

(1988) 08 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 30 of 1978

Nirendra Chandra Roy

APPELLANT

Vs

L.I.C. of India and Others

RESPONDENT

Date of Decision : 05-08-1988

Acts Referred:

Citation : (1990) 1 LLJ 393

Hon'ble Judges : A. Raghuvir, C.J.; S.P. Rajkhowa, J

Bench : Division Bench

Advocate : P.K. Goswami, for the Appellant; A.P. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

A. Raghuvir, C.J.—Nirendra Chandra Roy is the writ petitioner. The subject matter in the writ petition concerns about his age of superannuation. The facts which are necessary for the, purpose of the issue alone are stated in this order.

2. Roy joined the service of Hindusthan Cooperative Insurance Society Ltd. in the year 1944. At that time he was aged 24. He was a matriculate by qualification. In the Matriculation Certificate his date of birth was entered as February 1, 1918. He represented to his employer at the time of recruitment that his correct date of birth was February 1, 1920. that the Matriculation Certificate does not record his age correctly. He produced necessary proof including horoscope and an affidavit or a statement by his elder brother. The employer, namely, the Insurance Society accepted the proof and recorded in the service records that he was born on February 1, 1920, not on February 1, 1918 as indicated in the Matriculation Certificate.

3. In 1956 the business of the Life insurance was nationalised. Roy thereafter became the employee of the Life insurance Corporation. The Corporation in 1969 made an attempt to correct the date of birth of Roy as per the Matriculation Certificate. Roy protested. Notwithstanding the protest the service record was corrected on May 27, 1969. One of the issues is whether Roy was informed of the

correction made in the records. However, Roy relentlessly protested in letter dated November 9, 1976, by another letter of June 8, 1977, again by letter dated October 17, 1977. Finally against the correction he has approached this Court. Pending the writ petition Roy retired on February 1, 1978. Since, he is to be affected financially by the decision in this petition, the lis in the writ petition was argued.

4. The Insurance Corporation avers to have lost service records of Roy of 1944 when he was recruited in 1944. Therefore, their case is, on an investigation made in the year 1969 the date of birth was corrected consistent with the Matriculation Certificate. Learned counsel for the Life Insurance Corporation who very vehemently opposed this writ petition argued ordinarily the Matriculation Certificate is to prevail and admittedly the writ petitioner was shown to be born, as per Matriculation Certificate, on February 1, 1918, therefore his retirement on February 1, 1978 is not improper. It was urged there were laches on Roy's part. He did not move his little finger ever since 1969. We do not see any basis in the argument.

5. Repeatedly we have asked the learned counsel for the Corporation to point out the evidence to indicate, after the correction was made on May 27, 1969 whether Roy was informed of the rectification. We see Roy protested before the correction was made on February 28, 1969. Since there is no evidence offered to accept to show Roy was informed, we do not see any reason to sustain the argument of laches.

6. The principal question arises for consideration is whether in the above circumstances the employer was entitled to correct the date of birth to read it consistent with the Matriculation Certificate. The entire case of the petitioner is at the time he joined the service of the predecessor employer in 1944 his representation was accepted. His Matriculation Certificate was accepted not to contain the correct age, therefore, service records indicated he was born on February 1, 1920. At this stage the learned counsel for the Insurance Corporation argued the original records are lost or not available, but he contends the case of the petitioner cannot be accepted. We see no basis as to why the case of the petitioner should not be accepted as Roy's case is in 1944 his date of birth was accepted to be February 1, 1920. This averment of Roy is not even denied in the counter affidavit.

7. The subject matter was burning fire from the year 1969 when the Matriculation Certificate was (service record?) was corrected. The Corporation did not say in the counter that when the petitioner was recruited he had not shown his date of birth as February 1, 1920, on that basis he was not recruited. Therefore we do not see any reason why we should not accept the averment made by the petitioner.

8. The writ petition is allowed with costs of Rs. 240/-. We declare the petitioner should not have been made to retire on February 1, 1978. He was entitled to be

in service upto February 1, 1980. He therefore be paid salary and emoluments due within 4 (four) months from today.