

(1988) 04 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction No. 706 of 1980 (R)

Smt. Kaushalaya Choudhury

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-04-1988

Acts Referred:

Citation : (1989) PLJR 21

Hon'ble Judges : S.B. Sanyal, J

Bench : Single Bench

Advocate : T.K. Das, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sanyal, J.—The petitioner is the wife of dead freedom fighter Late Mahendra Choudhary of Monghyr, who was executed. Her late husband laid his life for the freedom struggle. Mahatma Gandhi and Dr. Rajendra Prasad's intervention to fore-stall the execution of petitioner's husband bore no result which will be evident from annexure-1 a letter dated 23rd July, 1945, by Mahatma Gandhi to the then viceroy Lord Wevell. As a measure of compensation to the family of the late freedom fighter, the petitioner was given an appointment in the year 1947 as Sewika in Coal Mine Labour Welfare Organization to rehabilitate the family of the freedom fighter. I am told that too at the behest of Dr. Rajendra Prasad. The petitioner seeks for issuance of a writ of mandamus for correction of her age which according to her has been wrongly recorded in the service book. She produced in support of her age, school leaving certificate showing her date of birth as 9.8.1926 whereas in the records of establishment, her date of birth is recorded as 26.10.1922. On 26.9.1979, she wrote a letter to the Welfare Officer (Annexure-3) that her original school leaving certificate is lying in the service book showing her date of birth as 9.8.1926. Therefore, the date of birth recorded in the records may be corrected. On 4.12.1979 the Welfare Administrator wrote to the Welfare Officer that petitioner's representation along with the original school leaving certificate is being forwarded for his consideration (Annexure-3).

School, Learning Certificate dated 2.1.1941 (Annexure-4) records her date of birth as 9th August, 1926. The petitioner was not forwarded with the consideration of her representation founded upon school leaving certificate even though she requested for the same (Annexures 5 and 6), but she was communicated on 13.1.1980 that on attaining the age of superannuation, she retired from the service on 13.1.1980 (Annexure-7). Had the petitioner's date of birth been corrected in accordance with the school leaving certificate she would have retired from service in August, 1984 on attaining the age of 58 years, counted from her date of birth recorded in the school leaving certificate as 9.8.1926.

2. A counter affidavit has been filed stating that the service book of 1947 records her age as 26th October, 1922. There is a piece of paper drawn up in English stating her date of birth as 26th October, 1922 and the said piece of paper bears her signature. It has also been stated that in the year 1971 in the gradation list, she was shown to have been born in the year 1922, but no objection was raised. It has further been said that the date of birth may be altered with the previous sanction of the Ministry of Home Affairs Department of personnel and a circular of 10th October, 1977 have been appended to the counter affidavit which required that the date of birth shall not ordinarily be changed. The exemption to the rule is only when there is a bonafide clerical mistake, this alteration could be effected with the sanction of the Ministry of the Department or an Administrator of Union Territory. In reply to the counter affidavit it has been stated that at the time of appointment, no service book was prepared. Some biodata of the petitioner have been written on a piece of paper. Her age was neither asked nor she was asked to produce any paper therefor. She might have signed in that piece prepared by the authorities themselves. It has also been submitted that since the petitioners had no objection to her seniority in the gradation list, she did not object to the gradation list.

3. Mr. Das appearing on behalf of the petitioner, has submitted that the petitioner had a right to get her date of birth corrected. Rule 79 of the General Finance Rule envisage alteration of the date of birth, however with the previous sanction of department of personnel of the Central Government or the Administrator. He has, in support of his point relied on a decision of Calcutta High Court reported in the case of *R.K. Chatterjee v. Union of India*, (1984 (1) LLJ 402) to the effect that an application for correction of the age can be rejected by giving reason therefor. The decision refusing to order correction is a quasi-judicial one having civil consequences. He has also drawn my attention to the decision of *R. Venkatachalam v. Personnel Officer* reported in (1971 (2) S. L. R. 53) where Madras High Court held that Indian Railway Establishment Code sub rule 3 (iv) of Rule 145 envisage alteration of age. When a request for alteration of age is made and is supported by a copy of the school certificate, it is obligatory on the part of the Railway authority to keep the petitioner in service till the decision of the problem. It was further held that while rejecting the application, the order should disclose conscious application of mind of such a quasi-judicial Tribunal to the

cogent material before it, and ex-facie the decision should disclose that the ultimate order was arrived at after considering the pros and cons of such material before it. It was further held that failure to object at the time of the gradation list, is of no consequence since it is only at a time when a person's right are affected to his prejudice that he is called upon to act and speak and establish that what is sought to be made out by his superiors or his employer is not correct. The other decision to which my attention has been drawn is of a Division Bench of Kerala High Court reported in (1979 (3) SLR 109) J.A. Eapen v. Union of India and others) interpreting Fundamental Rule 56. The Bench observed that in exercising due strictness in regard to the grant of such requests for correction, the attitude is not to be one of wooden rigidity but it should, on the other hand be one susceptible of sufficient flexibility so as to mete out justice in truly deserving cases where it is proved beyond doubt that the existing entry is vitiated by a clerical mistake. Mr. Das, learned counsel appearing on behalf of the petitioner, has submitted that the ratio of all the decision is indicative of one fact that the law contemplates in suitable cases a correction of the date of age if there has been some bona-fide mistake in relation thereto at the time of entry in the service. The authorities while considering the application for correction must apply their mind to the materials made available to them and pass an order in conformity with the principle of natural justice. In the instant case, according to the learned counsel, the authorities have not considered the recommendation and representation but they just ignored it, when in law, the petitioner is entitled to a decision from an authority exercising quasi-judicial power followed by civil consequences.

4. Having heard the learned counsel for the petitioner and Mr. Debi Prasad as also having appreciated the decision of Calcutta, Madras and Karela High Courts, I am of the opinion that when such an application for alteration is made, the authority must pass a speaking order of granting or refusing the prayer in exercise of quasi-judicial power vested in them. They have no right to maintain silence and ignore such a representation. In the instant case, they never replied to the representations made by the petitioner along-with the original as well as attested copies of the transfer certificate of the school. At the time of admission of this writ, a Bench presided over by L.M. Sharma, J. (as my Lord then was) observed in their order dated 22 11 1980 the pendency of this application in this court will not come in the way of authorities concerned if they are desirous of holding a fresh enquiry regarding the age of the petitioner after notice to her. For all these reasons, I direct the respondents to dispose of the representations of the petitioner in the light of the decisions of the several High Courts, referred to above, and in accordance with law. The writ application is allowed to the extent if the authorities on an enquiry of the pending representation conclude that her date of birth was wrongly recorded and her actual date of birth is 9.8.1926, the petitioner shall be paid the salary for the period she was out of job and other consequential benefits flowing therefrom treating her date of retirement in the month of August, 1984. The petition is allowed to the extent aforesaid. There will

be no order as to costs.