
(2004) 06 GAU CK 0027
In the Gauhati High Court
Case No : WP (C) No. 1406 of 2004

Upen Chandra Sharmah	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 GLR 449 : (2005) GLT 739 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : D.C. Nath Hazarika, S.B. Choudhury and M. Das, for the Appellant;
V.M. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner who joined the Government service way back in 1970 declaring his date of birth as 1.3.1945 has filed this writ petition for a declaration that his actual date of birth is 1.1.1951 and for a direction to the respondents to correct the date of birth as such recorded in the service book.

2. The petitioner joined his service in the Hindi Teacher's Training College, North Guwahati on 21.2.1970 and his services was regularised on 1.1.1981. According to the petitioner he had submitted a school certificate which recorded his age as 14 years 2 months on 1st March, 1965. As per the age recorded in the said certificate, the petitioner allegedly claimed before the respondents for clarification of his date of birth recorded in the service book from 1.3.1945 to 1.1.1951.

3. The petitioner was promoted to the post of book binder in 1986 from his initial appointment as a Grade-IV employee. He made representations on 24.1.1996 and 12.4.1996 for correction of his date of birth in the service book. But the same was rejected by letters dated 8.3.1996 and 22.4.1996. The petitioner did not make any challenge to the said orders and instead submitted yet another

representation dated 4.4.2000 followed by a further representation dated 15.7.2003. Thereafter also he kept on waiting and eventually filed the present writ petition on 2.3.2004 seeking the aforesaid relief.

4. I have heard Ms. S.B. Choudhury, learned counsel appearing for the petitioner and Mr. V.M. Thomas, learned State counsel. Placing reliance on two decisions of this court as reported in 1997 (2) GLT 140 (Col. P. N. Xavier, Pro, Silchar v. The Union of India and Ors.) and 2003 (2) GLT 241 (Abdul Khaleque Laskar v. All Assam Public Health Employees Association and Ors.), Ms. Choudhury strenuously argued that the respondents are duty bound to consider the case of the petitioner for alteration of the recorded date of birth in the service book.

5. Mr. V.M. Thomas, learned State counsel on the other hand questioned the very claim of the petitioner on ground of delay and laches. He submitted that the petitioner having entered the Government service declaring a particular date to be his date of birth, is precluded and estopped from claiming another date of birth at the fag end of his service career so as to gain some more years of service. Mr. Thomas, learned State counsel produced the original service book of the petitioner recording the date of birth of the petitioner as 1.3.1945. The records produced by Mr. Thomas also contains the letter dated 26.2.2004 issued by the Principal of the college in reference to the representation dated 15.7.2003 submitted by the petitioner directing him to submit the certificate purportedly submitted by the petitioner at the time of joining the service.

6. I have carefully considered the rival submissions advanced by the learned counsel for the parties. I have also considered the materials available on record. The fact of preferring a further representation on 15.7.2003 by the petitioner before the Principal, although has been disclosed in the writ petition, the reply thereto dated 26.2.2004 asking the petitioner to produce the school certificate purportedly submitted by him at the time of joining the service has been withheld from the court by the petitioner by not making any reference to the same in the writ petition. The petitioner entered service under the respondents way back in 1970 and after about 26 years of his service, he made representation in 1996, when he was left with only 7 years of service. His representations were rejected by annexure D and D/1 letters dated 8.3.1996 and 24.4.1996. Thereafter, the petitioner remained silent for about 4 years. He submitted a further representation on 4.4.2000 and again remained silent till 15.7.2003 when he made the last representation. He filed the writ petition on 2.3.2004 just before his retirement from service.

7. From the aforesaid factual aspect of the matter, there is no gainsaying that there was inordinate delay on the part of the petitioner in seeking correction of date of birth on the basis of the claim of another date of birth. No explanation is also forthcoming from the petitioner as to what made him to obtain the school certificate on 22.7.1981 recording a particular date of birth which is different from the one recorded in the service book. Such a certificate was obtained after about 11 years of entering the Government service in 1970. Even if the date of

regularisation of the services of the petitioner by order dated 1.1.1981 is taken into account, then also there is no explanation as to what made the petitioner to obtain the certificate on 22.7.1981. Even after obtaining the certificate allegedly on 22.7.1981, the petitioner remained silent for 15 long years and made his 1st representation in January 1996.

8. As noticed above, the representations submitted by the petitioner were rejected by communication dated 8.3.1996 and 22.4.1996. The petitioner never made any grievance against the same. However, he submitted yet another representation dated 4.4.2000 and thereafter also remained silent till submitting the last representation dated 15.7.2003. The stand of the petitioner in his last representation dated 15.7.2003 claiming change of date birth is worth noting. The contents of the said letter is reproduced below:

"(English Translation)

To

The In-charge Principal,
Hindi Teachers Training College,
North Guwahati.

Sub : Prayer for correction of date of birth in the Service Book.

Dated : 15.7.2003.

Sir,

Humble submission is that, I am a poor employee of your college/office. The date of birth recorded in my service book does not tally with my actual date of birth given in my school certificate, which had already been submitted before recording. I do not know how such thing happened. If it remains uncorrected then I shall have to go on retirement much before my actual time.

It is therefore prayed that my date of birth may be corrected on the basis of my school certificate.

