1915. The Service Book entry recording "1917" was struck off and the one according to matriculation certificate, retained.

The petitioner's grievance before this Court is that he was not given a reasonable opportunity of showing cause; he was not heard on the evidence he possessed to convince the authorities that he was born in the year 1917; and that; the date of birth mentioned in the matriculation certificate was incorrect. His order of retirement was, in consequence, contrary to rules since he had not reached the age of superannuation. That the decision of the Government to strike out the entry made in the Service Book without hearing the petitioner, was violative of the principles of natural justice.

The petitioner prays that the orders of the Government retiring him from service with effect from 22nd April, 1971, be quashed, so also the order deleting the year of birth "1917" shown by the petitioner in the Service Book.

In the return which the Government have filed, the plea taken is that the year "1917" that happened to be mentioned in the Service Book was, it appears, without verification or investigation, otherwise the date and the month should also have been mentioned. After the merger of the State of Vindhya Pradesh into the State of Madhya Pradesh, verification of the service records were undertaken and the petitioner was asked to give his date of birth. On page 3 Part II of his Service Book, the petitioner made the entry showing the date of birth to be the 8th April, 1915, as per matriculation certificate. The entry is signed by the petitioner. The earlier entry which only mentioned the year 1917 was rendered superfluous and could any time be deleted.

That it was the second part of the Service Book, prepared after reorganization,

which governed the petitioner's service conditions and the Government could without enquiry, pass orders of retirement on its basis. In further support of their contention, the Government relied on the list of Tahsildar and Naib Tahsildars prepared and corrected upto 1st November, 1956. The petitioner's name appears at serial No. 17 and in column 3 relating to date of birth, it is shown April 15. This list was circulated to all Tahsildars and Naib Tahsildars with a request that errors and omissions should be brought to the notice of the Government at once with necessary proof. The petitioner never objected to the particulars given in the list. It would be reasonable to, presume that the petitioner was anxious to see this list and know where in seniority he was placed in the new set up and whether his service particulars were correctly recorded.

Another document on which the Government rely is the declaration dated the 24th February, 1960, whereunder the petitioner had given his service particulars since 1940 to 1956. In column 3, he has shown his date of birth to be the 8th April, 1915 (Annexure 1).

The petitioner sought permission to file a rejoinder and pleaded that, the second part of the Service Book did contain an entry in his handwriting showing the date of birth to be 8th April, 1915, as per matriculation certificate, but he said, the entry was made on the insistence of Shri R. L. Gupta, the Settlement Officer some time in the year 1958. He, at the same time, retained the earlier entry showing the year of birth to be 1917 which was in fact the correct year of birth and could not be erased without notice to him to" show cause.

That the Settlement Officer had been sending annual establishment returns and the one sent by the petitioner in the year 1969, mentioned his date of birth to be 1917 (Annexure M-3). No objections were raised.

The petitioner contended that if the Service Book raised doubt as" regards the date of birth, and as there appeared conflicting dates, the Government could resolve the doubt only after hearing the petitioner and after appraising the evidence he was going to produce.

Having heard the parties at length, we are of the opinion that the petition must be dismissed on three counts: (i) that there had been undue delay on the part of the petitioner in moving this Court for the discretionary relief, (ii) that the relief should be refused on the ground of acquiescence and (iii) that the petitioner was guilty of suppression and mis-statement of material facts.

It was in the year 1957 when for the first time after the reorganization of States, the petitioner was called upon by the Settlement Officer to disclose his date of birth. The year 1917 mentioned in the Service Book did not seem a proper record as the date and the month of the petitioner's birth were not mentioned and the Service Book indicated nothing to show that the entry was verified with reference to any confirmatory documentary evidence like the matriculation certificate or the Municipal birth certificate. The petitioner produced the matriculation certificate and entered the date of birth as 8th April, 1915, not with an idea of

creating conflict, nor do we have reason to believe that the entry was made on the insistence of Shri R. L. Gupta. Presumably, he made the entry having reason to believe that the same shall be acted upon. Whatever be the real intention in the mind of the petitioner, any reasonable man would accept the declaration to be true and act on it. The rule 84 of the Financial Code on which the petitioner relied, required a declaration about the date of birth as could be confirmed by documentary evidence like a matriculation certificate. A duty was cast upon the petitioner to disclose his date of birth along with the confirmatory evidence. He chose to produce the matriculation certificate. He entered the date as shown therein without protest. He was not debarred from producing the horoscope instead and asserting that the real date of birth was 13th Shukla Samvat 1974 equivalent to 20th August, 1917. He could agitate the issue then and get a decision on the question of his date of birth. He has come to the Court thirteen years after when the Government had chosen to act on his own admissions; they gave him extension in service for a year and retired him with effect from the 22nd April, 1971.

The petitioner was also guilty of acquiescence. He accepted 8th April, 1915, to be his date of birth in a subsequent declaration made by him on the 24th February, 1960 (Annexure 1). He also did not object to this date being shown in the list of Tahsildars and Naib Tahsildars prepared in 1958.

The case also attracts the doctrine of estoppel by negligence. The petitioner allowed the two entries to continue and thereby led the Government to choose the entry which prima facie appeared genuine and had the support of confirmatory evidence. The petitioner cannot now turn round and say that he has been prejudiced. He should have taken steps to get one of the entries prejudicial to him scored out. He had permitted them to continue and the Government could legitimately act on the entry which was supported by the petitioner's matriculation certificate. It was customary with the Government to rely on the matriculation certificate mostly, for purposes of date of birth. The petitioner's negligence lay in permitting; the two entries to continue, and the latter entry in particular, to be construed as his own admission in the matter of date of birth.

We also find the petitioner guilty of suppression and mis-statement of facts inasmuch as he did not disclose initially that he had himself entered in part II of his Service Book the 8th of April, 1915, to be his date of birth. He also did not speak about the declaration he had submitted in February 1960. If he was forced to make the entry as he later contended, that would be a disputed question of fact on which this Court would not go in evidence. In so far as the admission in the declaration of February 1960 is concerned, there is no such plea of undue influence or coercion or misapprehension. Prima facie, however, we would accept the two documents having been voluntarily executed by the petitioner.

Counsel for the petitioner relied on Binapani Dei's case reported in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, in support of his contention that a public servant must be given an opportunity to prove his true date of birth before

he is superannuated. In that case, the date of birth recorded in the Service Book was sought to be changed as a result of an enquiry which was held in a manner violative of the principles of natural justice. Dr. Binapani was given no opportunity to meet the case of the State.

In the present case, however, the question is entirely different. No enquiry was made since the Government was acting on the petitioner's own admissions and declarations. The original entry showing the date of birth as 1917 was incomplete. It did not disclose the date and the month nor did it appear to have been verified with reference to any document like a matriculation certificate. The petitioner was called upon to supply the omissions and it appears, he voluntarily gave the date as 8th April, 1915 as per matriculation certificate, knowing that this would be the date which would govern his superannuation. This happened in 1957. The earlier entry was rendered superfluous. It could be deleted any time. The petitioner was entitled to no notice nor could he claim enquiry into his real date of birth. The Government was after all acting on the petitioner's own admissions.

In the result, therefore, the petition must fail and is hereby dismissed. There will be no order as to costs.