
(2009) 09 CAL CK 0041
In the Calcutta High Court
Case No : F.M.A. No. 1366 of 2008

Milan Krishna Roy

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 32

Citation : (2009) 09 CAL CK 0041

Hon'ble Judges : Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : K.K. Moitra and Anindya Lahiri, for the Appellant;Jahar Lal De and Deepak Jain, for the Respondent

Final Decision : Dismissed

Judgement

Tapan Mukherjee, J.—This appeal at the instance of the writ petitioner is directed against the judgment and order passed by Learned Single Judge in W.P. No. 17094 (W) of 2003 dismissing the writ application.

2. The appellant joined the service of Allahabad Bank in 1977 as a Field Officer in Scale I category. He was promoted to the post of Deputy Manager and then Senior Manager in the Scale III. His date of birth was 26th October 1948. At the time of joining in the Bank service appellant submitted all the necessary credentials including birth certificate. He informed bank authorities that his correct date of birth was 26th October 1948 instead of 1943 as inadvertently recorded in the matriculation certificate. After passing matriculation examination he got scholarship for intermediate study and news was published in local daily of Chitagaon now in Bangladesh called Dainik ITTEFAQ. According to the appellant, his father collected the corrected date of birth from local Prasuti Sadan at Chitagaon and the respondent authorities duly took note of the exact date of birth and subsequently recorded the same in the seniority list of officers. The seniority list published in the year 1992 reflected that his actual date of birth is 26th October 1948. Date of retirement of the appellant-writ petitioner was 25th

October 2008 on his completion of 60 years. In the year 1993 the appellant applied for House Building Loan which was sanctioned by the respondent authorities with a repayment schedule of Rs. 2225/- to be paid by the petitioner in 192 equal monthly instalments. The number of equal monthly instalment was calculated on the basis of his proposed date of retirement on 25th October 2008. It has been submitted on behalf of the appellant that to his utter shock and surprise the appellant received a letter dated 24.9.2003 signed by the respondent No. 5 intimating therein that he would retire on 31.10.2003 on his attaining superannuation on 25.10.2003 and thus the respondent Bank sought to cause his pre mature retirement without allowing to remain in service for about 5 years more. As the appellant was served with notice of alleged premature retirement, writ petition was filed.

3. The respondent-Bank categorically denied that claim of the appellant contending that the date of birth of the said appellant was not 26th October 1948 but the same was 26th October 1943. In the application for appointment the appellant unequivocally stated that his date of birth was 26th October 1943.

4. Learned Single Judge answered the issue of date of birth against the appellant/writ petitioner and dismissed the writ petition.

5. Being aggrieved the appellant/writ petitioner preferred this appeal.

6. The entire edifice of the appellant's case rests on the foundation regarding date of birth. According to the writ petitioner-appellant his date of birth was 26th October 1948. But according to Bank the appellant/writ petitioner's date of birth was 26th October 1943. In support of the respective contentions learned Counsel of both parties have thrown arrows of attack placing reliance further upon some affidavits and counter affidavits filed in course of hearing of appeal before the Division Bench.

7. Learned Senior counsel for the appellant Mr. Kashi Kanta Moitra contended that before very date of joining the service, the appellant did not leave any stone unturned to disclose in his letter dated 26th February 1977 that his date of birth was erroneously recorded as 26th October 1943 in stead of 26th October 1948 in the matriculation certificate maintained by the then East Pakistan Board of Secondary Education Daka and approach for correction of the said date of birth was made to the appropriate authority and necessary corrected documents in support of his correct date of birth would be submitted in due course. The said letter was duly received by the Bank. As the correct date of birth was not available so the appellant was literally compelled to write his wrong date of birth as 26th October 1943 in stead of 1948 in confidential report file.

8. Mr. Moitra further contended that on 6.9.1986 the appellant submitted another representation directly to the General Manager (P & A) through Chief Manager, Agricultural Credit Department Head Office soliciting the authority's help in making necessary correction in the service record with regard to his correct date of birth as 26th October 1948. Accordingly, the respondent-Bank published

appellant's correct date of birth as on 26th October 1948 in the seniority list of 1986. But the appellant was not informed of the said incorporation of his correct date of birth.

9. Mr. Moitra also contended that according to the correct date of birth the appellant was scheduled to retire on 31st October 2008 and he was called for an interview for promotion to the next higher scale IV on 8.2.2003. Though as per Allahabad Bank (Officer) Service Regulation 1979 and relevant promotion policy for the officer minimum 5 years of service is required to be left for that promotion yet he was called for an interview and such interview would testify to the fact that the appellant's date of birth was not in the year 1943 but in the year 1946 and he was left with 5 more years' more service to retire from the date of interview.

