

(1996) 03 CAL CK 0052
In the Calcutta High Court
Case No : Matter No. 3324 of 1994

Nazirul Haque

APPELLANT

Vs

General Manger, Hindustan Petroleum Corpn. Ltd. and Others

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Services Rules — Rule 9(1), 9(5)

Citation : (1996) 1 CALLT 375

Hon'ble Judges : Nisith Kumar Batabyal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nisith Kumar Batabyal, J.—The writ petitioner who is an employee of Hindusthan Petroleum Corporation Ltd., hereinafter referred to as "HPCL" was appointed as Mosalchi by then Manager Esso Standard Eastern Inc. by letter dated 23rd October, 1964. A copy of which is annexed herewith the writ petition and marked with the letter "A". At the time of his appointment, the petitioner submitted his Matriculation Certificate showing his date of birth as 20th January, 1939. A copy of the Certificate is annexed to the writ petition and marked with the letter "B". The age of superannuation is 58 years. Naturally, the year of superannuation would be 1997 but the petitioner surprisingly came to know in the month of August, 1994 that he would be superannuated in January, 1995. Immediately, thereafter, he made a representation to the General Manager, HPCL for correction of his date of birth which was wrongly recorded in the service, register. Although the petitioner made the representation to the authorities, annexing copy of the School Final Certificate but the respondents did not consider the said representation inspite of lapse of adequate time. Being aggrieved by and dissatisfied with the arbitrary and illegal decision of the respondents to superannuate the petitioner from service before he actually attains the age of superannuation ignoring the actual date of birth of the petitioner, he has come before this Court for writ be issued in the nature of mandamus commanding the

respondents to forbear from giving any effect or further effect to their decision to superannuate the petitioner from January, 1995 and to make necessary correction in the Register of Service where the date of birth of the petitioner was wrongly recorded and for a writ be issued in the nature of prohibition, prohibiting the respondents from giving any effect or further effect to the decision to superannuate the petitioner from January, 1995.

2. In the affidavit-in-opposition, on behalf of the respondents No. 1, 2 and 3, it has been stated that at the time of joining the service under HPCL, the petitioner had submitted a copy of High School Certificate Examination dated 12.9.1957 issued by the Intermediate Board of Examination, Nagpur and as per the said Certificate, his date of birth was recorded as 20.1.1937. The petitioner himself also signed a declaration in his own hand-writing in which it was declared that the date of birth of the petitioner was 20.1.1937. The petitioner did not submit any Matriculation Certificate at the time of his appointment. A xerox copy of the High School Certificate produced by the petitioner at the time of Joining in the service is annexed to the affidavit-in-opposition and marked with the letter "W". The Matriculation Certificate containing the date of birth as 29.1.1939 was submitted by the petitioner only on 14.11.1994. The respondents have categorically denied the allegations that they have taken the decision arbitrarily to superannuate the petitioner. All other allegations made in the said writ petitions have been categorically denied by the respondents. It has been submitted also that the request for change of date of birth of an employee according to the circulars of the Company should be made within 5 years from the date of joining the service of the Corporation along with School Leaving Certificate, Matriculation Certificate, H.S.C. Certificate or Matric from birth Register. The petitioner did not follow the said instructions. A copy of the official circular is annexed with the affidavit-in-opposition and marked as annexure "Z". According to the respondents, the writ petition is misconceived and malafide and should be dismissed.

3. In the affidavit in reply filed on behalf of the writ petition, the material allegations made in the affidavit-in-opposition have been denied. It has been stated that in the periodic Medical Examination report of the petitioner conducted by HPCL, the date of birth of the petitioner has been mentioned as 27.10.1939. The said date of birth was not correct as the actual date of birth of the petitioner is 20th January, 1939. A copy of the said Examination report is annexed with the affidavit-in-reply and marked with the letter "A". According to the petitioner, the year of birth was taken as 1939 and not as 1937. It has been stated that the Certificate being annexure "W" to the affidavit-in-opposition is connected with a totally different person and has no relation with the petitioner. The petitioner has also denied that he signed the declaration as stated by the respondents to the effect that his date of birth was 20th January, 1937. According to him, the officers of respondent No.3 compelled him to sign on copy of the said Certificate being annexure "W" to the affidavit-in-opposition by threat and coercion. He has also denied that Matriculation Certificate was not submitted by him at the time of

his appointment.

