
(1995) 02 CAL CK 0023
In the Calcutta High Court
Case No : F.M.A.T. No. 196 of 1993

Steel Authority of India Ltd.	Vs	APPELLANT
Santosh Kumar Joardar and Others		RESPONDENT

Date of Decision : 10-02-1995

Acts Referred:

Citation : (1995) 1 CALLT 472 : (1996) 3 LLJ 808

Hon'ble Judges : Prabir Kumar Majumdar, J;Arun Kumar Dutta, J

Bench : Division Bench

Advocate : Sumit Panja and Kanchan Roy, for the Appellant; Milan Bhattacharjee, Krishna Gopal Roy and Kumaresh Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Dutta, J.—This Appeal is directed against the judgment and order dated 21st December, 1992 passed by a Learned Single Judge of this Court in Civil Order No. 1472 (W) of 1991, allowing the Writ Petition filed by the Writ Petitioner-Respondent No. 1 (Hereinafter referred to as petitioner) for the reasons recorded therein.

2. The Petitioner had filed the relevant Writ Petition praying for "a writ in the nature of mandamus and/ or order and/or a direction of like nature commanding the respondents to forbear from giving any effect or further effect to the decision of determination of the date of birth of the petitioner as November 29, 1993, as communicated in the letter being No, PL-III/4-J(91)/1639 dated June 13, 1989 and being No. PL-III/4-J(91)/3086 dated September, 26, 1989, both issued by the Deputy Manager (Pers.) Exe. of Durgapur Steel Plant being Annexures "E" and "J" respectively to this application, and / or from taking any action for superannuation of the petitioner on the basis of the said wrong date of birth and further commanding the respondents to cancel and / or recall and /or rescind the said decisions determining the date of birth of the petitioner as November 29, 1934, after taking into consideration the service certificate given by the previous employer being annexure "B" as well as the school final pass Certificate issued

by the West Bengal Board of Secondary Education being annexure "D" to this application", amongst other reliefs prayed for therein, in the facts and circumstances stated in the application.

3. The petitioner had joined the Durgapur Steel Plant (hereinafter shortened into DSP) in the year 1961. Before joining the DSP he was in service under the Fertiliser Corporation of India (Hereinafter shortened to FCI). At the time of joining the DSP he had submitted a Release certificate issued by the said former employer, FCI, as he was called upon to do. It is contended by him (Petitioner) that his date of birth is November 29, 1937, which had been mentioned in the release certificate issued by the FCI.

4. At the time of joining the Durgapur Steel Plant an application form had been submitted by him which was filled up by somebody else wherein he had put his signature. At the time of putting his signature therein he found that the year of his birth had been wrongly stated to be 1934, which he had immediately corrected by recording therein 1937 by encircling the figure 34; and his date of birth has been so recorded in his service book to be November 29, 1937. His aforesaid date of birth had thereafter been recorded in all subsequent official records and registers, including the staff register, super annuation register, identity cards, and bio data sheet which was prepared at the time of his interview for the post of executive officer in the Steel Plant on January 6, 1989. After joining the DSP in 1961, the petitioner had appeared at the school final examination in 1964 as a private candidate, and had passed the said examination. In the relevant school final Certificate as well his date of birth has been recorded as November 29, 1937.

5. Despite recording his aforesaid date of birth in the various official records and registers from time to time, the Deputy Manager, DSP, by letter dated June 13, 1989, being annexure "E" to the Writ Petition, had informed the petitioner that his date of birth as per the School Final Certificate would not be accepted on the ground that at the time of joining the DSP on September 15, 1961 he had declared his date of birth as November 29, 1934; and that as per rules of the company, the date of birth mentioned in the school in the School Final Examination Certificate obtained as a private candidate after entering the service is not acceptable as a valid document in support of the date of birth. Hence the relevant Writ petition by the petitioner for the reliefs prayed for therein.

