
(2015) 08 JH CK 0077

In the Jharkhand High Court

Case No : Writ Petition (S) Nos. 3285 of 2013 and 6080 of 2014

Member Secretary, Central Silk Board and Others

APPELLANT

Vs

V. Divakaran and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Citation : (2015) 08 JH CK 0077

Hon'ble Judges : Virender Singh, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Indirajit Sinha, for the Appellant; M.M. Pal and Mahua Palit,
Advocates for the Respondent

Judgement

Virender Singh, C.J—Both the writ petitions are arising out of a common order dated 15.05.2013 passed in O.A. No. 72 of 2011(R) by the Central Administrative Tribunal, Circuit Bench at Ranchi and as such they are being heard together and decided by this common judgment.

W.P.S No. 3285 of 2013

2. Fact giving rise to the filing of the present writ is that in the school register the date of birth of the Respondent No. 1 was recorded as 10.03.1952 and the father of the respondent No. 1 represented before the authorities on 25.01.1963 and 12.12.1963 by alleging that the date of birth of the respondent No. 1 has been wrongly recorded as 10.03.1952 in place of 08.03.1954 in the school register but the request was turned down vide order date 12.12.1963 and dated 16.03.1964 respectively. In the meantime the respondent No. 1 joined Central Silk Board on 11.07.1977 as Upper Division Clerk and in the Service record also the date of birth of the respondent No. 1 was recorded as 10.03.1952. However, the respondent No. 1 continued to make representations before the authorities for making correction in the date of birth. Finally, the Hon'ble Governor of Kerala by office order dated 16.12.2011 condoned the delay and accorded sanction under Rule 3, Chapter VI K.E.R. to apply before the Commissioner for Government

Examination to consider his request for correction of date of birth. The Mahanagar Palika, after inquiry, corrected his date of birth of the respondent No. 1 as 08.03.1954 and accordingly fresh birth certificate issued on 19.01.2012. Thereafter, the respondent No. 1 approached before the Commissioner, Government of Examination who by order dated 17.03.2012 gave direction to the Secretary and pursuant to that direction by order dated 20.03.2012 the date of birth of the respondent has been corrected in Secondary School Leaving Certificate (hereinafter referred to as S.S.L.C) as 08.03.1994 in place of 10.03.1952. After correction of the date of birth, the respondent filed representation on 27.02.2012 for making necessary correction in the Service Book but the same was rejected by the Director In-charge, Central Silk Board vide order dated 17.03.2012. The respondent No. 1 filed O.A. No. 72 of 2012 (R) before the Central Administrative Tribunal, Patna Bench Ranchi and the same was allowed by order dated 15.05.2013 by directing the authorities to allow the respondent No. 1 to continue in his job till the actual date of his retirement by treating his date of birth as 08.03.1954 after making necessary correction in the service book. The authorities were also directed to treat the intervening period from 31.03.2012 till resumption of duty as continuous service giving the notional benefit for that period. Hence, the present writ.

3. The learned counsel for the petitioner, Mr. Indrajit Sinha, has assailed the impugned order mainly on the grounds that as per rules position any alteration in date of birth shall not be entertained after preparation of the service book or after completion of the probation period or after a period of five years limitation period. He further submitted that the service record may not be corrected at the fag end of service. He further submitted that in the order dated 16.12.2011 itself it has been mentioned that this order will not confer any right to the applicant that his date of birth in school record/SSLC Book or service records will be corrected.

4. Per contra, the learned Senior Counsel appearing for the respondent No. 1, Mrs. M.M. Pal submitted that there was a bonafide clerical mistake in the S.S.L.C and accordingly wrong entry was recorded in the service record and now when the said bonafide mistake had been rectified as 08.03.1954 in place of 10.03.1952, it is fit to be carried out in the service book. It is further submitted that unless such mistake can be rectified by the competent authority the applicant was not in a position to ask the change of his date of birth and thus his case cannot be rejected on the ground that the application for correction has been made at the fag end of service.

5. Heard the learned counsel for the parties and perused the materials placed on record. The Hon''ble Apex court as well as this court in a catena of decisions laid down the propositions about the correction of date of birth in the fag end of service. In the case of Kamta Pandey Vs. B.C.C.L. and Others, (2007) 3 JCR 681 : (2009) 1 SLR 532 , the Full Bench of this court after considering the various judgment of Hon''ble Apex Court held in para 27 that normally the

employee will not be permitted to apply for the change of his date of birth at the fag end of service but if the court finds that there has been real injustice to the persons concerned and his claim for the correction of date of birth has been made in accordance with the procedure prescribed and when a clear case relating to the date of birth is made out on the basis of clinching materials then necessary direction to make a declaration for change of date of birth can be given.

From the above proposition, it has become very clear that even at the fag end of service the court may give the direction for correction of date of birth if real injustice has been caused to the person and there is a clear case for correction of date of birth.

6. Coming to the facts of the present case. The admitted fact is that in the school register the date of birth of the respondent No. 1 was recorded as 10.03.1952 and father of the respondent No. 1 represented continuously to the authorities for rectification of the date of birth on the ground that the elder brother of the respondent No. 1 was born on 02.09.1952 and thus he cannot be born on 10.03.1952 and in support of that he had forwarded the copy of the birth certificates No. 979 and 980 dt. 18.09.1962. After a long effort of the father of the respondent No. 1 and the respondent No. 1, the Government of Kerala by order dated 16.12.2011 condoned the delay and accorded sanction for consideration of the application for correction of date of birth of the respondent No. 1 but at the same time a stipulation was made that this order alone will not confer any right to the applicant that his date of birth in school records/SSLC Book or service records will be got corrected. Thereafter, Mahanagar Palika corrected the date of birth of the respondent No. 1 in the Birth Certificate and the date of birth recorded in the S.S.L.C was also rectified by the Competent Authority.