4. It has been submitted by the learned advocate for the writ petitioner that the moot question whether the petitioner should be superannuated on the basis of the date of birth of the petitioner as contained in the service documents of the Company. The main contention of the petitioner is that according to the Matriculation Certificate, the date of birth is 20th January, 1939. It appears from the annexure "B" to the writ petition that Nazirul Haque son of Waizul Haque passed the Matriculation Examination of Patna University held in the month of September, 1952 from T.P.H.E. School and his date of birth is given in that Certificate as 20th January, 1939. From annexure "W" to the affidavit-in-opposition it appears that it relates to Waizul Haque son of Waizul Haque, born on 20th January, 1937 who passed the High School Certificate Examination held in the month of December 1956. At the bottom of annexure "W" there is the signature of the petitioner Nazirul Haque. But it is evident on the face of it that this Certificate has nothing to do with Nazirul Haque son of Waizul Haque who is the petitioner before us. It is clear from annexure "A" to the writ petition that the petitioner was appointed by Esso Standard Eastern Inc. on 23rd October, 1963 on certain terms and conditions. From the annexure "D" to the Writ petition it is found that the writ petitioner for the first time complained about the wrong recording of his date of birth in the Company's Register in August, 1994. He also submitted a xerox copy of the Matriculation Certificate along with his petition. From annexure "F" it appears that in the Medical Evaluation report dated 21st October, 1964 of Esso Standard Eastern Inc. the, date of birth of Nazirul Haque, Mosalchi was recorded as 1939. The actual date of birth was not given at page 20 of the annexure. But from the page "21" of annexure "F", which has been described as Periodic Health Inventory dated 7.6.67, the date of birth is given as 27.10.1939. At page "23" of annexure "F" which is a continuation of the Periodic Health Inventory of a date which is not prior to 6.9.88 the date of birth is given as 27.10.1939.

5. From the annexure "X" to the affidavit-in-opposition reply, it appears that in the application for employment and qualification record, the date of birth has been recorded as 20th January, 1937. At the bottom of that application for employment there is an endorsement signed by Nazirul Haque that the information on the record is true. From annexure "Y" to the affidavit-in-reply, it appears that in the Medical Insurance Plan Enrollment Form dated 20.4.92, the date of birth of the petitioner has been given as 20th January, 1937. This also bears the signature of Nazirul Haque. It appears from annexure "Z" to the affidavit-in-reply that all the employees of the Company were informed of the Circular dated 23rd January, 1991 regarding the correct recording of the age of the employees.

6. It is clear from the above discussion that the High School Examination Certificate marked annexure "W" to the affidavit-in-reply, has got nothing to do with the writ petitioner. Therefore, it can be safely ignored. The Matriculation

Certificate as per annexure "B" to the writ petition relates to Nazirul Haque son of Waizul Haque. There is nothing to show that a copy of this Matriculation Certificate was submitted by the writ petitioner at the time of his joining of his service. But curiously enough, it appears from annexure "A" to the affidavit-In-reply the date of birth of the petitioner is recorded as 27th October, 1939. In Company's documents marked as annexure "F" at page "20" of the affidavit-in-reply, the year of birth of given as 1939. At page "21" of the said annexure, the date of birth is given as 27th October, 1939 and at page "23" of the said annexure, the date of birth is given as 27.10.1939. It is not the case of the petitioner that he was born on 27.10.1939. It is clear that the dates of birth as recorded in annexure "F" are all incorrect. The date of birth as given in the application for employment marked as annexure "X" to the affidavit-in-opposition and the annexure "Y" which is the Medical Insurance Plan to the affidavit-in-opposition, the date of birth does not correspondent with the date of birth as given in the Matriculation Certificate.

7. Mr. S. Ganguly, the learned Advocate for the petitioner has relied upon the principles laid down in *Sisu Ranjan Das v. Commissioner of Police and Ors.* (1979(2) CLJ 428). *Ranjit Kumar Chatterjee v. Union of India and Ors.* (87 CWN 713) and *Sadananda Sen v. State of West Bengal and Ors.* [CLJ 1989(1) Cal-76] in support of his contention that relying upon the Matriculation Certificate the correct date of birth should have been incorporated in the books and documents of the employer in place of the wrong entry.

