
(2011) 08 CAL CK 0161
In the Calcutta High Court
Case No : W.P.S.T. No. 222 of 2010

State of West Bengal and another

APPELLANT

Vs

Saranan Khanda and others

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2011) 131 FLR 772

Hon'ble Judges : P.K. Chattopadhyay, J;Abdul Ghani, J

Bench : Division Bench

Advocate : Joydeep Kar and Siddhartha Ghosh, for the Appellant;Arunabha Ghosh, Rabindra Nath Dutta, Anant Kumar Shaw, Ravi Kumar Dubey and Ms. Suparna Shobha, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay and Md. Abdul Ghani, JJ.—This writ petition has been filed assailing the judgment and order dated 6th May, 2009 passed by the learned West Bengal Administrative Tribunal in case number O.A. 2258 of 2006 whereby and whereunder the said learned Tribunal quashed the official order regarding correction of the date of birth of the respondent No. 1

From the records, we find that the respondent No. 1 herein was appointed to a group "D" post in the office of the District Land and Land Reforms Officer, Tamluk on 6th June, 1975.

2. At the time of entering into the Government service, the said respondent No. 1 produced one school leaving certificate and the admit card issued by the West Bengal Board of Secondary Education wherein the date of birth of the said respondent No. 1 was specifically recorded as 8th September, 1946. The said respondent No. 1 did not pass the school final examination as a result whereof, no certificate was issued by the West Bengal Board of Secondary Education.

3. However, it is not in dispute that the West Bengal Board of Secondary Education issued admit card in respect of the respondent No. 1 for appearing at

the school final examination in the year 1969 wherein the date of birth of the said respondent No. 1 was specifically recorded as 8th September, 1946.

4. The date of birth of the said respondent No. 1 was recorded as 8th September, 1946 in the service book on the basis of the aforesaid admit card issued by the West Bengal Board of Secondary Education and the school leaving certificate submitted by the said respondent No. 1 at the time of entering into service.

5. Unfortunately, at the fag end of the service career of the respondent No. 1, a complaint was lodged by the son of the first wife of the respondent No. 1 disputing the correctness of the recorded date of birth of the said respondent No. 1.

6. The concerned authorities thereafter most surprisingly started enquiry and issued show-cause notice to the respondent No. 1 only five months before attaining the actual age of superannuation.

7. The District Land and Land Reforms Officer, Purba Midnapore ultimately by the order dated 3rd July, 2006 corrected the recorded date of birth of the said respondent No. 1 upon placing reliance on the records in respect of a different school wherein the said respondent No. 1 was initially admitted according to the authority concerned.

8. The only question is now to be decided whether the concerned authorities viz., the petitioners herein were justified in correcting the recorded date of birth of the respondent No. 1 only five months prior to his retirement" ignoring the admit card issued by the West Bengal Board of Secondary Education wherein the date of birth of the said respondent No. 1 has been specifically mentioned.

9. Mr. Joydeep Kar, learned Advocate representing the petitioners submits that the date of birth recorded in the school leaving certificate and also in the admit card issued by the West Bengal Board of Secondary Education have no evidentiary value. Mr. Kar referred to and relied on the following decisions in support of his aforesaid contentions :

1. Birad Mal Singhvi v. Anand Purohit, 1988 (Supp) SCC 604
2. Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another,
3. Sushil Kumar Vs. Rakesh Kumar,

We do not find how the aforesaid decisions would be of any assistance to the petitioners herein.

Furthermore, in the case of Birad Mal Singhvi (supra), Supreme Court observed:

.....An entry relating to date of birth made in the school register is relevant and admissible u/s 35 of the Act.....

The other decisions cited by Mr. Kar are clearly distinguishable in the facts of the present case.

10. Mr. Arunabha Ghosh, learned Advocate representing the respondent No. 1 placed reliance on a decision of the Hon"ble Supreme Court in the case of State of Madhya Pradesh and others v. Mohanlal Sharma, 2003 (96) FLR 178 (SC) wherein the Hon"ble Supreme Court specifically observed:

.....The date of birth, as recorded in the matriculation examination, carries a greater evidential value than the evidential value attached to the certificate given by the retired headmaster showing the date of birth of the respondent. Such an evidence is not to be preferred when, admittedly, the date of birth of the respondent as recorded in the matriculation examination was 19.4.1935. The Tribunal erred in relying on the certificate issued by the retired headmaster as well as the horoscope furnished by the respondent." The aforesaid observation of the Hon"ble Supreme Court is very much applicable in the facts of the present case.

