

(2001) 01 CAL CK 0004
In the Calcutta High Court
Case No : C.O. No. 13267 (W) of 1992

Sanatan Bowri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2001) 2 CALLT 42

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Sandipan Banerjee and Debjani Sengupta, for the Appellant; Manas Kundu, for the Respondent

Judgement

Ashim Kumar Banerjee, J.—Writ petitioner was an employee of Durgapur Steel Plant. As per the service card his date of birth is September 15, 1942. In another place of the service card his date of birth was recorded as February 24, 1943. His Identity Card shows his date of birth as February 24, 1943 where as medical card shows that his year of birth is 1943. School certificate date September 25, 1970 produced by the writ petitioner to his employer shows his date of birth as 24th February, 1943. Writ petitioner was asked in the year 1975 (exact date is not supplied by any of the parties) to produce documents in support of his age. Accordingly, the school certificate was produced in the year 1975 which is not in dispute. The writ petitioner was superannuated from his service on the basis of his personal file where his date of birth was recorded as September 13, 1936. On an enquiry made by the Court, learned Advocate appearing for the respondent submitted that since at the time of joining, the writ petitioner could not furnish any documents in support of his age, the medical officer on the basis of an approximate recorded his age as stated hereinbefore. However, he admitted that there was no proper test conducted at the time of such recording or any time thereafter by the Respondent.

2. Ms. Debjani Sengupta, learned Advocate appearing for the writ petitioner

contended that the documents in support of the age of the writ petitioner as stated hereinbefore are sufficient to hold that the date of birth of the writ petitioner is February 24, 1943. She also submitted that the recording to the effect that the age of the writ petitioner is of September 19, 1936 is based on estimation made by the Medical Officer at the time of joining without availing proper mode of ascertaining age and as such the writ petitioner is entitled to have his service record corrected as he should have been allowed to work till the date of superannuation on the basis of the date of birth as claimed by him.

3. Mr. Manas Ranjan Kundu, learned Advocate for the respondent, submitted that there had been a gradation list published in the year 1973 which shows the date of birth of the writ petitioner as of 1936 since no challenge had been made by the writ petitioner "contemporaneously he is not entitled to pray for the relief as has been prayed herein. It was also urged on behalf of the respondent that the writ petitioner in any event was hit by the circular dated June 20, 1987 issued by the Respondent authority wherein it has been made categorically clear that no dispute with regard to correction of age would be entertained beyond during the last 5 years of his service tenure. According to Mr. Kundu the writ petitioner prayed for correction of his age in 1992 whereas he had been superannuated on 1994. As it was during the last 5 years of service as such the said application of the writ petitioner was hit by the said circular dated June 20, 1987. According to the respondent by an order dated July 9, 1992 Susanta Chatterjee-J (as His Lordship then was) directed the respondent authority to give a personal hearing to the writ petitioner. Accordingly, the writ petitioner was given such personal hearing with the assistance of a defence helper, the representation of the writ petitioner had been, considered by the authority and had been disposed of by a reasoned order appearing at page No. 25 of the writ petition. It was also contended by Shri Kundu that the defence helper of the writ petitioner in course of hearing admitted that the recording in the service card or the identity card or the medical card could not be considered as proof of his age as those were based upon unilateral declaration of the employee concerned. With regard to certificate it was contended that since the certificate was obtained in the year 1970 i.e. 18 years after the date of his leaving the school the said certificate should not be considered although the same was submitted in August" 1975.

4. The learned advocate for the parties in support of their contention have relied on the following decisions :-

- i) AIR 1988 S C 56;
- ii) Union of India Vs. Harnam Singh, ;
- iii) AIR 1991 I Cal LT318;
- iv) AIR 1999 Cal 897;
- v) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ;
- vi) AIR 1994, Vol. I, Calcutta Law Journal, Page 79.

5 Birad Mal Singhvi Vs. Anand Purohit, : The relevant portion of paragraph 14 and 15 of this judgment has been relied on by Mr. Kundu wherein the Supreme Court drawing an analogy of section 35 of Evidence Act was of the view that the document on which the age of the person is to be determined must be a public document. Supreme Court was of the view that entry recording the age of a person in the school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.

6. Union of India Vs. Harnam Singh, : In this case the Supreme Court held that the application for correction of date of birth entered in the service book in 1956, for the first time made in 1991, was hopelessly belated. It had not been made even within the period of 5 years from the date of coming into force the Government circular. His inaction for all this period of about 35 years from the date of joining service, therefore precludes him from showing that the entry of this date of birth in service record was not correct.

7. 1991, VOLUME I, CALCUTTA LAW TIMES, PAGE 318 : In this case there has been inordinate delay on the part of the petitioner for a period of about 10 years. The Division Bench of this Court although held that there had been inordinate delay, granted relief to the person concern in the interest of justice by directing the authority to record the date of birth after ascertaining through medical examination.

8. 1999, CALCUTTA WEEKLY NOTES, PAGE 897 : In this Judgment the Division Bench of this Court was of the view that since the dispute has arisen relating to the exact date of birth of the petitioner such dispute can not be resolved in proceedings under Article 226 of the Constitution of India.