8. In *Sisu Ranjan Das's* case (*supra*), the petitioner's date of birth, at the time of entry in the Police Service, was recorded in his Service Book as 1.1.1921, on the basis of Medical Examination of the petitioner by a Doctor. According to the Matriculation Certificate, his date of birth is 1.4.1923. On 27th January, 1978, the petitioner made a representation to the Commissioner of Police and prayed for correction of the date of birth in terms of the Matriculation Certificate. The Deputy Commissioner rejected the prayer for correction. The petitioner made another representation to the then Commissioner of Police who also rejected the prayer. The petitioner made another representation to the next Commissioner who declined to change the order. The petitioner then moved before the Hon'ble High Court under Article 226 of the Constitution of India and contended that the impugned order was illegal and in violation of Rule 9 of the West Bengal Service Rules Part-I. The respondent contended that the petitioner had not come forward for correction in term of 1956 Notification whereby employees were required to apply for correction of their dates of birth. But the petitioner made the representation after getting information of his retirement sent to him on 26th July, 1977. Held, entry made in the Service record is not a declaration under sub Rule (1) of Rule 9 and is not binding on the petitioner. No time limit has been prescribed for correction of the date of birth under sub Rule (5) of Rule 9. If sufficient reasons have been shown by the government servant, then even when the final order was passed by the competent authority or the Government regarding the date of birth of Government employee, it can be corrected at any

time at any stage. So, it is immaterial that the petitioner made the application for correction of the date of birth on the basis of the Matriculation Certificate after he received the notice of superannuation.

9. In *Ranjit Kumar Chatterjee* case (supra.), the petitioner sought to challenge an order refusing to correct his date of birth in the service records. As a non-Matriculate, he joined the U.S. Army in India as a Mechanic in 1948. His Service was later transferred to the Indian Bureau of Mines in 1957. While, working there, in 1959, he submitted his School Leaving Certificate in Original in connection with verification of his date of birth. The original certificate was not returned, although he wrote a letter praying for its return. The gradation list was prepared by the said Bureau of Mines showing his date of birth as 8th July, 1928. He was finally absorbed in the office of the Geological Survey of India in 1960. On 8th July, 1974, the petitioner inspected the entry in the Service Book regarding his date of birth and found it recorded as 18th July, 1918. On 9th August, 1974, he made a representation to the appropriate authority praying for correction of the date of birth. The authority wrote to the CMOH 24, Paraganas to give his opinion on the age of the petitioner. The sum total of the medical opinion was that the petitioner's age was between 45 to 50 years. Upon being asked to produce his original School Leaving Certificate, the petitioner produced a corroborative Certificate from the District School Board, Dhanbad and another letter from the District Education Officer, Dhanbad, informing the Administrative Officer of the Geological Survey of India that the petitioner's date of birth was 8th July, 1928, enclosing a copy of the Certificate for verification. The said Director of Administration then proposed to the Ministry of Steel and Mines that an order be made from the Government of India authorising the department to alter the date of birth from 18.7.1918 to 8.7.1928. Held, that the authority concerned turned down the proposal for changing the date of birth without assigning any reasons although the decision of the Administration authority was a quasi-judicial decision having civil consequences, the right to work being as valuable to a person as right to property. The said order turning down the proposal was against the principles of natural Justice. The impugned order was accordingly quashed.

10. In *Sadananda Sen*'s case (supra), an order of superannuation was challenged on the ground that the respondents failed to observe the principles of natural Justice and that the Board of Revenue had turned down the recommendation of the High Officials of the State Government without any reason, the said Officials having authenticated to service showing the correct date of birth of the petitioner. Without filing an affidavit, the State contended that the silence of the petitioner over a pretty long period of time raised suspicion at the fag end of his service career when superannuation was staring at his face.

11. On the other side, Mr. Neogi, learned. Adv. for the contesting respondent has cited the following cases to controvert the points raised by Mr. Ganguly. The first

case cited by Union of India and others Vs. Kantilal Hematram Pandya, . The next case cited by him is Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, The third case cited by him is Chittaranjan Das v. Durgapur Projects Ltd. (1995(2) CLJ 388).

12. In Kantilal Hematram's case (supra), the respondent made a prayer for correction of the date of birth in the official records. Representation for correction was made three decades after Joining his service. The correctness and the genuineness of the Certificate produced were not free from doubt. The Apex Court refused to give any relief to the respondent in the above circumstances.

