
(2012) 06 GAU CK 0160
In the Gauhati High Court
Case No : Writ Petition (C) No. 1981 of 2012

Shri Anadhir Ranjan Paul

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (2013) 1 GLD 177

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : P. Roy, for the Appellant; B.J. Ghosh, GA, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This writ petition is directed against the alleged premature retirement of the petitioner from service taking his date of birth as 12.04.1952 instead of 12.09.1957 claimed by the petitioner. There is no dispute that as per High School Leaving Certificate (HSLC) Examination Certificate of 1972, the date of birth of the petitioner is 12.04.1952. However, the petitioner after passing HSLC examination in 1972 and issuance of the certificate claimed his date of birth as 1.2.09.1957 and to that effect his elder brother Shri Nihar Ranjan Paul had sworn an affidavit on 22.02.1978. The said affidavit was sworn in before the Judicial Magistrate, 1st Class, Silchar. The case projected is that since the petitioner was appointed as LDC-cum-Typist in the office of the Commandant Battali on Training Centre, Dergaon in 1983 and to be precise on 26.08.1983, had his date of birth calculated on the basis of the said affidavit as 12.09.1957 been not accepted, he would have been over aged for appointment in 1983. In this connection, the petitioner has shown his age on the date of appointment as 31 years, 4 months and 21 days as against the permissible upper age limit of 30 years. However, in the process the petitioner has conveniently withdrawn the process selection which included advertisement indicating the last date of submission of application form etc. There is no whisper in the writ petition as to

whether on the date of submission of the application offering candidature, the petitioner was within the age limit.

2. There is another aspect of the matter that has come to the notice of this Court on perusal of the service book of the petitioner. As per the service book, the petitioner was appointed as LDA in the year 1978 against a temporary vacancy in the office of the Superintendent of Police, Cachar, Silchar. Thus the petitioner has conveniently omitted the earlier appointment as LDA w.e.f. 1978 in continuation of which he was regularly appointed.

3. According to the petitioner, the authority at the time of his appointment having accepted the corrected date of birth as disclosed in the said affidavit they are now precluded from taking the date of birth of the petitioner as 12.04.1952 and retiring him from service on that basis. The petitioner has also referred to the gradation list published on 20.03.2010 in which his date of birth was shown as 12.09.1957.

4. The respondents have filed the counter affidavit denying the contentions raised in the writ petition. It has been stated that in the service book two dates of birth were recorded one is 12.04.1952 and the other is 12.09.1957. It is the stand of the respondents that the date of birth recorded in the HSLC Examination Certificate will prevail over the declaration made in the affidavit which was sworn in by the elder brother of the petitioner. It has been stated that the particular entry in the HSLCE certificate having not been corrected by the authority which had issued the same, the affidavit sworn in by the elder brother of the petitioner cannot have any bearing. The affidavit has also referred to the particular enquiry conducted in association with the petitioner. It appears that the petitioner was associated with the said enquiry and he had placed reliance on Horoscope, However, in the writ petition there is no disclosure of the said enquiry and participation of the petitioner in the same.

5. have heard Mr. P. Roy, learned counsel for the petitioner as well as Mr. J, Ghosh, learned State counsel.

6. While Mr. Roy has submitted that the date of birth recorded in the service book could not have been altered without putting the petitioner to any kind of notice, Mr. Ghosh, learned State counsel submits that the writ petition is liable to be dismissed in view of the material suppression of fact. Mr. Roy, learned counsel for the petitioner has placed reliance on the Division Bench judgment of this Court in the case of *Dakshaprasad Deka Vs. Inspector General of Police and Others* . In that case it was emphasized that in case of any dispute raised by an incumbent, due opportunity to prove a fact regarding correct age should be given to him. However, the fact of the matter is that the said judgment of the Division Bench has been reversed by the Apex Court in its judgment reported in *State of Assam and Another Vs. Daksha Prasad Deka and Others*, .

7. Mr. Ghosh, learned State counsel has placed reliance on some other decision as reported in *Sudha Devi Vs. M.P. Narayanan and Others*, , 2002 (6) ALT 46

(SC) and State of Bihar and Others Vs. Pandey Jagdishwar Prasad, .

8. While in the first judgment, namely Smt. Sudha Devi (supra), the Apex Court has held that the affidavits are not included in the definition of evidence u/s 3 of the Evidence Act and thus cannot be used as an evidence, in the second decision namely Mohanlal Sharma (supra), the Apex Court has held that the date of birth recorded in matriculation certificate carries greater evidentiary value than that contained in a certificate given by the retired headmaster of the school or in the horoscope. Learned State counsel has placed reliance on the above decisions to contend that the affidavit sworn in by the elder brother of the petitioner does not have any evidentiary value more so when the HSLCE certificate declares the particular date of birth.

9. In the 3rd judgment namely Pandey Jagdishwar Prasad (supra), the Apex Court dealing with a similar issue held, that date of birth mentioned in the matriculation certificate should be treated as the date of birth. It has further been held that it would be open for the employee to place the documents before the authorities to prove that the date of birth shown in the matriculation certificate was incorrect. Such documents cannot be in the form of an affidavit.

10. Although the petitioner has contended that affidavit sworn in 1978 had been sent to the authority which had issued the HSLC certificate, but the fact of the matter is that the said authority never corrected the date birth recorded in the HSLC certificate.

11. From the above, what is seen is that there is suppression of material facts and/or correct fact has not been disclosed in the writ petition, Firstly, the petitioner has conveniently withdrawn the fact from the Court that he was appointed in the year 1978 in the establishment of the Superintendent of Police, Cachar and it was in continuation of such service he was regularly appointed in 1983. This aspect of the matter has a bearing inasmuch as to prove that the petitioner's date of birth as per the affidavit was accepted as 1957 in place of 1952, the petitioner has projected in the writ petition that had that not been the position, he would have been over aged on the date of his appointment in 1983. Second suppression in the writ petition is that there was an enquiry in association with the petitioner in which he had duly participated. In the counter affidavit the respondents have enclosed the copy of the enquiry report clearly mentioning about production of horoscope by the petitioner and giving statement in the enquiry. This fact has been withdrawn by the petitioner in the writ petition so as to contend that there has been violation of natural justice in not providing any opportunity to the petitioner.

12. Irrespective of suppression of aforesaid material facts, I have considered the case on merit. As per the HSLCE certificate, the date of birth of the petitioner is 12.04.1952 and not 12.09.1957. However, the whole basis of the claim of the petitioner is the aforesaid affidavit sworn in by his elder brother declaring his date of birth as 12.09.1957. Needless to say that the date of birth recorded in

the HSCE certificate will prevail over the date of birth shown in the affidavit. In the service book there are two entries against the column "date of birth" one is 12.04.1952 and the other 12.09.1957. While against 12.04.1952 it is stated that the same is as per HSLCE certificate, against the date of birth 12.09.1957 it is stated that same is as per the affidavit. The service book having recorded two dates of birth one supported by the HSLCE certificate and the other on the basis of the affidavit, it is within the competence and jurisdiction of the authority to accept the one declared in the HLCE certificate. In view of the above, I see no reason to interfere with the decision of the authority and accordingly the writ petition is dismissed.