10. Mr. Moitra contended that in the seniority list appellant's correct date of birth was recorded from the year 1986.

11. Mr. Moitra further contended that appellant was entitled to House Building Loan of Rs. 1,05,000/- for purchase of land on 5.3.1992. On 1.4.1992 the Assistant General Manager, Zonal Office, Kharagpur informed the Regional Officer that Personnel and Administration Department, Head Office had conveyed them that they had already recorded the corrected date of birth of the appellant as 26th October 1948 in the C.R. File maintained by them and Regional Manager was requested to calculate or fix the number of equal monthly instalments of House Building Loan based on corrected date of birth of the appellant facilitating smooth repayment of loan instalments.

12. Mr. Moitra contended relying on the said letter that it is proved that date of birth of the appellant-writ petitioner was corrected as on 26th October 1948 and incorporated in the confidential report.

13. It was further contended by Mr. Moitra that the appellant became eligible for House Building Loan and applied for the same on 20.12.1991. Thereafter, the appellant applied for House Building Loan on 5.3.1992. On 31.3.1992, the appellant wrote a letter to the Regional Manager R.O. Barasat for proper follow up and to know the fate of the House Building Loan. The said letter was returned to the appellant with remark "Sanction pending for date of birth". Thereafter, in terms of letter dated 1.4.1992 and 1.9.1992 House Building Loan of the appellant was sanctioned as those letters proved that date of birth was corrected. Equal monthly instalment of the House Building Loan for repayment was fixed up-to March 2007. So, the said fact proves that under no circumstance the retirement of appellant would have been in the year 2003 or any date before March 2007.

14. Mr. Moitra further contended that on the basis of his correct date of birth the appellant was sanctioned flood loan from the respondent-bank and last monthly instalment was to be paid on July 2007. So the question of appellant's retirement on 31st October 2003 does not arise and according to correct date of

birth, the appellant would have retired on 31st October 2008.

15. Mr. Moitra also contended that identity card issued by the Assistant General Manager on 1.4.1992 contained the correct date of birth as on 26.10.1948.

16. Mr. Moitra further contended that the said documents, the facts and circumstances of the case would clearly show that the impugned order of retirement on 31.10.2003 was absolutely bad in law and liable to be quashed reversing the judgment of the Learned Single Judge.

17. Mr. Moitra contended that date of birth of the appellant was corrected as on 26.10.1948 and further correction of date of birth on treating the same as on 26.10.1943 despite the existence of a number of documents in support of correction of date of birth without giving the appellant an opportunity of being heard offends the principles of natural justice. He further contended that subsequently, some affidavits have been filed on behalf of the respondent-bank only to make the simple matter confused and those affidavits cannot be relied upon.

18. Mr. Moitra has placed his reliance upon the decisions reported in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , Capt. Virendra Kumar Vs. Union of India (UOI), , State of Bihar Vs. Lal Krishna Advani and Others, , Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others, , Union of India (UOI) and Another Vs. Narendra Singh, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

19. Learned Counsel Mr. De for the respondent has contended that at the time of filing application for appointment the appellant made clear and unequivocal statement about the date of his birth as on 26th October 1943 and not 26th October 1948 annexing the Matriculation Certificate. In the said application, the appellant unequivocally declared that the statements in the application were correct. On 23rd June 1983, the bank issued circular mentioning the guidelines in connection with date of birth clearly advising all functional departmental heads that once date of birth furnished by the employee at the time of appointment is accepted and entered into service record by the appropriate authority the same shall not be subject to any alteration.

20. It was further contended by Mr. De learned Counsel of the Bank that in the case of petitioner and many other officers mistakes crept in the seniority list in respect of date of birth which do not tally with the service records of those officers and the said mistakes continued till detected or intimated by the concerned officers to the Bank. In the case of the petitioner such mistake crept in before his so-called application dated 3.1.1991 by which he alleged to have applied for correction of date of birth. So the contention that the date of birth of the appellant was corrected as per his application dated 3.1.1991 is absolutely baseless and that the date of birth was corrected in the seniority list is not correct. As in the seniority list date of birth was recorded as on 26.10.46 through inadvertence since 1986 and the appellant wanted to take advantage of the

same with ulterior motive.

21. It was also contended by the learned Counsel Mr. De that the appellant relied upon the birth certificate issued from Prosuti Sadan but it appears that said Prosuti Sadan was established in the year 1975 and giving purported certificate of date of birth of the appellant in 1948 is obviously impossible.