9. State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, : In this case there has been arbitrary fixation of date of birth by the State and the Supreme Court was of the view that the High Court is not precluded from entering upon a decision on facts raised by the petitioner under Article 226 of the Constitution of India.

10. 1994, VOLUME I, CALCUTTA LAW JOURNAL, PAGE 78 : Here the Division Bench of this Court was of the view that the correction of a date of birth can only be made by contemporaneous document and not otherwise.

11. The first two decisions cited above of the Supreme Court have no application in the instant case as I find the facts and circumstances of the case specially in the case reported in Union of India Vs. Harnam Singh, are totally different from the present one. Hence, the analogy of the Supreme Court while analysing section 35 of the Evidence Act may not be germane herein. On the contrary I find that the decision reported in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, would appropriately fit in the facts and circumstances of this case, inasmuch as the authority concern in instant case has recorded the date of birth admittedly on the basis of the estimation of the medical officer at the time when the petitioner joined the service. It is an admitted fact that such recording was not supported by any documents and/or basis. Hence, on the basis of that

recording it can not be said that the writ petitioner was born on that date. I find our Division Bench in the case reported in 1991 Volume I, CLT, Page 318 (supra) accepted the recording of the date of birth through medical examination. Following the said decision I feel that it is a fit and proper case where the age of the writ petitioner has to be ascertained by scientific method when both the parties are not having any full proof evidence of age.

12. Upon consideration of the facts it appears that even if I accept the contention of the respondent that the service record, Identity card and medical card can not be considered as proof of age then the proof of age in this case is based upon two documents, one is the school certificate on which the petitioner is relying upon and the other being the recording of medical officer on which the respondent is relying on. I do not wish to give much credence to the argument made by the respondent in regard to the gradation list as I find that the publication of the gradation list is absolutely for a different purpose and the statement showing recording of the date of birth can at best be said as a fact which might have come to the notice of the writ petitioner and as such the same can not be made a principal basis on which the issue has to be resolved herein.

13. Let me first consider the recording of the medical officer. It is an admitted fact that the writ petitioner could not submit any document on the date of joining. The respondent in that view should have proceeded to have his date of birth ascertained by proper medical examination. Having not done, so, the respondent, in my view, is not entitled to rely on such recording and deprive the writ petitioner of his service tenure if he is otherwise so entitled to. From the facts it appears that even thereafter the respondent did not think it fit to direct medical examination even when in the year 1975 the school certificate was produced by the writ petitioner. In my view in 1975 when the respondent authority got the school certificate, they should have objected to the same and should have directed medical examination at that juncture. In my view the writ petitioner by producing the said school certificate had raised a dispute, with regard to his recording of date of birth in 1975. Even if I accept the contention of the respondent that the gradation list was published in the year 1973 which recorded the date of birth of the writ petitioner as of 1936, by producing the school certificate in the year 1975, the writ petitioner had raised objection with regard to his recording of date of birth it was open to the respondent to raise dispute at that juncture and to resolve the same by directing the writ petitioner to appear before the medical board for examination. Having not done so I feel that the respondent was precluded from contending that the writ petitioner had been superannuated on the basis of his date of birth recorded as 1936.

14. With regard to the second part of the argument of Mr. Kundu that the application of the writ petitioner is hit by the circular I feel that such submission has no basis as I have just now held that by submitting the school certificate in the year 1975 writ petitioner had raised dispute with regard to his recording of date of birth and as such I feel that 1992 representation was nothing but a mere

follow up and can not be said to be hit by the said circular.

15. Hence I hold that the action on the part of the respondent authority in superannuating the writ petitioner from his service on the basis of his date of birth as wrongly recorded in the records of the respondent is bad and is liable to be quashed and set aside.

16. In course of hearing, on an enquiry made by me, Ms. Sengupta, on Instruction, submitted that even today the writ petitioner is prepared to face medical examination for ascertaining of his age. I find that such stand taken by the writ petition is bonafide.

17. In the result, the writ petition succeeds. The order directing superannuation of the writ petitioner's service on the basis of the date of birth as of 1936 is quashed.

18. To ascertain actual date of birth, writ petitioner is directed to appear before the medical board to be constituted by the Director, Health Service, Government of West Bengal at the cost of the respondent. The Director, Health Service, Government of West Bengal is directed to constitute a medical board for ascertaining the actual age of the writ petitioner. The cost and expenses of such process of ascertaining the age Including the medical examination would be borne by the respondent. The entire process of ascertaining of age should be completed within six weeks from the date of communication of this order. After the medical board comes to a conclusion about the actual age of the writ petitioner, the said medical board through the Director, Health Service, Government of West Bengal would submit report to the Respondent Authority and the Respondent Authority would accordingly correct the date of birth in the service record and in case it is found that the writ petitioner had been prematurely superannuated, the writ petitioner should be treated as in service upto the date of superannuation on the basis of corrected date of birth and other benefits available to the writ petitioner treating him in service for this period should be given as early as possible preferably within 8 weeks from the date of receipt of such medical report.

Writ petition is thus disposed of.

(Later) :

Let urgent xerox certified copy of this order be given to the learned Advocate for the respondent with in two weeks from today.