
(2010) 07 GAU CK 0055

In the Gauhati High Court

Case No : Writ Appeal No. 4 of 2009 in Writ Petition (C) No. 30 of 2008

State of Mizoram and Others

APPELLANT

Vs

Lalhnaiha

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Citation : (2010) 4 GLT 120

Hon'ble Judges : K. Meruno, J;H.N. Sharma, J

Bench : Division Bench

Advocate : N. Sailo and Dinari T. Azyu, for the Appellant; Joel J. Denga and H. Lalremsanga, for the Respondent

Final Decision : Allowed

Judgement

H.N. Sarma, J.—This writ appeal is directed against the judgment and Order dated 22.4.09 passed by the learned Single Judge in W.P. (C) No. 30/08 whereby and whereunder the prayer of the Petitioner to make the appropriate correction in his Service Book to correct the date of birth as 29.12.1956 in place of 17.3.1951 was allowed.

2. We have heard Ms. Dinari T. Azyu, learned Govt. Advocate, Mizoram for the Appellants/State and Mr. Joel J. Denga, learned Counsel for the writ Petitioner/Respondent.

3. The writ Petitioner was appointed as work-charge driver by the Superintendent Engineer, PHE Circle, Aizawl vide Office Order No. 102/1985-86 dated 3.12.85. Pursuant to the said appointment order, the Petitioner joined in the service. The Service Book of the Petitioner was also prepared thereafter wherein the date of birth of the Petitioner was entered as 17.3.51 along with other particulars. The aforesaid date of birth was entered into his Service Book on the basis of the certificate issued to that effect by the President, Village Council/Court, Vaivakawn, so produced by the Petitioner himself. In acceptance of the correctness of the documents, the thumb impression of the Petitioner on the

Service Book was taken. The Service Book of the Petitioner was verified from time to time by the authorities and the relevant entries are being (were) made in the Service Book by the concerned authorities.

4. On 4.6.03, the Petitioner made an application before the Respondent authority praying for correction and the entry of date of birth the Service Book as 29.12.56 in stead of 17.3.51 and this prayer was made on the basis that the writ Petitioner was (sic. had) earlier served in the Defence department and the discharge certificate so issued by the Defence department disclosed his date of birth as 29.12.56. However, the said claim of the Petitioner was not accepted by the authority, inter alia, on the ground that the prayer of the Petitioner is hit by Note 6 of Rule 56 of the Fundamental Rule inasmuch as the petitioner made the prayer for alteration/correction of his date of birth in the Service Book after expiry of 5 years from the date of his entry in the service.

5. Feeling aggrieved, the Petitioner approached this Court by filing writ petition. The prayer of the Petitioner was resisted by the State by filing counter affidavit. However, the learned Single Judge vide impugned judgment and Order, allowed the prayer of the Petitioner and directed the authority to make correction of the date of birth of the Petitioner in the Service Book as 29.12.56 in stead of 17.3.51.

6. Ms. Dinari, learned State Counsel contends that it is undisputed fact that the Petitioner entered in service on 3.12.85 and his date of birth recorded in his Service Book is 17.3.51. The prayer for alteration of the date of birth was made only on 4.6.03 i.e. after expiry of a period more than 7 years of his service. It is further contended that Service Book of the Petitioner was verified by the Petitioner from time to time and in the meantime, he never make (sic made) any objection for the entry of incorrect date of birth and the learned Single Judge has totally ignored the entire aspect of the matter in allowing the Petitioner to make correction in his Service Book.

7. In support of her submission, learned State Counsel has relied upon the ratio laid down in different cases by the Apex Court, which are as follows:

- 1) Union of India (UOI) Vs. Ram Suia Sharma,
- 2) The Commissioner of Police, Bombay and another Vs. Bhagwan V. Lahane,
- 3) State of U.P. and Another Vs. Shiv Narain Upadhyaya,
- 4) U.P. Madhyamik Shiksha Parishad and Others Vs. Raj Kumar Agnihotri,
- 5) State of Gujarat and Others Vs. Vali Mohmed Dosabhai Sindhi,

8. Mr. Denga, learned Counsel for the writ Petitioner/Respondent, however, supporting the impugned judgment passed by the learned Single Judge additionally contends that the writ Petitioner was appointed to the post of driver as an Ex-serviceman and his discharge certificate was very much produced at the time of his entry into the service which contained his date of birth as 29.12.56 but the same was not considered and recorded by the authority and instead

wrong entry of his date of birth was made in his Service Book. It is further contended that the Service Book of the Petitioner has not been prepared as per the procedure provided u/s 196/197/202 of the Service Rules and as such the entry made therein is not a valid entry. The learned Counsel for the writ Petitioner further submits that how the certificate issued by the President, Village Council/Court, Vaivakawn recording the wrong date of birth of the Petitioner as 17.3.51 is considered and accepted although the discharge certificate issued by the Defence department having clearly disclosed the date of birth of the Petitioner as 29.12.56 and thereby the authority recorded a wrong date of birth in his Service Book, accordingly the same needs to be corrected and hence the learned Single Judge has rightly allowed the prayer of the writ Petitioner.

9. We have considered the rival submissions made by the learned Counsel for both the parties. In order to satisfy ourselves, we have also called for the original Service Book/Roll of the Petitioner which has been produced by the learned State Counsel, Mizoram.