6. The contending opposite-parties in the Writ application had opposed the same contending that the petitioner's date of birth is November 29, 1934, as stated in the relevant Application form, submitted by him while joining the DSP in 1961. They sought to rely on the circular dated June 20, 1987 issued by the Steel Authority of India wherein it was stated that no dispute can be raised over the date of birth of an employee during the last five years of his service. For much the same reasons discussed by the learned Trial Judge, the aforesaid circular does not seem to be applicable in the present case as no dispute is sought to be raised by the petitioner regarding his date of birth. Per contra, the dispute is

sought to be raised by the DSP itself by their aforesaid letter dated June 13, 1989.

7. The respective contentions of the contending parties being, what they are, the only point emerging for consideration here is : whether the petitioner's recorded date of birth should be held to be November 29, 1937, or November 29, 1934, as respectively contended by the contending parties.

8. The petitioner is stated to have filed an Application on September 7, 1960, bearing his signature therein, seeking job in the DSP. From xerox copy thereof on record, (appearing at page 213 of the paper book), it appears that his date of birth against serial no.4 thereof has been recorded as "November 29, (34). 37". The petitioner has contended that the said Application Form had been filled up by somebody else, and while putting his signature thereon he had detected that his date of birth had wrongly been noted therein to be "34" which he had immediately corrected by putting the figure "37" thereon by encircling 34. As already indicated above, the various official records and Registers, including the staff register, superannuation register, etc., had been prepared by the DSP thereafter mentioning the petitioner's date of birth therein to be date of birth November 29, 1937. The implication appears to be immediately apparent and obvious, namely that the DSP had accepted the Petitioner's date of birth to be November 29, 1937, as corrected by him in the aforesaid relevant application dated September 7, 1960, submitted before joining the DSP.

9. It further appears from the annexure "A" to the application that the petitioner was informed by the General Manager, DSP, by his letter dated June 26, 1961 that he had been selected for appointment for the post mentioned therein on the terms and conditions mentioned therein. In terms of Clause III (d) thereof the petitioner was called upon to produce before joining the DSP a release certificate from his present employer or an evidence to show that his present employer has allowed him to retire or resign if he was then employed in the central or State Government or a Government Undertaking or a quasi-Government Organisation or a Steel company in the Private sector. The aforesaid condition being what it is the petitioner could not conceivably have been allowed to join the DSP without production of a Release Certificate from his earlier employer, as he was undeniably in the service under the FCI before joining the DSP. The petitioner must have produced his Release Certificate from the FCI before joining the DSP as such. The record would further indicate that the petitioner had, in fact, produced a release certificate from the Superintendent (Maintenance) of the FCI Ltd. dated June 14, 1961 before joining the DSP (vide annexure "B" to the Writ Application). The said Release Certificate makes clear that the petitioner had resigned from the FCI with effect from June 15, 1961. His date of birth had also been recorded therein to be November 29, 1937. For much the same reason discussed by the Learned Trial Judge, the genuineness and authenticity of the said Release Certificate cannot clearly be questioned. The fact that the petitioner's aforesaid date of birth had been recorded in the various official records and

registers, as indicated above, would at once seem to suggest that the said date of birth, mentioned in the said Release Certificate had as well as been accepted by it (DSP). It would also be pertinent to note in this context that clause 4.4 of the Rules of the Steel Authority of India Ltd., regarding determination of date of birth provides that the date of birth of the employees who have not passed Matriculation/School Final/ Equivalent Examination at the time of entering to service in any Steel plant under the Steel Authority of India Ltd. (as in the case of the petitioner) shall be determined on the basis of service certificate issued by the previous employer if the previous employer was a Public Sector Enterprise, Government Undertaking or a Local Body; further conforming that the petitioner's date of birth must have been determined by the DSP on the basis of the Release Certificate produced by him while joining the DSP in 1961.