22. Learned Counsel of the respondent Bank Mr. De further contended that even the purported letter dated 1.4.1992 alleged to have been written by the Assistant Manager, Zonal Office, Kharagpur, Midnapore to the Regional Manager, Regional Office, Barasat has been denied by Sri Deb Kumar Namhata who clearly stated in his affidavit dated 19th December 2008 that at no stage either the processing or sanctioning the loan application there was no query with regard to date of birth of the appellant either by officer processing the loan or by sanctioning authority being the Regional Manager, Barasat. Moreover, the application for loan having been made on 31.8.1992 there was no occasion of issuing such purported letter by the Assistant General Manager on 1.4.1992 and Regional Manager on 16.3.1992.

23. The Regional Manager, B. Kumar Dhir also affirmed an affidavit on 28.1.2009 contending that he never sought for advice from Assistant General Manager, Kharagpur by alleged letter dated 16.3.1992 as there was no reason to seek for such advice since no application was pending before him as on 16.3.1992 and the appellant made an application for loan for the first time on 31.8.1992 and the same was sanctioned on 1.9.1992.

24. Learned Counsel Mr. De has further contended that the appellant has filed certain documents in support of his case by fabricating and manufacturing the same.

25. Learned Counsel Mr. De has submitted that in opposition of the affidavit of the bank dated 19.12.2008 the appellant filed affidavit-in-reply on 15.1.2009 by annexing the application dated 20.12.1991 addressing to Regional Manager Barasat for issuing application Forms under Housing Loan Scheme of the Bank for purchasing land and for construction of self same building (Annexure - R1), application dated 5.3.1992 for sanction of loan of Rs. 1,05,000/- for purchasing land only (Annexure - R2), letter dated 31.3.1992 alleged to have been received by the Regional Office with remark "Sanction pending for DOB" by the Regional Manager Mr. B.K. Dhir (Annexure - R3), recommendation dated 1.9.1992 (Annexure - R4). Those have been challenged by Mr. B.K. Dhir, the then Regional Manager by swearing an affidavit contending that all the alleged signatures appearing in the Annexures R1 - R4 are not his signatures and he has not put the purported notes and the signatures and notes have been manufactured by way of mechanical process. He has further stated that during tenure of his service career as Regional Manager, Regional Office Barasat he never personally received any letter addressed to him by any employee within his region and the same was always used to be received by the office. He has stated in affidavit that

he never sought for advice from the Assistant General Manager, Zonal Office, Kharagpur by the alleged letter dated 16.3.92 as there was no reason to seek for any advice since no application for House Building Loan was pending before him as on 16.3.92 and the appellant made his application for the first time on 31.8.92 which was placed and forwarded to him by Barasat Branch of the Bank and which he sanctioned on 1.9.92.

26. He has further stated that the signature appeared in the Annexure 1 of the writ petition i.e., letter dated 3.1.91 is not at all his signature.

27. Learned Counsel Mr. De has contended that the documents have been manufactured and those have been created by way of superimposition.

28. Mr. De has further contended that at the time of applying for the House Building Loan at Barasat Branch, the appellant was posted at Regional Office, Barasat as a Scale III Officer and he himself used to deal with advance loan proposals as a Senior Manager of the Region and in his loan application illegally mentioned his date of birth as 26.10.1948 in place and instead of 26.10.1943.

29. It has further been contended by Mr. De that number of equal monthly instalments for repayment of Staff Housing Loan was computed on the basis of the illegal disclosure of the date of birth in the application for loan and the appellant cannot claim benefit and/or take advantage of his own illegal and fraudulent act.

30. Mr. De has also contended that there was no correction of date of birth in the Matriculation Certificate of appellant and the appellant never applied to the bank for correction of date of birth and the claim of the appellant is false.

31. Mr. De has placed his reliance upon the ruling reported in National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, , State of U.P. and Another Vs. Shiv Narain Upadhyaya, and K.D. Sharma Vs. Steel Authority of India Ltd. and Others, .

32. In the case reported in 1967 S.C.1269 it has been held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice.

33. In the case reported in Capt. Virendra Kumar Vs. Union of India (UOI), . at page 947 it has been held that in Service Jurisprudence, procedural safeguards are of prime significance.

34. In the case reported in State of Bihar Vs. Lal Krishna Advani and Others, at page 361 it has been held that the right to reputation is a facet of the right to life of a citizen under Article 21 of the Constitution. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter.

35. In the case reported in Raja Ram Pal Vs. The Hon"ble Speaker, Lok Sabha

and Others, at page 184 it has been held that the doctrine of natural justice is not merely matter of procedure but of substance and any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21.

36. In the case reported in Union of India (UOI) and Another Vs. Narendra Singh, at page 750 it has been held that mistakes are mistakes they can always be corrected by following due process of law.