13. In Burn Standard Company Ltd. Case (supra), it has been held that ordinarily High Courts should not in exercise its discretionary writ jurisdiction entertained a writ application filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his service register with the avowed object of continuing in service beyond the normal period of his retirement. In that case, the declared age which indicated that the date of birth of the respondent No. 1 as 25.4.1931 was the basis of his retirement from his service on attaining the age of superannuation at 60 years. Without any demur as to his age entered in his service record, he made an application to the appellant on 1.2.1989 at a time close to the date of his retirement, seeking correction of his date of birth as 7.7.1934 in his service book. Held, in paragraph-"9" of the reported decision that "even where such correction is sought, the Government or its instrumentality, as the case may be, would be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction. If that be the legal position, can it be said that it is open to a High Court in exercise of its extra ordinary writ jurisdiction to entertain a writ application of an employee of the Government or its instrumentality as the case may be, for correction of his date of birth entered in his Service and Leave Record at the time of his appointment and direct the Government or its instrumentality concerned to correct such date of his birth in his Service and Leave Record and continue him in service beyond the date of his normal retirement is the question. It is true that the High Court in exercise of its discretionary Jurisdiction under Article 226 of the Constitution of India can even enter upon the disputed questions of facts, if the case in which the extra ordinary Jurisdiction is invoked warrants adoption of such inevitable course and decide upon the same for giving relief to the concerned authority. But the question is that if an employee of the Government or its instrumentality, at the fag end of his service and due for retirement from his service shortly, according to his date of birth found in his service and leave record, files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for High Court to entertain such application to enquire into the disputed facts pertaining to his date of birth for correcting it and extend his period of service?

14. In paragraph 10 of the judgment, it has observed as follows;

"Entertaining by High Courts of writ application made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertaining of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirement when due.....".

In Chittaranjan Das's case (supra), it is a Division Bench decision of our Hon'ble Court, it has been held that an entry relating to the date of birth made in the School is relevant and admissible u/s 35 of the Evidence Act, but the entry regarding the age of the person in the School is not of much evidentiary value to prove the age of the person in the absence of material on which the age was recorded. It was further held that the question with regard to the retirement on the date of birth being a disputed one cannot be gone into by the Court in exercise of its jurisdiction under Article 226 of the Constitution of India in the facts and circumstances of the case.

15. The writ petitioner in our case entered service in October, 1964 and he made the first representation on 17.8.1994 for correction of the entry relating to his date of birth in the official records. The discrepancy must have come to his notice on 20.4.1992 in the Medical Insurance Enrollment Form which the petitioner himself signed. This medical Insurance Plan has been marked as annexure "Y" to the affidavit-in-opposition. In the affidavit-in-reply, the petitioner in paragraph "10" has stated that annexure "Y" was placed before him by the office of the respondent No.3 for signature and at that time the Form was not completely filled in and the Columns of the name, date of birth, relationship in item "A" of the said form were completely blank and the petitioner was asked to put up his signature with the assurance that the office would duly fill in the required particulars in due time and the he put his signature in good faith. It is perhaps redundant to mention that the writ court is not a court of facts and therefore, this Court cannot go into the question as to whether the annexure "Y" was really filled up in the manner as stated by the writ petitioner. It has got to be taken on its face value. So, the only reasonable inference is that the writ petitioner was aware about the incorrect entry as alleged by him of his date of birth in the official records. But he simply sat over the matter till 17th August, 1994. The learned advocate for the petitioner has during the course of his argument drawn the attention of the Court to the fact that the affidavit in opposition on behalf of the Company has been sworn by Mr. Ram Nath who is the General Manager Eastern Zone of HPCL and this General Manager cannot have any personal knowledge about either the date of birth of the petitioner or of what happened at the time of the entry into service of the petitioner in 1964. At that time Esso

Standard Eastern Inc. was the Company concerned. It is true that Mr. Ram Nath cannot have any personal knowledge about the date of birth or of what happened in 1964. But the petitioner himself also cannot have any personal knowledge about his own date of birth. So far as what happened in 1964, the official records as per annexure "X" dated 23rd October, 1964 shows that the date of birth of the petitioner is 20.1.1937. This also bears the signature of the petitioner and he signed affirming that the information in the record was true. The petitioner in his writ petition and affidavit-in-reply has stated that the copy of the Matriculation Certificate which is annexure "B", to the writ-petition was submitted at the time of his entry in the Service. According to this document, the date of birth is 20.1.1939. It has already been stated above that the office record of the Esso Standard Inc. dated 23rd October, 1964 marked annexure "X" shows the date of birth as 20.1.1937. In annexure "F" to the writ petition, the date of birth is only 1939 at page 20 and at page 21 and 23, the date of birth is 27.10.1939. The document marked annexure "F" to the writ petition is dated 21st October, 1964. Had the Matriculation Certificate been submitted then the date of birth would be 20.1.1939, and not 27.10.1939: Therefore, according to his own's and, the entries regarding the date of birth in annexure "F" to the writ petition are incorrect. The date on which the Matriculation Certificate was issued is illegible. Only it is understood that the examination was held in the month of September, 1952. It was brought to the notice of the Company undisputedly in the year 1994. There is nothing to show that the document was brought to the notice of the Company before 1994. The petitioner was due to go on superannuation in January, 1995 and he first made the representation for correction of the date of birth in August, 1994, that is only 5 months before his date of superannuation though he had the opportunity of knowing about the wrong entry in the year 1992.

