
(2003) 05 GAU CK 0041
In the Gauhati High Court
Case No : Writ Petition (C) No. 3813 of 2000

Prithivi Nath Pandey

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Citation : (2003) 3 GLT 645

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : K. Agarwal, for the Appellant; A. Thakur, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. Kamal Agarwal, learned Counsel for the Petitioner. Also heard Mr. A. Thakur, learned State Counsel for the Respondents.

2. By this writ petition the Petitioner has sought for a direction to the Respondents to correct the entry relating to the date of birth of the Petitioner as 6.10.42 instead of 1.7.42 in the Service Book and thereby to allow the Petitioner to superannuate on 31.10.2000 in place of 30.6.2000.

3. The brief facts leading to filing of this writ petition are that the Petitioner joined the Assam Police Battalion as Constable on 13.2.68 and thereafter the Petitioner was promoted to the successive posts and ultimately at the time of filing of this writ petition he was serving as Quarter Master Inspector (Q.M.I.) in the 4th Assam Police Battalion and was posted at its Head Quarter at Kahilipara, Guwahati. It is categorically stated that at the time of enrolment he produced his original pass certificate of HSLC as proof of his date of birth which was duly recorded in the Service Sheet as 6.10.42. On 25.3.78 a fire broke out in the Head Quarter of the said Battalion at Santilla, N.C. Hills and as a result of the said incident, all the materials of the unit including the service record of the Petitioner alongwith other police personnel were completely destroyed. In consequence thereof, the Commandant of the Battalion vide communication

dated 4.11.78 directed to reconstruct the record and the Petitioner was also asked to submit all the materials for the purpose of reconstruction of his service book including HSLC pass certificate and intermediate pass certificate and in response to such direction the Petitioner submitted all those documents including HSLC certificate as proof of his age and ultimately his date of birth was correctly recorded in the service sheet in his presence as 6.10.42. Despite such recording of date of birth by which the Petitioner ought to have superannuated on 31.10.2000, to the utter surprise of the Petitioner, the competent authority i.e. Respondent No. 6 vide impugned order dated 7.7.2000 ordered that in pursuance of communication dated 7.7.2000 issued by the Respondent No. 3, the Petitioner was retired from police service on 30.6.2000 on attaining the age of 58 years of age. Hence, this writ petition.

4. Assailing this impugned order dated 7.7.2000, Mr. Agarwal, learned Counsel for the Petitioner, has submitted that the service record of the Petitioner was manipulated by certain person having vested interest to deprive of the Petitioner from getting the benefit of superannuation on 31.10.2000 by recording his date of birth as 1.7.42 instead of earlier recorded date of 6.10.42 and thus this impugned order is liable to be quashed allowing the Petitioner to be in service till 31.10.2000 because by this time, the Petitioner has already retired from service on 30.6.2000. To substantiate his submission, the learned Counsel has relied on a document annexed as Annexure-22 to the writ petition. The said document was a communication dated 27.6.2000 issued by the Addl. Director General of Police (OSD), Assam to Addl. Director General of Police, CID, Assam, Ulubari, Guwahati-7 informing that first page of the service sheet Vol-I of the Petitioner appeared to have manipulated by erasing and overwriting thereon in order to give undue benefit to the Petitioner and suggested to cause enquiry in that matter of irregularity by a responsible officer. According to Mr. Agarwal, the Petitioner has no knowledge as regards the upshot of the said enquiry nor has he been informed about the same. His contention is that the said communication manifestly reflects that the Petitioner's date of birth was illegally and unauthorisedly manipulated and recorded as 1.7.42 by erasing earlier recorded date of birth as 6.10.1942.

5. I have carefully perused the case records including the service sheet produced by Mr. Thakur, learned State Counsel as directed by this Court earlier. On close inspection of the record including the service sheet it appears that first page of the service sheet reveals clearly that against the column of date of birth, there is a clear visible mark of overwriting and erasing and the ink used therein is also appeared to be different from the original ink. More surprisingly, the relevant service sheet reveals that the date of birth of the Petitioner as 1.7.1942 (First July Nineteen Forty two) was recorded prominently in a space exclusively provided for Particulars of previous service (military or Civil) allowed to count for (i) Pension (ii) increment" and the same was verified by Commandant 10th A.P. Battalion, Kahilipara, Guwahati-19. Such insertion had already been admitted by the authorities as manipulation as evident from the communication dated

27.6.2000 as noticed above as well as the affidavit in opposition filed on behalf of the Respondent No. 6.

6. Having considered the factual situation in its entirety and after hearing learned Counsel for the parties and also on perusal of the materials available on record, this Court is of the considered view that the said service sheet demonstrates the manipulation against the date of birth of the Petitioner which ought to have been 6.10.42 according to his school certificate annexed to this writ petition as Annexure I. The Court also has the opportunity to go through the original school certificate placed by the learned Counsel for the Petitioner which clearly shows the date of birth of the Petitioner as 6.10.42. Normally the date of birth recorded in the Matriculation or H.S.L.C. Examination Certificate is accepted to be the correct date of birth and on the basis of the said Matriculation Certificate generally the entry as regards the date of birth is made in the most of the Service Books. It is admitted fact that in the instant case, date of birth of the Petitioner was recorded as per H.S.L.C. Certificate. Once the same is found to be manipulated in the Service Sheet, the authorities ought to have accepted his date of birth as 6.10.42 on the basis of this original H.S.L.C. Examination certificate. That too, the authorities have not taken any step till date to cause an enquiry in this regard. At least, the records do not indicate such action. Even the learned Govt. Counsel has also failed to address on this issue whether any enquiry has ever been held.

7. That being so, the Petitioner has to get the benefit of his service upto 31.10.2000 and consequently he is declared to retire on 31.10.2000 on superannuation and shall be entitled to all the consequential benefits of service upto the said period although he was retired from service on 30.6.2000. The impugned order dated 7.7.2000 is accordingly hereby quashed.

8. In the result, this writ application is allowed for the reasons discussed above. However in the facts and circumstances of the case, no order is passed as to costs. Return the case records to Mr. A. Thakur, the learned Govt. Counsel immediately.