11. Mr. Kar submits that the respondent No. 1 did not produce the matriculation certificate in support of his date of birth.

There is no dispute that the respondent No. 1 herein appeared at the school final examination in the year 1969 and the West Bengal Board of Secondary Education issued admit card to the said respondent No. 1 in order to enable the said respondent No. 1 to appear at the school final examination. The date of birth recorded in the said admit card issued by the West Bengal Board of Secondary Education should be relied upon since the same carries a greater evidential value than the evidential value attached to the records of a different school where the said respondent No. 1 prosecuted studies for sometime.

12. As mentioned hereinbefore, the respondent No. 1 joined the service on 6th June, 1975 and thereafter discharged due duties and responsibilities without any objection from any quarter whatsoever. Only a few months before his actual date of superannuation, the concerned authority decided to take steps for correction of the recorded date of birth of the said respondent No. 1 pursuant to a complaint lodged by the son of his first wife with whom the relationship of the respondent No. 1 was not cordial. In order to put the respondent No. 1 into trouble, a complaint was lodged by the said son of the first wife which was most unfortunately entertained by the authorities only few months before retirement of the employee concerned.

13. The Hon"ble Supreme Court repeatedly discouraged the changing of the recorded date of birth at the fag end of the service career of the employee concerned.

14. In the present case, the authorities concerned decided to change the recorded date of birth of the employee concerned only three months before the actual date of superannuation and that too ignoring the admit card issued by the statutory authority viz., the West Bengal Board of Secondary Education.

15. The learned Tribunal, in our opinion, rightly observed that the Government

Officer should not encourage the family dispute by entertaining a private complaint.

16. In the present case, the authority concerned encouraged the son of the first wife of the employee concerned to satisfy his grudge and revengeful attitude towards his father by entertaining his complaint in respect of his father regarding correctness of the recorded date of birth only five months before the actual date of superannuation and ultimately illegally corrected the said date of birth of the employee concerned upon placing reliance on certain other documents which cannot override the date of birth as recorded in the admit card issued by the West Bengal Board of Secondary Education.

17. There is no dispute that the date of birth recorded in the school leaving certificate is corroborated by the Admit Card issued by the West Bengal Board of Secondary Education, a statutory authority and the respondent No. 1 produced the aforesaid documents at the time of entering into service.

18. The concerned authorities did not question the authenticity of the aforesaid school leaving certificate and the admit card issued by the West Bengal Board of Secondary Education in respect of respondent No. 1 on any valid or proper ground. The said authorities viz., the petitioners herein while correcting the recorded date of birth of the respondent No. 1 relied on certain documents which were not available before the said authorities at the time of recording the date of birth of the said respondent No. 1 in the service book immediately after joining the service.

19. It cannot be said that the documents subsequently relied upon by the authorities concerned in order to change the recorded date of birth of the respondent No. 1 can have any overriding effect over the documents on the basis whereof, the date of birth of the respondent No. 1 was entered into the service book. In other words, the documents supplied by a different school in respect of the respondent No. 1 cannot have any overriding effect on the original documents including the admit card issued by the West Bengal Board of Secondary Education on the basis whereof the date of birth was recorded in the service book of the said respondent No. 1 and the authorities concerned allowed the said respondent No. 1 to remain in service till 3rd July, 2006.

20. The authorities concerned, in our opinion, should not have changed the recorded date of birth of the respondent No. 1 only three months before attaining the actual age of superannuation on the basis of the records supplied by a different school ignoring the admit card issued by the West Bengal Board of Secondary Education wherein the date of the respondent No. 1 was specifically mentioned.

21. The learned Tribunal, in our opinion, has rightly decided the issues raised before it and we do not find any infirmity and / or illegality in the aforesaid decision of the learned Tribunal.

22. Therefore, we affirm the impugned judgment and order passed by the learned Tribunal and dismiss the writ petition as we do not find any merit in the same.

We direct the petitioners herein to implement the directions of the learned Tribunal without any further delay.

In the facts of the present case, there will be, however, no order as to costs.

Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.