37. In the ruling reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . at page 851 it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

38. In the case reported in National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, at page 786 it has been held that the writ petition raised highly disputed questions of fact which could be proved by leading evidence in a properly constituted suit and was not a matter to be investigated in a writ petition. In the ruling reported in State of U.P. and Another Vs. Shiv Narain Upadhyaya, at page 49 relating to correction of date of birth it has been held that unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In the case reported in K.D. Sharma Vs. Steel Authority of India Ltd. and Others, it has been held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed

at the threshold without considering the merits of the claim.

39. It was further held that if the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect himself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

40. It is undisputed that the appellant filed application for appointment to the respondent Bank service on 20.1.77 declaring his date of birth as on 26.10.43 annexing therein Matriculation Certificate dated 76.59 recording his date of birth as on 26.10.43, Citizenship Certificate, Intermediate Examination Certificate, B.Sc Certificate and M.Sc. Certificate. He verified the statements to be correct complete and to the best of his knowledge and belief. It goes without saying that the Matriculation Certificate is the best proof as regards date of birth of the appellant. The appellant joined the service as Scale I officer on 28.2.77 and in his Service Record Card date of birth was recorded as on 26.10.43 as per his own declaration and also according to the date of birth recorded in the Matriculation Certificate which has not yet been corrected by the competent authority. So the Matriculation Certificate, the best evidence as regard date of birth of the appellant rebels against the contention of the appellant that he was born on 26.10.48 instead of 26.10.43. The entry in the service record recording date of birth of the petitioner as on 26.10.43 has not yet been corrected and the same stands as before. The petitioner has stated that on 3.1.91 he wrote a letter to the respondent authority for recording the corrected date in the seniority list. The copy of the letter Annexure P1 shows that date of birth of the appellant was recorded as on 26.10.43 in his Matriculation Certificate on the basis of the record maintained at the school of his native village and the matter was taken up by his father since 1959 onwards to the concerned authorities of the school and Board of Secondary Education during Pakistani regime. Later on after continuous persuasion his father got corrected date of birth from local Prasuti Sadan where he took birth and an affidavit was sworn by his father before Fast Class Magistrate/ Notary Public, Chittagong now Bangladesh. He also submitted the original paper cutting from a Bengali newspaper the "Dainik Ittefaq" published from the then Pakistan, in support of his passing Matriculation examination.

41. Bank authority by filing affidavit-in-opposition has denied to receive the said application for correction of the date of birth in seniority list a copy of which is Annexure P1 to the writ petition.

42. In the affidavit-in-reply of the petitioner dated 6.9.86 to the affidavit-in-opposition it has been stated that on 8.9.86 the petitioner-appellant intimated Head Office Personnel Department through his letter dated 6.9.86 addressed to General Manager, Personnel Department that his date of birth was erroneously

recorded in the confidential report as on 26.10.43 instead of 26.10.48 relying on his Matriculation certificate. The said letter has been marked Annexure R by the writ petitioner/appellant. The petitioner has annexed a certificate dated 28.12.90 alleged to have been issued by Head Master Noapara High School that the appellant was born on 26th October 1948 and unfortunately his date of birth was recorded in Matriculation Certificate as on 26th October 1943 instead of 1948. It is admitted by the appellant that his date of birth was recorded in the Matriculation Certificate on the basis of his date of birth as recorded in the school certificate. The certificate dated 28.12.90 does not disclose that there is any mistake in the school record as regards his actual date of birth. The reasons for issuing such certificate are not explained.

