
(2017) 03 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 176 of 2016

Sh. Lalthanga Royte

APPELLANT

Vs

State of Mizoram

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2017) LIC 1349

Hon'ble Judges : Micheal Zothankhuma, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Micheal Zothankhuma, J.—Heard Mr. Lalchhanliana Khiangte, learned counsel for the petitioner. Also heard Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram for the State respondents.

2. The petitioner's counsel submits that the petitioner was born on 05.09.1962 and the date of birth was clearly recorded in his official documents such as Birth Certificate, Voter's ID card, Admit Card for his HSCL Examination, Provisional/ Transfer Certificate and Matriculation Certificate.

3. The petitioner's counsel submits that the petitioner passed his matriculation examination in the year 1982 and the petitioner was thereafter appointed as Field Assistant in the Land Revenue & Settlement Department in the year 1987. The petitioner's counsel submits that the petitioner is presently holding the post of Revenue Sub-Inspector in the office of Land Revenue Department, Champhai.

4. The petitioner's counsel submits that though the petitioner's date of birth was 05.09.1962, the petitioner's date of birth has been wrongly recorded in his Service Book as 05.09.1957. The petitioner's counsel submits that the petitioner came to know the wrong recording of his date of birth in his Service Book in the month of January, 2015 and accordingly, the petitioner submitted an application dated 07.04.2015 to the respondent No. 3 praying for correction of his date of

birth. The petitioner's counsel submits that the petitioner's application was rejected vide letter dated 20.05.2015, issued by the respondent No. 3, stating that the petitioner's date of birth could not be altered after serving for about 28 years and as the petitioner did not make any representation against the same within 5 years from the date of joining the service.

5. The petitioner, thereafter has filed the present writ petition on 18.10.2016, praying for correction of his date of birth from 05.09.1957 to 05.09.1962. The petitioner's counsel submits that the petitioner's Matriculation Certificate was lost and accordingly, a duplicate certificate was issued to the petitioner sometime in the year 1987. The petitioner's counsel submits that the date of birth recorded in the Matriculation Certificate is normally assumed to be the correct date of birth of a person and accordingly, the Service Book of the petitioner should be corrected as per the date of birth recorded in his Matriculation Certificate.

6. In support of his submissions, the petitioner's counsel has relied upon the judgments of the Apex Court and the judgment of this Court in the case of (1) Mohd. Yunus Khan v. U.P.Power Corporation Limited and others reported in 2009 1 SCC 80 : (AIR 2008 SC (Supp) 1163; (2) Loksheswar v. Assam State Electricity Board & Ors. reported in 2016 3 GLT 384; (3) Thuleswar Hazarika v. State of Assam & Ors. reported in 2016 2 GLT 1102; (4) 2015 4 GLT 137; (5) Satyen Tendulkar v. State of Assam reported in 2014 3 GLT 464 and Judgment & Order dated 26.09.2007 passed in the case of Shri. K. Thanmawia v. State of Mizoram & Ors. (W.P(C) No. 97/2006).

7. The petitioner's counsel also submits that the date of birth recorded in the petitioner's Matriculation Certificate is not disputed by the authorities and the petitioner's date of birth should be corrected accordingly.

8. Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram for the State respondents submits that at the time of entering the petitioner's Biodata in the Service Book, which included the petitioner's date of birth, the petitioner put his signature in his Service Book. Over the years, the petitioner had also put his signature in his Service Book and also in the Supplementary Service Book made in the year 2012. He submits that the petitioner's date of birth having been clearly reflected in the Service Book and Supplementary Service Book as 05.09.1957, the petitioner had ample opportunity to make a representation against the date of birth recorded in the Supplementary Service Book and Service Book earlier, which the petitioner did not do.

9. Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram also submits that the petitioner had given details of his family in Form-III on 05.04.2010 and 24.05.2011, wherein, the petitioner's date of birth has been clearly reflected as 05.09.1957. Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram also submits that the petitioner submitted a complaint for the first time only on 18.02.2016 and no representation or complaint was submitted by the petitioner

prior to 18.02.2016.

10. Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram submits that the petitioner's application for changing his date of birth could not be done as the same is not allowed by the Government of Mizoram, in view of O.M. dated 10.07.2014, which states that change of date of birth after 5 years from the date of entering in the Government service is not open to any Government servant. The Addl. Advocate General also submits that a request for change of date of birth by the petitioner was done only after 28 years of entering into Government service.

11. The Addl. Advocate General thus submits that the petitioner cannot be allowed to blow hot and cold with regard to his date of birth at this stage at the fag end of his career.

12. I have heard the learned counsels for the parties.

13. The question in hand is whether the petitioner can be allowed to pray for change of date of birth at the fag end of his career. The other question that has also to be decided is whether the petitioner can now resile from his earlier acts, wherein, he has shown in various documents that his date of birth was 05.09.1957, as recorded in his Service Book, details of family dated 05.04.2010 and details of family dated 24.05.2011.