10. On perusal of the Service Book of the writ Petitioner, the Petitioner is not found to be appointed as an Ex-serviceman in the post of driver and he was appointed as work-charge driver by the Superintendent Engineer, PHE Circle, Aizawl on 3.12.85 along with 9 other such persons.

11. The Service Book of the Petitioner also indicates that the entry of his date of birth as 17.3.51 which was recorded on the basis of the statement of the Petitioner supported by the certificate issued by the President, Village Council/Court, Vaivakawn. It is also found from the Service Roll that as the Petitioner was within the prescribed age limit of entry into Government Service, there was no occasion arise (sic. no occasion) for condonation of his over age. The Service Book of the Petitioner was verified by the authority from time to time and the relevant entries as regards increments, annual increments, transfer etc. have been recorded therein. After entering into the service, the Petitioner submitted the list of his near relatives who are entitled to get medical reimbursement on 23.7.01 by filling up the prescribed forms. In the said statutory forms also, the Petitioner entered his date of birth as 17.3.51. That apart, in his statement of particulars submitted before the authority in respect of compulsory provident fund, the date of birth of the Petitioner was also recorded as 17.3.51 and those particulars were prepared on 24.4.06.

12. From the record, we do not find that the Petitioner at any point of time objected to the certificate issued by the Village Council/Court reflecting his date of birth as 17.3.51. However, the learned Counsel submits that under the provisions of Section 56 of Fundamental Rules, the Village Council/Court authority is not a requiring authority to submit such birth certificate and accordingly, the same cannot be accepted for the purpose of ascertaining the correct date of birth of the writ Petitioner.

13. The claim of the Appellants/State is that even after his entry into service on

3.12.85, after recording his date of birth as 17.3.51 in the Service Book and the said date of birth having been reflected in various other correspondences and documents, the Petitioner did not object to the same. The Petitioner, however, raise such issue only on 4.6.03. The ratio of the decisions rendered in the cases cited above, goes to show that such a prayer for alteration/correction of the date of birth entered into Service Book is to be made within 5 years from the date of entry in service.

14. In the case reported in Union of India (UOI) Vs. Ram Suia Sharma, the Apex Court at paragraph 2 held as under:

2. The controversy raised in this appeal is no longer res-integra. In a series of judgments, this Court has held that a Court or tribunal at the belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service records. Admittedly, the Respondent had joined the service on 16.12.1962. After 25 years, he woke up and claimed that his correct date of birth is 2.1.1939 and not 16.12.1934. That claim was accepted by the Tribunal and it directed the Government to consider the correction. The direction is per se illegal.

15. Again, in the case reported in State of T.N. Vs. T.V. Venugopalan, Venugopalan, re-affirming the decision of the Supreme Court in Union of India v. Harnam Singh, the Apex Court in paragraph-5 held as follows:

5. In Union of India v. Harnam Singh, when Fundamental Rule 56(m) was amended and substituted Note 5 in 1979 prescribing a period of five years to seek alteration of the date of birth from the date of coming into force of these rules, this Court harmoniously interpreted the rule and held that the employee who was in service as on that date, will be entitled to seek correction of date of birth within five years from 1979. In that context, this Court held that: (SCC p. 167, para 7).

A Government servant who had declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth as different from the one earlier recorded;....should make application within a period of five years from the date the rule had come into force and if he had not done, he was not eligible and was not entitled to correction. In that case, in view of the inordinate delay, the application for correction of date of birth was rejected.

16. Further, in the case of U.P. Madhyamik Shiksha Parishad and Others Vs. Raj Kumar Agnihotri, the Apex Court discussing on various other cases decided earlier including the decision of Union of India v. Harnam Singh observed that - it is thus seen from the above quoted judgments that this Court has consistently taken the view that correction in entries made in Government record on the basis of which the Government servant got the service cannot be allowed to be changed just a few years before retirement or at the fag end of his retirement.

17. The writ Petitioner has not offered any acceptable and cogent reasons for alteration for the alleged incorrect date of birth within the limited period prescribed under Note-6 of Rule 56 of Fundamental Rules. The submission of the Petitioner to the effect that he was not aware as to how the certificate issued by the President, Village Council/Court, Vaivakawn was put on record, is also not acceptable. As per Rule 56 of Fundamental Rules that authentic documentary evidence can be acted upon to record the date of birth and the certificate issued by the Village Council concerned submitted by none else than the Petitioner is an authentic document which was rightly accepted by the department in recording his date of birth.

18. From the materials available on record and considering the entire facts and circumstances of the case including the fact that no objection raised by the Petitioner even at a later point of time where occasion arose to refer his date of birth, it seems that the Petitioner himself was satisfied with the said certificate issued by the Village Council for recording his date of birth in his Service Book. A Village Council is a statutory authority being a creation of statutory enactment, and the certificate having been issued by the concerned Village Council within whose jurisdiction the Petitioner resides, go (sic. goes) to show that the said certificate is a proper and genuine certificate reflecting correct date of birth of the Petitioner and it has been rightly accepted by the authority to ascertain the date of birth of the Petitioner and the entry made on this basis in the Service Roll of the Petitioner cannot be said to be incorrect.

19. In view of the aforesaid discussions and the law laid down by the Apex Court and acceptance of the said date of birth as 17.3.51 by the Petitioner himself at subsequent stages in filing the statutory forms and applications during the course of his service, we hold that the date of birth of the writ Petitioner was correctly entered in his Service Roll, which requires no interference.

20. In view of the above discussions, we allow this appeal and dismiss the W.P. (C) No. 30/2008.

21. No costs.