43. It appears from the certificate issued by the Doctor of Noapara Prasuti Sadan dated 30.12.90 that the appellant was born on 26th October 1948. But certificate does not disclose categorically that the petitioner was born in the said Prasuti Sadan. No attempt has been made to produce any document of that Prasuti Sadan to show that in the records of the Prasuti Sadan the date of birth of the appellant was on 26.10.48. It appears that the said Prasuti Sadan was established in 1975. So, obviously, petitioner was not born in the said Prasuti Sadan and the doctor of the said Prasuti Sadan had no authority to issue such certificate in 1990 and no reliance can be placed upon such certificate. The affidavit dated 1.1.91 shows that the father of the appellant had sworn an affidavit before the First Class Magistrate on 30.12.90 to the effect that his son Milan Krishna Roy was born on 26.10.48 as per record of Guzra Noapara Health Centre/Prasuti Sadan and the aforesaid date of birth was inadvertently recorded by Noapara High School as on 26.10.43 instead of 26.10.48 wherefrom his son appeared for Matriculation Examination in the month of February 1959 and since 1959 he has been constantly pursuing the matter for correction of date of birth and ultimately succeeded to record the corrected date of birth as certified by Noapara High School afresh on the strength of the certificate issued by aforesaid Health Centre/ Prasuti Sadan. There is nothing to show that the date of birth of the appellant was corrected in the Matriculation Certificate. No such corrected Matriculation Certificate has been produced. The affidavit was sworn as per contents of the affidavit on 30.12.90 whereas the deponent signed verification on 1.1.91 and the same was affirmed before the Magistrate on 1.1.91. This affidavit does not at all help the appellant to support his contention that he was born on 26.10.43. As the certificate of Guzara Noapara Health Centre or Prasuti Sadan cannot be relied upon, this affidavit also cannot be relied. Another affidavit alleged to have been sworn by one Nripendu Bikas Roy has been filed. The said affidavit shows that on 22.11.03 the declarant said to be uncle of appellant stated that Milan was born on 26.10.48 and inadvertently his date of birth was recorded in his Matriculation Certificate as on 26.10.43 instead of 26.10.48. He was personally present at the time of his birth. From the affidavit it appears that verification was made by Nripendu Bikas Roy deponent on 22.11.03. But from the seal of the Notary public it appears that the same was affirmed on

24.8.2003. If the affidavit was verified on 22.11.03 it is curious to take note of the fact that the same was affirmed before Notary Public on 24.8.03 i.e., before the birth of the said affidavit. The affidavit appears to be false one and the same cannot be relied upon.

44. Another certificate alleged to have been issued by the Headmaster of Noapara High School on 23.12.03 shows that the Milan Krishna Roy was born on 26.10.1948. The occasion for issue of that certificate is not known. There is no whisper about the date of birth recorded by the school in the Admission Register of that school in respect of the appellant. On scrutiny it appears that except the date of the Certificate and date of signature of the Headmaster in the Certificate this Certificate is carbon copy of Certificate dated 28.12.90. There are over writings in respect of figure "3" in the date of Certificate and date of signing the said Certificate. There is every reason to doubt genuineness of the said Certificate. So that certificate alleged to be dated 23.12.2003 created after institution of the writ petition cannot be relied upon.

45. The petitioner has relied upon the paper cutting of "The Daily Itfaq" alleged to have been published on 6.4.59 and in the news published in the said paper it has been stated that Milan Krishna Roy appeared in the Matriculation Examination in February 1959 at the age of 12 years and he got second division and made record and Chittagong Government College granted him scholarship of Rs. 150/- and gave him the scope to read Intermediate with science. The entire newspaper has not been annexed. The address of Milan Krishna Roy as referred in the alleged Newspaper "The Daily Itfaq" has not been given. The source of information of the said news is not disclosed. There is no dependable material about existence of the said newspaper and the publication of the said news in the said newspaper. In the circumstances, mere paper cutting cannot be relied upon and on that basis it cannot be held that the appellant was born in 1943 instead of 1948. So in the teeth of the fact that age of the appellant in the Matriculation Certificate was not corrected and the documents referred above produced by the petitioner in support of his actual date of birth are unworthy of credence and that in the school register the date of birth of the appellant was recorded as on 26.10.43 instead of 26.10.48 the petitioner's contention that he was born not on 26.10.43 but on 26.10.48 cannot be accepted.

46. To the contrary, it appears that appellant's service record was duly prepared on the basis of the declaration of the appellant at the time of his entry in the service and also on the basis of Matriculation Certificate the date of birth was rightly recorded as on 26.10.43 instead of 26.10.48.

47. Now the appellant has come up with the story that he applied for correction of date of birth and it was corrected. He has placed much reliance upon the letter of the Assistant General Manager addressed to the Regional Manager dated 1.4.92 in the matter of House Building Loan Application of Sri Roy. The said letter as it stands shows that with reference to the letter of Regional Manager dated 16.3.92 in the matter of House Building Loan Application of the appellant the

Assistant General Manager informed Regional Manager that the Personnel Administrative Department, Head Office had conveyed them that they have already recorded the corrected date of birth of Sri Roy as 26.10.48 in the C.R. file maintained with them and Regional Manager was asked to calculate or fix the equated monthly instalment of House Building Loan based on the above mentioned corrected date of birth of Sri Roy facilitating smooth repayment of loan instalments as per prescribed repayment schedule in terms of guidelines dated 16.4.82.