7. From the above admitted fact it is clear that due to the laches on the part of the Government, the apparent mistake in the date of birth was not corrected in spite of the several representation given by the father of the respondent No. 1 and also by the respondent No. 1 and for that reason bonafide mistake was committed in the service record by entering the wrong date of birth as was entered into the S.S.L.C. Finally the correction was made in the birth certificate as well as in the school leaving certificate after following due process of law and as such the respondent has been punished for so many years without any fault on the part of him which caused great injustice to him. The circumstances were beyond the control of the respondent No. 1 and he had made all the effort for making correction since from the beginning but the correction was not made by the authorities for a several years. So far the stipulation given in the order dated 16.12.2011 whereby the respondent No. 1 was restricted from getting any correction in the S.S.L.C and in the service record, we do not find the stipulation as justifiable for the reason that a person, who had run from pillar to post for a relief, has been granted the same but at the same time he has been restrained

from enjoying the fruit of it. The contention of the petitioner that the application for correction of date of birth was made within five years or not, is not very much relevant in the present scenario as the correction of date of birth in the service book was contingent on the correction of S.S.L.C and the respondent No. 1 immediately after the correction the S.S.L.C had applied for correction in the service book. In our opinion, the learned Tribunal has after considering all the aspect has rightly concluded that as the date of birth of the respondent No. 1 was subsequently rectified as 08.03.1954 the service book should also be rectified accordingly, otherwise, prejudice will be caused to the respondent No. 1.

W.P.S No. 6080 of 2014

8. Aggrieved with the part of the direction whereby the respondents (petitioners in W.P.S No. 3285 of 2013) are directed to treat the intervening period from 31.03.2012 till resumption of duty as continuous service giving the notional benefit for that period, the petitioner (respondent No. 1 in W.P.S No. 3285 of 2013) has filed the present writ and claiming that he is entitled to the full back wages for the intervening period from 30.09.2012 to the date of his actual superannuation i.e. 30.03.2014.

9. The learned Senior Counsel for the petitioner, Mrs. M.M. Pal, submitted that at the time of filing of O.A. the petitioner was in service and he was made to retire during the pendency of the O.A. The learned Tribunal by order dated 19.03.2012 had decided that whatever action is taken by the authorities with regard to retirement of the applicant/continuance in service beyond 31.03.2012 will be subject to outcome of this O.A. and as such even after allowing the O.A. the learned tribunal has committed error in not giving full back wages with all consequential benefits.

10. Mrs. M.M. Pal in support of her contention has relied upon para 22 of a judgment of the Hon'ble Supreme Court in the case of Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Co. Ltd. and Another, (2014) 5 AD 369 : (2014) AIRSCW 3298 : (2014) 142 FLR 236 : (2014) 6 JT 622 : (2014) LabIC 2847 : (2014) 2 LLJ 513 : (2014) 2 LLN 301 : (2014) LLR 687 : (2014) 5 SCALE 285 : (2014) 6 SCC 434 : (2014) 2 SCT 765 wherein the appellant was awarded full back wages from the date of his premature termination till the date of correct superannuation.

11. From perusal of the aforesaid judgment it appears that the fact of that case was slightly different from the case in hand. In that case the date of birth of the other employees were corrected on the basis of the affidavit but the appellant's date of birth was not corrected in spite of the court order and without any hearing of the appellant he was forcefully retired. On the other hand in the case in hand during the pendency of the O.A. the petitioner was in service and he had filed one petition for stay being M.A. No. 25 of 2012 but the same was rejected on 13.12.2012 being infructuous as the petitioner was made to retire on 31.03.2012. Thus the learned Tribunal had not stayed the impugned order dt. 17.03.2012 and by order dt. 19.03.2012 it was left open for the respondent to

either continue the applicant or superannuate him and accordingly the respondent had chosen to superannuate the petitioner and as such during the period to which the O.A. was pending before the Tribunal, the respondents are not liable to pay any back wages because till that time they were not at fault. However, after the decision of the Tribunal i.e. from 15.05.2013, the petitioner represented to the Director on 29.05.2013 and before the Joint Secretary (Silk) and Vice Chairperson through e-mail and requested them to give him joining as per the term of the order of the CAT but no heed was paid by them rather the respondent filed writ petition before this court on 30.05.2013 and till date stay has not been granted in the matter. Mere filing of the writ does not Ipso facto stay the impugned order. Thus the respondent did not comply with the order of the Tribunal and is liable to pay the back wages from the date of the order i.e. 15.05.2013 to the actual date of retirement by treating the date of birth as 08.03.1954.

12. For the reasons as aforesaid W.P.S No. 3285 of 2013 is dismissed and W.P.S No. 6080 of 2014 is partly allowed and the authorities (petitioners in W.P.S No. 3285 of 2013) are directed to correct the date of birth of the employee (respondent No. 1 in W.P.S No. 3285 of 2013) in his service book as 08.03.1954. Since the retirement date of the employee, by treating the date of birth as 08.03.1954, has already been passed, the authorities are directed to pay the retiral dues alongwith all consequential benefits having taking into consideration the date of birth of the employee as 08.03.1954. It is further directed to the authorities to pay the back wages of the employee from the date of judgment of the CAT i.e. on 15.05.2013 to the actual date of retirement by treating the date of birth as 08.03.1954. The above directions shall be complied with within one month from the date of the order. Ordered accordingly.