14. The petitioner has not been able to produce his original Matriculation Certificate in the Court. However, there is a letter allegedly written by the Mizoram Board of School Education (MBSE) that the petitioner's date of birth is 05.09.1962. This letter is allegedly written by one State Public Information Officer of the MBSE on 22.11.2016. The petitioner's birth certificate has been issued on 18.02.2016 and the petitioner's Electoral Photo Identity Card had been issued on 12.05.2005.

The above 2 documents thus cannot be accepted by the Court to prove that the petitioner's date of birth was 05.09.1962.

15. In the case of State of Uttar Pradesh & Anr. v. Shiv Narain Upadhyaya reported in 2005 6 SCC 49 : (AIR 2005 SC 4192), the Apex Court has held that date of birth of an individual is recorded to keep a record of the date of exit/supperannuation or retirement. This is the practise prevailing in all services, because every service has fixed the age of retirement and it is necessary to maintain the date of birth in the service record. The Apex Court has also held in para 7 as follows:

"Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth on the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be

entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Dekha* this Court said that the date of the compulsory retirement

" must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

16. The Apex Court in the case of *State of Uttar Pradesh & Anr. v. Shiv Narain Upadhyaya* (AIR 2005 SC 4192) (*supra*) has also held that the Court or the Tribunal should not issue a direction or make a declaration on the basis of the materials which may make such claim only plausible unless a clear case on the basis of clinching materials, which can be held to be conclusive in nature, is made out by a party and that too, within a reasonable period of time as provided in the rules governing the service.

17. In the present case, even assuming that the date of birth of the petitioner is 05.09.1962 as per the Matriculation Certificate, the fact remains that the petitioner has approached this Court at the fag end of his career i.e. in October, 2016, while the petitioner was to retire in September, 2017. As per Note 6 (a) of FR 56, an alteration of date of birth of a Government servant can be made if a request in this regard is made within 5 years of his entering into Government service. Besides the above, the State respondents had issued an Office Memorandum dated 10.07.2014 clarifying that change of date of birth after 5 years from the date of entering into Government service is not open to any Government servant. Thus, the petitioner has not applied for correction for his date of birth within the time period allowed as per the rules governing his service. Also the petitioner has not made any challenge to the O.M dated 10.07.2014.

18. In the case of *State of Haryana v. Satish Kumar Mittal & Anr.* reported in 2010 9 SCC 337 : (AIR 2010 SC 3312), the Apex Court has held that the import of a rule laying down that an application for correction of date of birth should be submitted within 2 years is due to the fact that a direction for correction of date of birth for a public servant concerned has a chain reaction, inasmuch as, others waiting for years, below him for the respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, the officers concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. The Apex Court has thus held that the application for correction of date of birth is also to be looked into from the point of view of department concerned and the employees engaged therein. The Apex Court thus held that the application made beyond the period provided for filing an application for correction of date of birth cannot be allowed, if it is belated. The judgments of the Apex Court mentioned above clearly state that a petition for

correction of date of birth should not be allowed at the fag end of a person's career.

19. The Apex Court having held in various judgments, including in the case of *State of Punjab v. S.C Chadha* reported in 2004 3 SCC 394, that a petition for correction of date of birth should not be allowed which has been filed at the fag end of a person's career, this Court is also bound by the law laid down by the Apex Court.

Besides, the above, the petitioner has made declarations regarding details of his family, as per the forms submitted by him to the Government on 05.04.2010 and 24.05.2011. In both these forms, the date of birth of the petitioner has been shown to be 05.09.1957. The petitioner has also signed these forms showing the details of his family members.

20. I have perused the Service Book and Supplementary Service Book of the petitioner. The Service Book of the petitioner shows that the petitioner's date of birth has been recorded as 05.09.1957. The petitioner has given his signature on the said Service Book in the year 1987. Thereafter, he has given his signatures in the year 1990, 1991, 1993, 1994 and 1995. In the Supplementary Service Book, the petitioner's date of birth is recorded as 05.09.1957 and was opened on 31.05.2012. The petitioner has given his signature in the first page and also on other pages in the year 2012. The fact of the petitioner giving his signatures in his Service Book clearly goes to show that the petitioner was aware of his date of birth being recorded as 05.09.1957 in his Service Book. He did not agitate the same earlier. His first and only representation was made on 07.04.2015, which was rejected on 20.05.2015. The petitioner then filed the present writ petition after waiting for another one year five months, i.e. 11 months prior to his date of retirement. The petitioner cannot be now allowed to take a plea that he was unaware that his date of birth was wrongly recorded in his Service Book until January, 2015 as he did not pay attention to the recording of his date of birth in his Service Book. The petitioner cannot now be allowed to blow hot and cold at the same time.

