
(1999) 01 GAU CK 0004
In the Gauhati High Court
Case No : Writ Appeal No. 27 of 1997

Swadesh Ranjan Dey

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 11-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 GLT 45

Hon'ble Judges : P.G. Agarwal, J;D. Biswas, J

Bench : Division Bench

Advocate : A.M. Lodh, for the Appellant; R. Dasgupta, for the Respondent

Judgement

D. Biswas, J.—This writ appeal is preferred against the judgment and order dated 6.3.1997 passed by the learned Single Judge dismissing Civil Rule No. 217 of 1996.

2. The Appellant herein as writ Petitioner filed the aforesaid writ petition seeking direction that the date of birth on 30.12.1940 recorded in the Service Book should be acted upon and for quashing the Government order to this effect retiring him on 31.5.1996 which, according to him, was more than two and a half year before his actual date of superannuation.

3. We have heard Mr. A.M. Lodh, the learned senior counsel appearing on behalf of the Appellant and Mr. R. Dasgupta, the learned Government Advocate appearing on behalf of the Respondents.

4. It would appear that the Petitioner joined the post of Assistant Amin under the Directorate of Land Records and Settlement, Government of Tripura on 1.10.1959 A.D. Long thereafter, in the year 1967, he had passed the School Final Examination from the West Bengal Board of Secondary Education. From the Admit Card as well as the Certificate issued by the Board, it would appear that his date of birth was 30.12.1940. The seniority list published by the Government at different point of time also reflected the aforesaid date of birth. But the

Government without notice to the Petitioner corrected the aforesaid date inserting March, 1938 as his date of birth and relying on this correction, retired the Petitioner from service with effect from 31.5.1996. According to him, he was pre-maturely retired from service in view of the aforesaid correction made without notice to him. The said decision of the Government has been assailed before this Court as arbitrary and capricious.

5. The learned Single Judge, taking into account all the circumstances made available before him and also after a careful consideration of the entries in the service book, held that the age recorded in the Admit Card and the School Final Examination Certificate is of no significance as the Petitioner had appeared in the School Final Examination long after his entry to the Government Service. The learned Single Judge also came to a finding that the Petitioner had himself declared his date of birth as in March 1938 and this declaration has been signed by the Petitioner as well as the Circle and Assistant Settlement Officer of the Survey and Settlement Department, Government of Tripura on 16.5.1960. On this finding, the learned Single Judge held that the declaration of date of birth as given by the Petitioner at the time of entry in the Government Service shall prevail and the date of birth reflected in the Admit Card and the School Final Examination Certificate cannot unsettle the said declaration.

6. On a careful consideration of the copy of the relevant entry in the Service Book (Annexure-I.C.) we are convinced that the date of birth was initially inserted as March, 1938 in the Service Book and it was signed by the Petitioner in approval thereof. Later on, in the year 1966 the date of birth was corrected by the Respondent on the basis of a School Certificate produced by the Petitioner reflecting 21.1.1936 as the date of birth. Thereafter the Petitioner passed the School Final Examination as a private candidate in 1967 and in the Certificate issued by the West Bengal Board of Secondary Education altogether a different date of birth i.e. 30.12.1940 was reflected. The earlier recorded date of birth was again corrected and 30.12.1940 was inserted as his date of birth. Because of three different dates of birth figuring in the Service Book, the Department considered it appropriate to examine the matter and directed the writ Petitioner to produce documentary evidence for the purpose of verifying the same. The Director, TRP & PGP Department, Government of Tripura vide Order No. F. I-48/ESTT/TRP&PGP-87/760. 71 dated 27.5.1996 disposed of the matter finally after taking into consideration the representation dated 30.4.1996 submitted by the Petitioner holding that the date of birth of Shri Swadesh Ranjan Dey, UDC should be treated as "March, 1938" for the purpose of determining his age for superannuation within the meaning of FR-56 since it was declared by him at the time of entry to the service. It would appear that the date of birth i.e. March, 1938 recorded in the Service Book on the declaration of the Petitioner has been accepted and acted upon by the Respondents. This was so necessary because of the confusion created by different entries on different occasions regarding his date of birth. Obviously the date of birth as per School Certificate and the date of birth as per Admit Card/School Final Examination Certificate could not be

accepted by the Respondents. The date of birth as per School Certificate was 21.1.1936 and had this date of birth been accepted, the Petitioner would have retired in the year 1994. But the Petitioner continued in service even thereafter. The date of birth as recorded in the Admit Card/School Final Examination Certificate could not be accepted by the Respondents as because the Petitioner appeared in the School Final Examination long after his entry to the Government Service. It was, therefore, reasonable on the part of the Respondents to act upon declaration given by the Petitioner himself as to his date of birth immediately after his entry to the Government service. Therefore, the order dated 27.5.96 passed by the Respondents after due consideration of the representation submitted by the Petitioner accepting the date of birth as declared by him at the time of entry to the Government service appears to be just and proper. It is apparent that the Petitioner was given opportunity to submit his case and on consideration of his representation the decision was arrived at by the Respondents. Under the circumstances, the decision arrived at by the Respondents after due consideration of all materials do not warrant interference by this Court in exercise of its power under Article 226 of the Constitution. When the decision making process does not suffer from any infirmity and the decision rendered appears to be reasonable, the powers of this Court under Article 226 need not be invoked. We are of the opinion that the ratio laid down in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, has not been in any way deviated from in the instant case. That apart, the decision of a Division Bench of this Court available in Sri Radha Madhab Paul, Petitioner v. the State of Tripura and Ors. Civil Rule No. 278 of 1990 appears to be of no assistance as the Court in that case accepted the date of birth recorded in the Admit Card altogether on a different context. The appeal, therefore, appears to have no merit and deserves dismissal.

7. In the result, the appeal is dismissed. Considering the nature of the case, no order as to costs is made.