48. The petitioner has further contended that the Regional Manager, Bhavendra Kumar Dhir made correspondence regarding Housing Loan Application on 31.3.92 to the Assistant General Manager of the respondent Bank as reminder of letter dated 16.3.92 and in that letter dated 31.3.92 Regional Manager, B.K. Dhir asked the Assistant General Manager, Zonal Office, Kharagpur to convey them corrected recorded date of birth of Sri Roy at their earliest convenience. The copy of the said letter alleged to have been issued on 31.3.92 has been marked R1 of the affidavit sworn in February 2009. The said letters have been challenged by the Bank by filing affidavit sworn by B.K. Dhir, the Regional Manager, Barasat, Deb Kumar Namhata, Scale II Officer, Kharagpur Zonal Office and Partha Bhattacharjee, Senior Manager, Legal Department.

49. Sri Deb Kumar Namhata has sworn an affidavit stating that from 14.1.91 to 2.1.95 he was posted as Officer Scale II at Kharagpur Zonal Office and was dealing with advance/loan portfolio of Kharagpur Zone of Allahabad Bank.

50. It is stated that letter dated 3.4.92 issued from Assistant General Manager to Regional Manager, Regional Office, Bhubaneswar had number.9 and it cannot be believed that on 1.4.92 the letter of Assistant General Manager addressed to Regional Manager would bear No. 248.

51. The appellant applied for Housing Building Loan on 31.8.92 to the Manager, Barasat Branch of the Bank while the appellant was posted at Regional Office, Barasat as Scale III officer dealing with advance/loan proposals as a Senior Manager of the Region. The Branch Manager forwarded the said letter to Regional Manager, Barasat on 1.9.92 and on the same day the same was processed and sanctioned by the Regional Manager.

52. He has stated that loan application of the appellant being made on 31.8.92 there was no occasion of issuing any purported letter either by Regional Manager on 16.3.92 or by the Assistant Manager, Zonal Office, Kharagpur on 1.4.92 and there was never query with regard to date of birth of appellant either by the officer processing the loan or by the sanctioning authority of the Regional Manager, Barasat.

53. Sri Partha Bhattacharya, Senior Manager, Legal Department, Head Office of the Bank also filed an affidavit on 29.1.09 stating that appellant for the first time applied for House Building Loan at Barasat on 31.8.92. It was stated by Partha Bhattacharya, Senior Manager, Legal Department of the respondent Bank that

the alleged letter dated 1.4.92 is totally a manufactured document and it has been created for the purpose of this case. He further stated that the appellant is in the habit of manufacturing documents by superimposing and using mechanical process and the same would be evident from the letters dated 28.12.90 and 23.12.03 alleged to have been issued by Headmaster Noapara High School at page 86 to 90 of the paper book. He has denied that the letter dated 16.3.92 was issued by Sri Bhavendra Kumar Dhir, Regional Manager of the Bank to the then Assistant General Manager, Zonal Office, Kharagpur in connection with alleged House Building Loan Application of the appellant. It has been specifically submitted that there was no loan application before the bank on 16.3.92 and question of writing such letter does not arise.

54. From the affidavit of Sri Bhavendu Kumar Dhir, who was posted as Regional Manager, Regional Office, Barasat from 30.4.90 to 16.6.94, it appears that the Regional Manager, Sri Dhir did never seek any advice from Assistant General Manager, Kharagpur Zonal Office by alleged letter dated 16.3.92. It appears further that there was no reason to seek for advice since no application was pending for as on 16.3.92 and appellant made his application for the first time on 30.8.92 as was placed and forwarded by Barasat Branch of the Bank and signed by Sri B.K. Dhir on 1.9.92. The letter of the Personnel and Administration Department (Head Office) conveying that they have already recorded the corrected date of birth of Sri Roy as on 26.10.48 in the CR file maintained by them has not been produced. It is not disclosed from whom the appellant procured copy of that letter dated 1.4.92 said to be issued by the Assistant General Manager to the Regional manager. So, no reliance can be placed on the said disputed Annexure "C" and it cannot be concluded that the date of birth of the appellant was corrected and the corrected date of birth was recorded in the C.R. file maintained with the Zonal Office, Kharagpur.

55. It has been contended by the respondent that in the annual performance appraisal report for the year 1987-89 the appellant has recorded his date of birth as on 26.10.43 and not as 26.10.48.

56. It is being contended by the petitioner that in the annual performance report for the year 1992 to 1998 and 2002 the date of birth has been recorded as 1948 instead of 1943 and this bears testimony to the fact of the recording of the correct date of birth of the petitioner by the respondent authorities. In the affidavit-in-opposition it has been stated by the bank that there was no determination of correct date of birth of the petitioner as claimed by the petitioner.

57. It has been contended by the appellant that after correction of the date of birth of the petitioner the seniority list was published and in the seniority list date of birth has been recorded as on 26.10.48.

