
(2005) 07 GAU CK 0012
In the Gauhati High Court

Smt. Renu Prabha Bora

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 01-07-2005

Acts Referred:

Citation : (2005) 107 FLR 674

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Judgement

R.B. Misra, J.—Heard Mr. S.D. Choudhary, learned Counsel for the petitioner and Mr. V.M. Thomas, learned Standing Counsel for the department.

2. In this petition prayer has been made for issuance of writ of mandamus, for directions to respondents not to force the petitioner to go on retirement till his superannuation on 30.6.2005. Further prayer of the petitioner is also to quash the letter dated 21.8.2002 whereby, the Block Elementary Education Officer (in short called BEEO) North West Block, Jorhat has indicated that the petitioner after completing 58 years on 31.10.2002 as per service book shall be superannuated accordingly.

3. According to the learned Counsel for the petitioner, he was appointed as Assistant Teacher in No. 20 Blmyanchuk LP School and 31.6.1947 was recorded as date of birth in the Service Book, while entering into the service in-the year 1962, she is due to attain the age of superannuation (i.e. 58) years on 31.6.2005 but, the Block Elementary Education Officer, North West Block vide letter dated 21.8.2002 (Annexure-IV to the writ petition) informed the petitioner that she would be retiring from service with effect from 31.10.2002 as per entry in the Service Book, however, the petitioner's application dated 9.9.2002 (Annexure-V to the writ petition) before the BEEO, was not responded.

4. The provisions of S.R. 8(a) provides as below:

(a) In the case of a Government servant whose year of birth is known but not the exact date, the 1st July should be treated as the date of birth for the purpose

of determining the date on which the Government: servant concerned should be held to have attained the age of 55 years, Similarly, if only the month, and year of birth is known, the 16th of the month is taken to be the exact date of birth.

(c) Commissioner and Heads of Departments may alter the recorded date of birth in the case of non-Gazetted Government servants; provided they are satisfied after enquiry, that the previous date was incorrect.

5. The learned Counsel for the petitioner has submitted that the provisions of S.R. 8 (c) contemplate that if there is any dispute regarding the date of birth recorded in the service book and there is some prima facie evidence, the competent authority should hold an enquiry in the matter for a decision and in such enquiry the principles of natural justice should be followed, as held in *Mohan Chandra Das v. Director of State Transport Corporation* AIR 1969 AN 259.

If on such enquiry, it is found that the date of birth recorded in the service book is not correct and the latter date of birth as alleged by the employee is correct, the retirement of such employee on the basis of date of birth recorded in the service book would certainly amount to punishment as laid down by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, This view has been accepted in *Dakshprasad Deka v. Inspector General of Police* AIR 1967 AN 13.

6. Age as recorded in the service book is to be accepted prima facie to be correct unless found to be wrong on proper enquiry. *Mohan Chandra Das v. Director, State Transport Corporation* AIR 1969 AN 259.

7. The learned Counsel for the petitioner has submitted that even if the petitioner was minor at the time of joining, nobody raise any objection nor objected for her entry into the service. According to the learned Counsel for the petitioner, she is entitled to be given show cause or opportunity of hearing by the authority and without any notice, the petitioner is being retired before due date. The petitioner has opposed the alteration and correction made in the same.

8. The learned Counsel for the petitioner has placed reliance on the decision of the Single Bench of this High Court in *Chhabi Deb Barma (Smti) v. State of Tripura and Ors.* 2000 (2) GLT 687 where it has been observed that any correction in respect of date of birth could only be made in the service book in accordance with the relevant service rules and instructions applicable and correction of date of birth entered into service book could only be done by competent authority in consonance to the guidelines and provisions applicable and after affording the opportunity of hearing to the retiring person in consonance to the principles of natural justice.

9. The learned Counsel for the respondents has submitted that at the time of joining in the service, the date of birth of the petitioner was 31.6.1947 as recorded in the service book. Taking the date of birth as 31.6.1947, the petitioner being minor could not have been appointed in the year 1962. However, her date of birth was corrected as 31.10.1944 at the initial stage and to this

effect letter No. 5135 dated 8.6.2005 received from Sri S.K. Hazarika, Dy. Inspector of Schools reveals that Sri Inamul Hussain Saikia, Deputy Inspector of Schools was the competent authority to make correction. The said letter enclosed in the original service book has revealed that:

1. Sri Inamul Hussain Saikia the then D.I.S. was made the correction in the service book of Smti Renu Prava Bora. Yes, he was the competent authority to make such correction.

2. As per DEE's direction vide letter No. IV/PXN/2/94/pt-II dated 18.6.1990. and No. S.B. 21 /23-43 dated 8.11.1990 all the service books of entire teachers of L.P. Schools under the jurisdiction of P.I. of Schools made necessary verification. No individual notification is sent in this regard.

3. On the basis of the original age proof certificate of the teacher concerned attached with the service book at the time of verification, it was found that the petitioner's correct date of birth is 31.10.1944 and not 31.6.1947.