21. With regard to the citations cited by the petitioner's counsel, this Court finds that the citations referred to are not applicable to the present case. In the case of *Mohd. Yunus Khan v. U.P.Power Corporation Limited and others* reported in (2009) 1 SCC 80 : (AIR 2008 SC (Supp) 1163), the case involved a mistake in the recording of the date of birth of the appellant therein, in view of the fact that there were two persons with the same name in the department, due to which the documents had got mixed up. The said fact does not apply to the present case in hand.

22. In the case of *Loksheswar v. Assam State Electricity Board & Ors.* reported in 2016 (3) GLT 384, the subject matter in issue was with regard to the appellant overstaying in service and drawing excess salary due to wrong recording of date of birth.

This Court in the said case has held that the School Leaving Certificate was a vital piece of document for ascertaining the age of an employee. This Court does not have any quarrel with the decision made in Loksheswar (supra). However, the said decision is not applicable in the present case due to the fact that the present application for correction of the date of birth has been made in violation of the rules laid down, i.e. beyond the time period allowed for submission of the application for correction of the date of birth and as the same has been made at the fag end of his career.

23. In the case of Thuleswar Hazarika v. State of Assam & Ors. reported in 2016 2 GLT 1102, this Court has held that a representation for correction of date of birth should be made as expeditiously as possible so as to enable the employer to pass appropriate orders thereupon but the said principle would not be applicable in a case where a mistake on the part of the respondent stands admitted. This Court then referred to the decision of the Apex Court in Mohd. Yunus Khan v. U.P. Power Corporation Limited and others reported in (2009) 1 SCC 80 : (AIR 2008 SC (Supp) 1163), where the Apex Court held that even if there is a statutory rule fixing the time frame for filing an application for correction of date of birth in the service record, the same would not be much significance if the employee had no knowledge about such mistake in the service record at an earlier point of time. In the present case, there is no admission made by the respondents that there is a mistake committed by them. Also, the petitioner has given his signatures in his Service Book and Supplementary Service Book over the years and the last signature given by him in his Supplementary Service Book was in the year 2012. The above clearly implies that the petitioner was well aware that his date of birth recorded in his Service Book was 05.09.1957. Further, the 2 forms filled up by the petitioner giving details of his family members dated 05.04.2010 and 24.05.2011 clearly show that the petitioner's date of birth is 05.09.1957. Accordingly, the above citation cannot come to the aid of the petitioner as an inference can be made that the petitioner was well aware of his date of birth recorded in his Service Book, Supplementary Service Book, details of family members in the forms dated 05.04.2010 and 24.05.2011, which had been submitted by the petitioner to the Government.

24. The petitioner's reliance upon the Judgment of this Court in the case of Kamal Chandra Bora v. State of Assam & Ors. reported in 2015 4 GLT 137 also does not come to the aid of the petitioner in view of the fact that the petitioner in the above case raised the issue of correction of his date of birth much prior to his superannuation date and not at the fag end of career, as recorded in para 23 of the said judgment. The petitioner's reliance upon the judgment of this Court in the case of Satyen Tendulkar v. State of Assam reported in 2014 3 GLT 464 also cannot come to his aid in view of the fact that the date to be corrected was in relation to the correct computation of his date of birth on the basis of the age entered in his Pass Certificate of the HSLC examination, which had already been made a part of his Service Book. The above judgment is not applicable in the

present as the petitioner's Matriculation Certificate is not a part of his Service Book. Also, it is not the petitioner's case that the petitioner's date of birth was wrongly recorded in the Service Book due to a wrong computation of his date of birth. In W.P(C) No. 97/2006, the facts of that case was that the petitioner's date of birth which had been wrongly recorded was corrected by the authorities by recording the petitioner's date of birth as had been originally recorded in the Service Book. The same had been done without issuing any notice to the petitioner. It was in this context that the decision had been made by this Court in the Judgment & Order dated 26.09.2007 passed in W.P(C) No. 97/2006. The facts of that case is also not the same as the facts of this case.

25. It is well settled that the judgment of a Court is not to read mechanically as a Euclid's theorem nor as if it were a statute. The law laid down by the Apex Court having clearly held that an application for alteration of date of birth should not be considered at the fag end of a career by a Government servant as it could affect others, this Court is not inclined to allow the present writ petition. Further, the petitioner has not made any challenge to the O.M dated 10.07.2014.

26. Further, in view of the fact that the petitioner's application for correction of his date of birth has been made in the fag end of his career and as the petitioner had accepted his date of birth recorded in his Service Book and family declarations made on 05.04.2010 and 24.05.2011, wherein, his date of birth is recorded as 05.09.1957, this Court is not inclined to exercise its discretion and accordingly, the present writ petition stands dismissed.