58. It has been contended by the Bank that before that date since 31.12.86 due to printing mistake the date of birth of the appellant has been shown to be

26.10.48 instead of 26.10.43 and in order to take advantage of the printing mistake the appellant manufactured documents for supporting his contention that he was born on 26.10.48 instead of 26.10.43 as declared by him and as evident from his Matriculation Certificate and he wanted to impress upon Hon''ble Court to believe that the same to be correct and to act on the basis thereof.

59. It appears that in the seniority lists of the year 1986 and onwards the date of birth of the appellant has been shown to be 26.10.48 instead of 26.10.43. The said recording of date of birth of the appellant in the seniority list rebels against the contention of the appellant that his date of birth was corrected subsequently and it was conveyed by the letter dated 1.4.92. To the contrary, in view of the application for appointment coupled with Matriculation Certificate recording date of birth as on 26.10.43 and futile attempt of the appellant to produce certain documents, the certificates of the school, affidavits, the Certificate of Nursing Home, the paper cutting which are not reliable and disclosure of his date of birth as in 1943 in the Annual performance report for number of years it can be said that there is room for the contention that taking advantage of the wrong date of birth recorded in the seniority list subsequently, the appellant tried to make out a case that his date of birth was not 26.10.43 but 26.10.48 and made futile attempt to convince the Court.

60. As regards loan application the appellant has contended that appellant applied for issuing requisite prescribed application forms for loan on 20.12.91 and on 5.3.92 he applied for House Building Loan of Rs. 1,05,000/- for purchasing of land only. On 16.3.92, the Regional Manager, Barasat wrote a letter to the competent authority for ascertaining the correct date of birth for fixation of the equal monthly instalments.

61. On 31.3.92 in response to appellant's reminder letter the Regional Manager informed the applicant that the House Building Loan sanction is pending for date of birth.

62. On 1.4.92, the Assistant General Manager, Kharagpur Zonal Office communicated to the Regional Manager, Regional Office, Barasat that Head Office has already recorded corrected D.O.B. of the appellant and that has been incorporated in the confidential report filed by the respondent bank.

63. On, 1.9.92 the Regional Manager of the respondent Bank communicated that date of birth of the appellant was duly corrected but the sanctioning of the loan was pending for the long time. On 1.9.92, 80% of House Building Loan to the tune of Rs. 84,000/- was sanctioned.

64. In opposition to the affidavit of the bank dated 19.12.08 the appellant filed affidavit-in-reply on 15.1.2009 annexing certain documents i.e., copies of the applications dated 20.12.91, 53.92 and letter dated 31.3.92 with the note that sanction pending for date of birth, the recommendation dated 1.9.92, an application dated 21.10.93 and sanction dated 27.10.93 marked Annexures R1 to R4. It is undisputed that Mr. B.K. Dhir was posted as Regional Manager, Regional

Office, Barasat Branch of the Bank from 30.4.90 to 16.6.94.

65. In the affidavit filed in the month of February 2009 the appellant stated that all the signatures contained in the documents marked as Annexures R1 to R4 are of Sri Bhavendra Kumar Dhir, the Regional Manager, Regional Office, Barasat Branch of the respondent Bank.

66. The said Regional Manager, Bhavendra Kumar Dhir affirmed rejoinder on 28.1.09 stating that the alleged signatures in R1 to R4 are not his signatures and he has not put the purported notice and the signatures and notice have been manufactured by way of mechanical process.

67. He has further stated that during his service career as Regional Manager, Regional Office, Barasat he never personally received any letter addressed to him by any employee within his region and the same was always used to be received by his office.

68. He further stated that he never sought for advice from the Assistant General Manager, Kharagpur, Zonal Office by alleged letter dated 16.3.92 as there was no reason to seek for advice since no application was pending before him on 16.3.92 and the appellant made his application for the first time on 31.8.92 and the same was placed and forwarded to him by the Barasat Branch of the Bank which he sanctioned on 1.9.92. He has also stated the signature appear in Annexure R1 of the writ petition, in the letter dated 3.1.91 is not at all his signature. It must be taken note of the fact that the appellant claimed to have filed application for loan on 5.3.92 and also on 21.10.93. On scrutiny of both the applications it will appear that the writing in both the applications are almost similar and the position of writing in both the applications is curiously the same barring the sanction of loan amount in the 1st page, 2nd page, 3rd page, 4th page appeared to be carbon copies.