16. From the cases cited above, it appears that Burn Standard Cases (supra), Their Lordships of the Hon"ble Supreme Court have categorically laid down that no employee can claim a right to correction of date of birth." In both the decisions cited above of the Apex Court, it has also been laid down that the petitioner cannot come at the fag end of his career with an application for correction of his date of birth without adducing any reliable or documentary evidence in support of his claim and without in any manner explaining as to why he had not taken any action in the intervening long years. In Sisu Ranjan Das's case (supra), and Ranjit Kr. Chatterjee's case (supra), it was laid down that it was immaterial that the writ petitioner made the application for correction of the date of birth on the basis of the Matriculation Certificate after the receipt of the notice of superannuation or that the application was made towards the end of his service career. In Ranjit Kr. Chatterjee case's case (supra), the principles laid down in Sisu Ranjan Das's case (supra) was affirmed. There is a fine distinction between the Apex Court cases cited above and the decisions cited by the learned advocate for the writ petitioner in that the Apex Court did not lay down that under no circumstances an application filed for correction of entries regarding the

date of birth in the service record can be changed towards the fag end of the career. The legal position is that if after a gap of long years towards the end of the service career, the employee makes an application for correction of his date of birth without adducing any reliable documentary evidence and without explaining the delay satisfactory, the writ Court should not exercise its discretionary power under Article 226 of the Constitution of India in favour of the petitioner. Moreover, it has got to be emphasised that no employee can claim a right to correction of his date of birth in the service record.

17. The principles laid down in *Sadananda Sen*'s case (*supra.*) in paragraph "6" of the reported judgment at page 79 read as follows;

"6. The two decisions cited by Mr. Banerjee very much support his contention. The respondents No. 2 and 3 violated the principle of natural justice by turning down the proposals of 3 High State Officials for correction of the petitioner's date of birth in the service book without assigning any reason. A wrong recording of the date of birth in the service book would not estop, the petitioner from challenging the correctness of date even at the pension stage on the basis of authentic document, i.e., the School Leaving Certificate. This principle has been laid down in *Ranjit Kr. Chatterjee v. Union of India and Ors.* [*supra.*]. The decision in *Sisu Ranjan Das v. Commissioner of Police and Ors.* (*supra.*) goes a step further wherein the Calcutta High Court held that the entry in the service record is not a declaration under Rule 9(1) of the West Bengal Service Rules Part-I, and no time limit has been prescribed for correction of the date of birth under Rule 9(5) of the said Rules. It was further held in this case that it is immaterial that one makes representation for correction of his age after receiving the notice of superannuation of the basis of authentic document. The age can be corrected at any time at any stage."

18. In view of the principles laid down in the decisions of the Apex Court in *Burn Standard* case (*supra.*), and in *Hematram* case (*supra.*), it can no longer be said that the High Court should entertain a writ application made by an employee of the Government or its instrumentalities at the fag end of their service careers, if the facts in the given case do not warrant such a correction. The petitioner has to come with reliable records and he must explain his conduct for the long silence satisfactorily, because no employee can claim a right to correction of the date of birth." Accordingly, it is clear that while the legal position is that an employee of the Government or its instrumentality has the right to lodge a claim even towards the fag end of his career for correction of the entries regarding his date Of birth in the service records but he has to base his claim on reliable documents and he has to explain his long silence. These two limitations are wanting in the principles laid down in the cases cited by the learned advocate for the writ petitioner. Considering, the legal position involved in the case and in the peculiar circumstances of the case, this Court holds that it is not fit case where the Court should exercise its discretionary power in favour of the petitioner.

19. Accordingly, the writ petition is dismissed without any order as to costs.

Interim orders, if any will stand vacated.