
(2009) 06 GAU CK 0037
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 60 of 2008

Sh. Chhawntluanga

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Citation : (2010) 1 GLD 163 : (2009) 5 GLT 814

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Heard Mr. Michael Zothankhuma, learned Counsel for the petitioner. Also heard Mr. N. Sailo, learned Additional Advocate General, Mizoram for the respondent authorities.

2. The petitioner was appointed as a Chainman in the Office of the Assistant Settlement Officer, Lunglei vide order dated 27.10.1973. As required under the Service Rules the respondent authorities opened Service Book for the petitioner with initial entries made therein on 20.6.1974 by the Assistant Settlement Officer, Government of Mizoram, Lunglei. Column No. 5 relates to date of birth by Christian era as nearly as can be ascertained. In the said column, the date of birth of the petitioner has been recorded. According to the petitioner his date of birth is 1.4.1955 and he made declaration to that effect at the time of opening initial Service Book. According to him as per his declaration the Assistant Settlement Officer recorded his date of birth as on 1.4.1955 but the last figure "5" in the year has been manipulated by over writing thereon figure 1 by an unknown person. The respondent authorities accepted petitioner's date of birth as on 1.4.1951 in the year 1997 without giving any notice to the petitioner on the basis of the aforesaid over writing made upon the figure "5" by figure "V. The petitioner made representations before the respondent authorities for correction of his date of birth as on 1.4.1955 but the same was rejected vide impugned orders dated 16.12.2003 and 24.6.2008.

3. Mr. Michael Zothankhuma, learned Counsel for the petitioner submits that the petitioner's date of birth has been recorded in the 1st Service Book as on 1.4.1955 as per declaration made by the petitioner at the time of opening the Service Book. The date of birth as recorded therein as on 1.4.1955 is the true date of birth which he is using for all purposes, including the service benefits. The further submission of Mr. Michael Zothankhuma, learned Counsel is that during last 24 years since the initial Service Book was opened, the authorities concerned did not make any query or inform the petitioner about the doubt, if any, that arose regarding his date of birth recorded in the Service Book. At no point of time, before correcting the figure "5" by "V in the year of birth, the respondent authorities did ever enquire from the petitioner, or give any notice for effecting any correction thereon. According to Mr. Michael Zothankhuma, learned Counsel for the petitioner, the date of birth once recorded in the Service Book cannot be changed or corrected without giving any notice to the Government servant concerned and therefore, any correction made without prior notice to the petitioner and acceptance of the same without hearing the Government servant concerned is unauthorized and illegal and the same is liable to be set-aside.

4. An affidavit-in-opposition has been filed by the State respondents wherein it is maintained that the date of birth of the petitioner is 1.4.1951 and the same was originally entered in his Service Book as per his declaration made at the time of opening the Service Book. It was the petitioner himself who, in an unauthorized manner made the over writing on figure "1" by "5" for his benefit. It is stated in the counter affidavit that, the respondent No. 1 thoroughly examined the entry made in the Service Book in regard to date of birth of the petitioner and it was found that figure "1" was some how manipulated over written by figure "5" over figure 1 and it was clear from the examination of note sheet that 1.4.1951 was the original figure. The Government therefore, had no other option but to accept the original entry i.e. 1.4.1951 as the correct date of birth of the petitioner as per the Rules.

5. In order to resolve the issue, this Court by an order dated 5.3.2009, directed the respondent authorities to obtain opinion of the handwriting expert in regard to over writing over the year of birth by sending the same to the Forensic Science Laboratory, Assam, Kahilipara, Guwahati. In compliance to the said order the same was referred to the FSL and report has been obtained therefrom. The same has been submitted by the State respondents alongwith an affidavit filed on 5.6.2009. The report is quoted below:

GOVERNMENT OF ASSAM DIRECTORATE OF FORENSIC SCIENCE : ASSAM,
KAHILIPARA: GUWAHATI

To,

The documents in connection with a departmental enquiry (received vide memo No. C.3101/22/2008-EST/DTE(Rev.)/62 dated 18.3.2009) have been carefully and thoroughly examined under various scientific instrument like magnifying

lenses, stereo Microscope, in different light arrangement such as oblique light, transmitted light and also under radiations like ultra violet including infrared ray under VSC 5000 instrument.

2. The existing figures in the red enclosed part "1.4.51" stamped and marked Q1 representing date of birth where the last digit was overwritten over the original figure when deciphered read "1.4.55".

3. The existing words in the red enclosed part (1st day of April Nineteen-Fifty-one) stamped and marked Q2 representing date of birth, where the last word was overwritten over the original word when deciphered read "(1st day of April Nineteen-Fifty-five)"

Tomizuddin Ahmed Senior Scientific Officer, Questioned Documents Division, Assam, Kahilipara, Guwahati-19

6. The conclusion of the Forensic Science Laboratory is to be noted. It is clear that the figure 5 has been over written by figure 1 and the last word was over the original word when deciphered read (1st day of April Nineteen-Fifty-five). This is the opinion of the handwriting expert which the Court is bound to accept.

7. This opinion of the expert is to be read with the School Certificate issued by the Headmaster, Government Middle School, Rahsi Veng, Lunglei issued on 27.6.2008 where the date of birth of the petitioner has been recorded as on 1.4.1955. In para 18 of the writ petition, statements have been made by the petitioner that he approached the authorities of his old school to give him School Leaving/Transfer Certificate and the said certificate was issued to him as per the admission register. The respondent authorities, in their counter affidavit, have not challenged the genuineness of the aforesaid School Certificate. Under such circumstances the School Certificate obtained by the petitioner is to be accepted and the date of birth recorded therein as on 1.4.1955 which is initially recorded by the concerned officer in the initial service book should also be accepted considering the affirmative report of the FSL as discussed earlier.

8. That apart it is an admitted position that before any correction was made, the petitioner was not served with any notice. Any steps taken by the respondent authorities for correcting the date of birth without affording any chance of hearing, is a flagrant violation of the principle of natural justice and as such the impugned orders dated 16.12.2003 and 24.6.2008 are violative of principle of natural justice and the same are liable to be quashed and set aside.

9. In the result, the impugned orders dated 16.12.2003 and 24.6.2008 stand quashed.

10. The writ petition stands allowed.