10. According to Mr. V.M. Thomas, learned Standing Counsel for the respondents, the service book, time and again was verified by the different, authorities even by the Deputy Inspector of Schools and the Secretary of the "Board."

11. It has become necessary to analyze different decisions of the Courts given from time to time on the issue of correction of date of birth in the service record as follows:

11(1) The Supreme Court in *R.S. Kalolimath v. State of Mysore* 1977 (35) FLR 4 (SC) has observed that if sufficient grounds exist, an enquiry can be held into the correctness of the date of birth recorded in the Service Register, and even such an inquiry can be made even after the employee has retired.

11 (2) The Supreme Court in *State of Orissa v. Binapani Dei* 1967 (15) FLR 299 (SC) as well as in *Sarjon Prasad v. General Manager* 1981 (43) FLR 408 (SC) has observed that the change of the date of birth of an employee involves civil consequences. Such an order to the prejudice of the employee can be made only after an inquiry is made in which the employee is given adequate opportunity to set up his defence and to correct or controvert the evidence which is being relied upon against him. If a unilateral determination of the age of the employee is made to the prejudice of the employee, such an order is likely to be quashed by the Courts of law. It is no defence to say that the order made is in exercise of administrative power.

11 (3) The Supreme Court in *Sidheswar Ganguly Vs. The State of West Bengal*, has observed that since birth certificates are not ordinarily available in our country, in case of dispute regarding the date of birth, final conclusion should be based on all the facts and circumstances, physical features of the person concerned, and oral testimony as may be available.

11 (4) The Supreme Court in *Secy and Commr., Home Dett. v. R. Kirubakaren*

1993 (67) FLR 978 has observed that Courts or the Tribunal should be more cautious when an application for alteration of date of birth is made near about the time of superannuation.

11 (5) The Supreme Court in *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, has observed that while considering the interim relief to a writ petitioner for changing recorded date of birth prudence should prevent the grant of interim relief in such cases. The Apex Court further held that continuance in service in consequence of direction of a Court on an application for change in recorded date of birth-application rejected finally-held employee shall not be entitled to any service benefits other than the salary drawn by him for the period beyond his normal date of retirement.

11. (6). In *Executive. Engineer, Bhadrak v. Rangadiar* AIR 1993 SCW 559 the Supreme Court held that personal hearing may be granted only if there is any requirement of a rule or law.

11. (7) The Supreme Court in *Union of India v. Harnam Singh* 1993 (67) FLR 262 (SC) has observed that it is competent for the Government to fix a time limit in service rules after which no application for correction of date of birth of a Government servant shall be entertained. The Supreme Court has further held in *Harnam Singh (supra)*, that where there is no such rule, the general principle of refusing relief on grounds of laches or stale claims shall apply.

11. (8) In *Union of India and others Vs. Kantilal Hematram Pandya*, the Supreme Court has observed that Stale and belated claims for changing the recorded date of birth made after unexplained and inordinate delay should normally be rejected.

11. (9) *Harnam Singh (supra)* 1993 (67) FLR 262 the Apex Court has held that employee signing his service book showing the date of birth on a number of occasions-cannot be allowed to challenge the correctness of that entry subsequently.

12. I have heard the learned Counsel for the parties and perused the records. The date of birth recorded and duly verified by the employee as well as the competent authority in service book may be corrected only in accordance to the relevant service rules or instructions applicable and such correction or variation or modification could be made by the competent authority only after complying the guidelines and after making an inquiry if necessary in consonance to the principles of natural justice. However, the burden to prove, lead evidences or produce documents in support of his claim is on the employee. But disputing or controverting particular date of birth entered into service record is disputed question of fact cannot be gone into the writ jurisdiction for that purpose, the employee seeking alteration of date of birth may have to approach to the Civil Court by preferring civil suit. In the present case since the petitioner claimed superannuation on the recorded date of birth as 31.6.1947 on the basis of which the petitioner could not have been allowed into service in the year 1962 being minor but before making correction of date of birth is 31.10.1944 the competent

authority has made the same without proper inquiry. The petitioner has however not prayed for correction of date of birth either at the fag end of career or what to say after retirement but in the present case since the entry of date of birth as 11.6.1947 makes the petitioner disentitle for entry into service in the beginning itself therefore the date of birth of the petitioner as 31.6.1947 appears to be incorrect, therefore the competent authority shall make an inquiry into the fact finding about the date of birth in consonance to principle of natural justice within four months from today. However, the petitioner shall not be allowed to function any more on the disputed date of birth as 31.6.1947 and the petitioner shall be allowed to function upto 58 years of age either treating the date of birth as recorded on 30.10.1944 or on the basis of the subsequent date of birth to be ascertained as an outcome of fact finding in an enquiry by a competent authority to be made as indicated above and treating the date of birth either 30.10.1944 or ascertained in an enquiry by competent authority. The competent authority shall decide the post retiral benefit etc. to be paid to the petitioner. However, till the finalization of date of birth, the petitioner be given provisional/pensionary benefit or post retiral benefit treating the date of birth as 30.10.1944 only.

13. With the above observations, the writ petition shall stand disposed of.