10. As already indicated above, the petitioner's date of birth appears to be have been recorded (as November 29, 1937) in the various official records and Registers from time to time, including the Staff Register, Superannuation Register, Identity card. Bio-data Sheet at the time of his interview for the post of Executive Officer in the Steel Plant on January 6, 1989 etc., presumably on the basis of the relevant Application submitted by him and the aforesaid Release Certificate produced by him before joining the DSP. The petitioner also appears to have submitted an attested copy of his School Final Examination Certificate to the DSP in 1968 wherein his date of birth had as well been stated to be November 29, 1937. The said School Final Examination Certificate as well would further seem to lend point to the petitioner's contention that his date of birth is November 29, 1937. Even though the attested copy of the said Certificate had been submitted to the DSP as far as back as 1968, no question regarding the petitioner's date of birth had been raised by it for about 21 years. The DSP had been sleeping over the matter for such a long period, and their somnolence appears to have been shaken thereafter as indicated in the letter dated June 13, 1989, when a dispute as to the date of the petitioner's date of birth was sought to be raised by them without acceptable material in support of their contention that the petitioner's date of birth is November 29, 1934. The petitioner had appeared at the said examination in 1964 as a private candidate, three years after joining the DSP in 1961. Even at that time he had given his date of birth to be November 29, 1937, long before the dispute is sought to be raised by the DSP, which could not clearly be held to be an afterthought as quite rightly observed by the Learned Trial Judge. That the petitioner's date of birth is November 29, 1937 would all more be confirmed by the certificate dated August 24, 1948 issued by the Refugee Rehabilitation Department. Government of West Bengal (appearing at page 220 of the Paper book) showing his age therein as 11 years on his next birthday. The said Certificate had been issued long long before the petitioner's joining the DSP in 1961, when he was about 11 years old. His age therein must have been recorded on the declaration made therefore. It would seem so unlikely as to be scarcely credible, and it would be naive to believe that a false declaration about his age had been made as far back as 1948 to create evidence

about his age in anticipation that a dispute might be raised by the DSP in 1989 about his date of birth. It would again be pertinent to note that the Chief Personnel officer of the FCI had issued another certificate on October 4, 1989 stating therein that the petitioner's date of birth as per the official Record was November 29, 1937, which was accepted by them (appearing at page 52 of the paper book). It would, therefore, be difficult to hold that the petitioner was seeking to make out a new case regarding his date of birth and was seeking to raise any dispute on the point.

11. As against the aforesaid overwhelming and cumulative materials on record in support of the petitioner's contention that his date of birth is November 29, 1937 there seems to be no material whatsoever on record to support the contention of the Appellant-Opposite-Party that his (Petitioner's) date of birth is November 29, 1934. The Appellant-Opposite-Party has sought to lean long and rely too heavily upon the Application Form submitted by the petitioner while joining the DSP in 1961 (appearing at page 213 of the paper book) wherein his date of birth appears to have been stated to be "November 29, (34).37". It was sought to be contended by them that the year 1937 had been subsequently inserted in the Application by the Petitioner with ulterior motive. The Petitioner, however, has affirmed and reaffirmed with clarity that he had inserted the year 37 after 34 in the Application Form, which was filled up by somebody else, at the time of submitting the same when the said mistake came to his notice while putting the signature thereon. The fact that his date of birth had been recorded November 29, 1937 in the various official records and Registers from time to time, as indicated above, would seem to give clearest and conclusive indication that the petitioner had put in the year of his birth in the Application Form while submitting the same when the mistake came to his notice while putting the signature thereon, as stated by him. The said date of birth must certainly have been accepted by the DSP, otherwise the various official records/registers would not have recorded his date of birth to be November 29, 1937. It would further seem significant and observable to note that even though the petitioner's date of birth has been stated in the said application (dated 7.1.60.) to be "November 29, (34).37", no query appears to have been made by the DSP therefore, and no clarification either appears to have been sought for from the petitioner in the matter as yet for recording his correct/actual date of birth in his service Record. Per contra, his date of birth appears to have been recorded in the various official records from time to time as November 29, 1937, which must have been declared by the petitioner while joining the DSP in 1961 and on the basis of his date of birth recorded in his Release Certificate dated June 14, 1961 issued by the FCI, which has been produced by him before joining the DSP.

12. In view of the discussions above and for much the same reasons discussed by the learned Trial Judge at length, it does not seem to us that he had committed any error in coming to the conclusion, he did. There seems little substance in this appeal as such. And, we find nothing to interfere with the impugned Judgment and order passed by him.

13. In the result, the Appeal fails and be dismissed. The impugned Judgment and Order passed by the Court below be hereby confirmed.

P.K. Majumdar, J.

14. I agree.