
(2006) 12 OHC CK 0019
In the Orissa High Court
Case No : Writ Petition (C) No. 2525 of 2004

Sri Sachidananda Mohanty

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 6A

Citation : (2006) 12 OHC CK 0019

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : K.P. Mishra, for the Appellant; U.C. Mohanty, for the Respondent

Judgement

L. Mohapatra, J.—The Petitioner who was working under opposite party No. 3, National Textile Corporation Ltd. has filed this writ application for a direction to Provident Fund authorities-opposite parties 1 and 2 to release the pensionary benefits with effect from 2.2.2001 in terms of the Employee's Pension Scheme, 1995.

2. The case of the Petitioner is that opposite party No. 3 is a public undertaking and he was working in the category of a workman under the said organisation. The date of birth of the Petitioner is 2.2.1951. Before attaining the age of superannuation, the Petitioner took voluntary retirement from the said organization on 29th February, 2000. According to the Petitioner in terms of paragraphs-7 and 8 of the Employee's Pension Scheme, 1995, he is entitled to get pension on attaining the age of 50. After the Petitioner took voluntarily retirement, the opposite party No. 3 forwarded the relevant documents requesting for payment of pensionary benefits to the Petitioner in terms of the aforesaid scheme. However, the opposite parties 1 and 2 treated the date of birth to be 1.3.1959/16.3.1959 and denied the pensionary benefits to the Petitioner under the said scheme.

3. The learned Counsel appearing for the Petitioner submitted that u/s 6-A of the

Employee's Provident Fund and Miscellaneous Provision Act, 1952, a scheme was famed called "Employee's Pension Scheme, 1995". The said scheme applies to the employees of all factories and other establishments to which the Employee's Provident Fund and Miscellaneous Provision Act, 1952 applies. The Petitioner's date of birth being 2.2.1951, on the date he voluntarily retired, he was 50 years of age and was ac entitled to pension under the said scheme. The learned Counsel appearing for the Petitioner further submitted that though the documents available on record show that the date of birth is 2.2.1951, the same was treated as 1.3.59 by the Provident Fund authorities and accordingly, under the scheme, the pensionary benefit has been denied to the Petitioner. It is also the case of the Petitioner that the employer had forwarded all the records/documents recommending for payment of pension under the said Scheme accepting the date of birth of the Petitioner as 2.2.1951.

4. The opposite parties 1 and 2 have filed a counter affidavit alleging therein that in the writ application the Petitioner has prayed for change of his date of birth from 16.3.1959 to 2.2.1951 for the purpose of pension under the Employee's Pension Scheme, 1995. According to the opposite parties 1 and 2, at the time of entry into the service the Petitioner had declared his age to be 24 years as on March, 1983 and his employer had also certified that the date of birth is 16.3.1959 in the prescribed Nomination and Declaration form No. 2 which was signed by the Petitioner and certified by the employer. The claim for change of date of birth at the fag end of service is not permissible and accordingly, the claim for payment of pension under the Employee's Pension Scheme, 1995 was denied. The opposite party No. 3- employer has also filed a counter affidavit stating therein that the Petitioner who was working under the establishment took voluntary retirement under Voluntary Retirement Scheme and was relieved from service with effect from 29th February, 2000. After such retirement, the application of the Petitioner, affidavit and copy of the scheme certificate were forwarded on the request of the Petitioner to the opposite party No. 1 on 7/8 January, 2003 for consideration of the claim of the Petitioner for pension under the Employee's Pension Scheme, 1995.

5. Reliance has been placed by the learned Counsel for the Petitioner on Annexure-2 issued by the Headmaster of Damodar Madhya Bidyapitha in which the date of birth of the Petitioner has been recorded as 2.2.1951. Reference has also been placed in Annexure-3 issued by the Employees Provident Fund Organisation wherein the date of birth has been mentioned as 1.3.1959. Reliance has also been placed in Annexure-4 series to show that even the employer had intimated the opposite parties 1 and 2 that the date of birth of the Petitioner is 2.2.1951. From Annexure-4 series, it appears that in Form No. 9 the Petitioner's name finds place at serial No. 527 and the date of birth was recorded as 2.2.51. The learned Counsel appearing for the Provident Fund Commissioner under direction of the Court also produced the original record submitted before the authorities by the employer in Form No. 12 where the name of the Petitioner finds place and against the column the age at the time of first employment, the

date of birth has been recorded as 2.2.1951. The opposite parties 1 and 2 relied on the document vide Annexure-A and took a stand on the basis of such document that the Petitioner was 24 years of age in March, 1983 when he entered into service and accordingly in Annexure-B the date of birth has been recorded as 16.3.1959. Earlier in the Scheme Certificate the date of birth had been recorded as 1.3.1959 but subsequently it has been recorded as 16.3.1959. From Annexure-B itself it appears that the date of birth has been initially recorded as 2.2.1951 and subsequently correction has been made to 16.3.1957 and again to 16.3.1959. It is not known as to who has made that correction, but the other document on which reliance is placed by the Petitioner including the Transfer Certificate issued by the school authorities clearly show that the date of birth of the Petitioner is 2.2.1951. Reliance is placed by the learned Counsel for the Petitioner on a decision of this Court in the case of Smt. Gitanjali Bisoi Vs. Smt. Bidyulata Muduli and Another, where the Court has held that entries regarding date of birth made in the School Admission Register have more probative value than the entry made in the Voter Identity Card. On consideration of the documents placed before the Court by the Petitioner, prima facie it appears that the date of birth of the Petitioner is 2.2.1951 and not 16.3.1959 as mentioned in the Scheme Certificate on the basis of Annexure-B which is Nomination and Declaration Form.

6. Since it is not known as to who has corrected in the said Nomination and Declaration Form, which was in possession of opposite parties 1 and 2, I dispose of this writ application and direct the opposite parties to reconsider the matter with reference to the documents placed before the Court and find out as to whether the correction in Annexure-B i.e. Nomination and Declaration Form, has been made subsequently or at the time of submission and accordingly take a decision within a period of three months from the date of communication of this order.