69. It further appears that in the 5th page besides the writing against the column No. 29 all the writings in both the pages 5 of both the applications appeared to be same and the writings have been made exactly on the same position. Only in column No. 29 at page 5 of the loan application dated 21.10.93 it has been written "the necessary arrangement has already been made for construction of a residential building for which sanction of P.F. Loan of Rs. 1,66,000/- (out of total estimated cost of Rs. 2,34,898/-) is required to be sanctioned". Whereas in respect of column No. 29 of the alleged application dated 5.3.92 it has been written that "after acquiring/purchasing of land necessary arrangement will be made for construction and a separate loan application will be submitted for the actual cost of construction". In the last page of the alleged application dated 5.3.92 the date has been written in unusual large letters. So, the contention that no application for loan was filed on 5.3.92 and the application dated 5.3.92 has been manufactured by way of superimposition cannot be ruled out. It is being contended by the appellant that equal monthly instalment of House Building Loan for repayment has been fixed up till March 2007 and the appellant was

sanctioned flood loan with loan EMI was to be paid on July 2007, so question of appellant's retirement on 31.3.03 does not arise at all. It shows that the date of retirement of the applicant would surely be long after the year 2003. The appellant by way of affidavit-in-reply on 15.1.09 has filed Annexure R4 in order to show that a sum of Rs. 1,66,000/- was sanctioned on 27.10.93 and loan was to be paid within 150 months out of which the principal will be repaid in 112 instalments and interest will be paid in 38 instalments and payment of instalment will commence from the pay of the month following the completion of construction of house or pay of the month of April 1994 whichever is earlier. So, if the appellant was to repay the loan of Rs. 1,66,000/- with interest beginning from the month of April 1994 then the repayment will be made within 150 months from April 1994 up to the end of the year 2007. So, it is contended on behalf of the appellant that it is amply proved that the concerned authority has accepted that the date of birth of the appellant was not on 26.10.43 but on 26.10.48. In other words, the bank accepted that he was due to retire on 31.10.08.

70. It has been contended by the learned lawyer for the appellant that as per PF regulation nobody is entitled to PF unless his 5 years service is left for availing such loan and the appellant availed himself of PF loan in the year 2000 so, his retirement cannot take place in the year 2003 according to the regulation. Mere irregularity, if any, in the matter of sanctioning loan does not amount to the acceptance by the authority concerned that the date of birth of the appellant was on 26.10.48.

71. The appellant has contended that identity card has been issued by the Assistant General Manager on 1.4.92 with the correct date of birth as on 26.10.48. From the original of the said identity card it is claimed that said identity card was issued by the Assistant General Manager, Bholanath Roy. Bholanath Roy is not alive. So, we lack the best evidence whether said Bholanath Roy signed the identity card. Moreover, the signature in the identity card can be manufactured by superimposition. Signature is not the original signature of the Assistant General Manager but it's copy. So it is unsafe to place reliance upon the said identity card and to hold on the basis of said identity card recording the date of birth of the appellant as on 26.10.48 and his service record was rectified and authority accepted his date of birth as on 26.10.48.

72. Considering the materials on record and facts and circumstances of this case it appears that the date of birth has been recorded in the service record of the appellant in the respondent Bank on the basis of his declaration made in the application for appointment together with the date of birth appearing in the Matriculation Certificate which is doubtless the best proof of the date of birth of the appellant and as the said date of birth in the Matriculation Certificate has not been corrected so the said date of birth as recorded in Matriculation Certificate as on 26.10.43 stands good and as there was no change in the service record so the date of birth as recorded in service record stands good and consequently the

appellant cannot be allowed to contend that his date of birth is 26.10.48 not 26.10.43 and the question of violation of principles of natural justice does not arise. The decisions relied by the learned Counsel for the appellant do not come to his aid.

73. It further appears that documents relied upon by the appellant in support of his contention that his date of birth is 26.10.48 and not 26.10.43 are disputed documents, the matter of acceptance of which is dependent on the evidence and the Writ Court cannot enter into the disputed question of facts and so, in this writ proceedings the appellant cannot be allowed to reap benefit on the basis of such disputed documents. The clouds of reasonable doubts as to genuineness loom large around the documents relied upon by the appellant in support of his date of birth. So, in view of the decision in the case of Coal India Limited and Anr. v. Ardhendu Bikas Bhattacharjee and Ors. reported in (2005) 12 SCC 201 where it has been held that High Court ought not to have exercised its writ jurisdiction to determine question of fact and also in view of the decision reported in National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, referred above, this Court cannot resolve the controversy regarding real date of birth of the appellant in exercise of its writ jurisdiction on the basis of disputed documents.

74. In the circumstances, the writ petition merits dismissal and the order of dismissal of the writ petition by the Learned Single Judge must be upheld.

75. We, therefore, dismiss the appeal and affirm the order of the Learned Single Judge. We make no order as to costs.

76. Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.

77. I agree.