

(1989) 04 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 196/82

Shri Munindra Nath Deb Adhikari

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 GLR 18

Hon'ble Judges : W.A. Shishak, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : D.N. Choudhury and A.C. Sarma, for the Appellant; G.K. Bhattacharyya, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, J.—The Petitioner entered the Government service on 18.11.1957 pursuant to the appointment letter dated 14.10. 1957. The initial appointment was as a teacher of Charak in the Government Ayurvedic College, Guwahati. At that point of time his date of birth was recorded as 24.11.1929. The question of correct date of birth got agitated in 1976, when the Joint Director of Health Services, Assam wrote to the Petitioner vide Annexure-2 dated 25.6.76 that the Petitioner had not furnished any acceptable proof of age. He was, therefore, required by this letter to submit a certificate showing the date of birth as per school records from the Headmaster of the school where he had taken general education. The Petitioner replied vide Annexure-3 that he had studied at home privately before (sic) the Course in Sanskrit TDC. It was further averred by the Petitioner that he had passed his Vyakaran Shastri examination after having studied for a period of about 8 years. Thereafter he passed his admission examination in the Benaras Hindu University as a private candidate. The Petitioner further averred that he had already submitted his horoscope as a proof of his age. The authorities did not feel satisfied at the reply and referred the case to the Medical Board whose Chairman reported that the approximate age of the

Petitioner at the time of examination in 1976 ought to have been 57 years. If his report is accepted, the year of birth of the Petitioner would be 1919 as against 1929 given by the Petitioner. In the mean time, the authorities contacted the Controller of Examination of the Benaras Hindu University who reported that the date of birth of the Petitioner is 1.2.1923. After receipt of this information, the Govt. desired to know from the Controller of Examinations, Benaras Hindu University, as to what was the basis of recording the date of birth as 1.2.1923 and the Controller replied that the same might have been based on the Vyakaran Shastri Examination Certificate which the Petitioner had passed from Bihar in 1944. After receipt of these reports, the Joint Director of Health Services addressed another letter to the Petitioner stating that as per the records of the Benaras Hindu University his date of birth was 1.2.1923 whereas in the service book it was recorded as December 1929. He was therefore asked to show cause as to why his date of birth as recorded in the service book should not be corrected and why appropriate disciplinary action should not be taken against the Petitioner for furnishing false information regarding his date of birth. To this, the Petitioner replied that the particulars of the service book was recorded on the basis of horoscope submitted by him which was still available with the authorities. The authorities replied back the Petitioner by saying that the horoscope could not be accepted. The authorities subsequently retired the Petitioner on reaching the age of superannuation relying on the date of birth as given by the Controller of Examinations, Benaras Hindu University. The Petitioner has assailed the aforesaid date of birth as determined by the authorities in this application under Article 226 of the Constitution.

2. Shri Choudhuri has urged that the Petitioner did not get full opportunity to establish his correct date of birth and the authorities relied on the information supplied by the Benaras Hindu University, without ranking available the information of the Petitioner. In this connection our attention has been drawn by Shri Choudhuri to the well known case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, It has also been urged by the learned Counsel that as the conclusion of the authorities is not supported by any evidence, it is open to this Court to interfere with the same in exercise of our power under Article 226 of the Constitution. To substantiate this submission, we have been referred to Union of India (UOI) Vs. H.C. Goel, By placing reliance on Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, Shri Choudhuri has urged that requirement of proof cannot be dispensed with even in a domestic enquiry--not to speak of an enquiry of the present nature.

3. As to the last submission of the learned Counsel, we may state that we are unable to agree with him when he submits that there was no material before the authority to change/alter the date of birth. We have taken this view inasmuch as from the facts as narrated above, it is clear that the authorities relied on the date of birth as informed to them by the Controller of Examinations, Benaras Hindu University, of which reference has already been made.

4. As to the non providing of proper opportunity or violation of the principles of natural justice, we may say that the Petitioner was duly informed about the information received by them from the Controller of Examinations, Benaras Hindu University and he was given adequate opportunity to have his say in the matter. Shri Choudhuri submits that the Petitioner was made known that the date of birth as recorded by the Benaras Hindu University was perhaps on the basis of Vyakaran Shastri Examination Certificate. Though this is correct, but then we find that it is almost an admitted position that the Petitioner had appeared in Vyakaran Shastri Examination of which reference has been made in Annexure-3, of course, in this Annexure it has not been stated wherefrom or from which place the Petitioner had passed the Vyakarana Shastri Examination. Be that it as it may, as we are not satisfied on the facts of the present case if the date of birth of the Petitioner was altered by the authorities without any basis or without giving due opportunity to the Petitioner to meet his case, we are of the view that the present is not a fit case for interference in exercise of our extraordinary powers under Article 226 of the Constitution.

5. Before concluding, we would like to state that Shri Choudhuri has also drawn our attention to the provision in Rule 8 of the Subsidiary Rules which has dealt with the question as to when alteration in the date of birth can be made at the request of the incumbent. As per the note appended to the Rule, in no case a request for change in the date of birth of a Government servant should be entertained within 3 years of the date of superannuation. The Petitioner was superannuated in 1981 whereas the exercise relating to the ascertainment of his correct age was started in 1976. The provisions in the Note to the aforesaid Rule cannot, therefore, be said to have been violated.

6. The petition is, therefore, dismissed.