Yours faithfully,

Sd/- Sri Upen Chandra Sharma"

9. The statement of the aforesaid representation is that the date of birth recorded in the service book does not tally with the actual date of birth recorded in the school certificate which was submitted by the petitioner before recording the date of birth in the service book. In response to the said representation, the Principal of the college by his letter dated 26.2.2004 asked the petitioner to furnish a copy of the school certificate which was submitted by the petitioner at the time of joining the service. Apart from not responding to the said letter dated 26.2.2004 the petitioner also suppressed the said letter in making claim in the

writ petition.

10. Both the aforesaid letters and the contents thereof have significance in the issue in hand. By his representation dated 15.7.2003, the petitioner claimed that his date of birth recorded in the service book did not tally with the school certificate produced at the time of joining the services. Accordingly the competent authority of the college by her letter dated 26.2.2004 directed the petitioner to produce the copy of the same which the petitioner never did and withheld that aspect of the matter from the court. The whole claim of the petitioner is based on the school certificate issued in 1981 (22.7.1981). Thus the petitioner naturally could not have responded to the aforesaid letter dated 26.2.2004 by producing the copy of the school certificate which he had produced at the time of joining the service in 1970 which must have depicted his date of birth as 1.3.1945. The date of birth of the petitioner could not have been recorded on air and must have been based on documents produced by the petitioner and declaration made by him in his application for appointment. The petitioner accepted the recorded date of birth by putting his signature and thumbs and fingers impression. The declaration made by the petitioner was authenticated by the competent authority of the college under column 5 of the 1st page of the service book. The date of birth of the petitioner has been clearly recorded as 1.3.1945 and the same was authenticated by the principal of the college with the endorsement "as per school certificate submitted".

11. From the above revelation made from the records/service book, it is crystal clear that the petitioner at the time of joining the service declared his date of birth as 1.3.1945 and the same was accepted by due authentication. There is no dispute that the date of birth of the petitioner was recorded as per school certificate produced by him. It is in this context the veracity of the subsequent school certificate dated 22.7.1981 produced by the petitioner will have to be tested. Naturally after recording of a particular date of birth in the service book on the basis of the school certificate produced by the petitioner, the subsequent school certificate dated 22.7.1981 loses its stint. Once the whole basis of the claim made by the petitioner, i.e. the subsequent school certificate dated 22.7.1981 falls through, the claim of the petitioner for change of date of birth also does not survive.

12. In the case of Col. P. N. Xavier (*supra*), the Division Bench of this Court issued a direction to consider the case of the concerned Government servant on the basis of the SSLC certificate showing the date of birth as 21.1.1946 instead of 15.4.1945 as recorded in the service book. Such a course of action was adopted having regard to the attending materials and on the ground of not assigning any reason towards rejection of the claim of the Government servant which is unlike the present case in which the variation of the claimed date of birth than the one recorded in the service book which is about 6 years. In that case the variation was by a few months. In the instant case reasons for non-acceptance of the claimed date of birth of the petitioner as against the original

date of birth recorded in the service book have already been discussed.

13. In the case of Abdul Khaleque Laskar (*supra*) the change of date of birth allowed in favour of the officer by an incompetent authority was held to be incorrect. This decision of the Division Bench was relied upon by the learned counsel for the petitioner to claim that the petitioner in the instant case was entitled to pray for alteration of the date of birth preceding three years of retirement.

14. The petitioner made declaration of his date of birth on the basis of the school certificate which was also produced by him at the time of joining his service. He accepted the entry relating to his date of birth in the service book and as a token of the same put his signature and thumb and fingers impression. It was only after about 26 years of entering the service, the petitioner approached the competent authority for correction of his date of birth recorded in the service book.

15. In the case of State of T.N. Vs. T.V. Venugopalan, the Apex Court held that the delay in seeking correction would be fatal and the Government servant should not be permitted to challenge the recorded date of birth in the service book which has been accepted by countersigning the same at the fag end of his service career. Deprecating the approach of the Tribunal in granting the relief to the applicant the Apex Court held that the Tribunal grossly erred in showing overindulgence in granting the reliefs even trenching beyond its power of allowing the applicant to remain in office for two years after the date of superannuation. The course of action adopted by the Tribunal was held to be the grossest error of law committed by the Tribunal holding the same not be too countenanced and sustained on any ground.

16. In the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, the Apex Court held that such correction should normally not be allowed. It has been held in that case that the Tribunal or the High Court should not deal with an application for correction of date of birth keeping in view the only public servant concerned. The Apex Court has also emphasised in that case that the Court or the Tribunal must be slow in granting any interim relief for continuation in service. The Apex Court also pointed out the chain reaction that follows with the continuation of the services of the incumbent beyond the date of superannuation such as adverse effect on promotion prospect of his juniors etc. Limited scope of judicial review in such matter has also been emphasised by the Apex Court. Same is the view expressed by the Apex Court in the case of Gulaichi (*supra*). In that case, the Apex Court observed as follows :

"Normally, in public service with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date

of birth in the service records. But, of late as trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their recorded, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

As observed by this Court in *State of T.N. v. T.V. Venugaopalan and State of Orissa v. Ramanath Patnaik* when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran* case as adopted."

17. I may gainfully refer to the decision as reported in *Union of India Vs. C. Rama Swamy and others*, in which the Apex Court held that an appointment having been secured on the basis of a particular date of birth, it would be against public policy to permit a change in the same to enable a longer benefit and the same would operate an estoppel. The Supreme Court pointing out that in matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment and one of the relevant circumstances is the age of the person who is sought to be appointed and that although it may not be possible to conclusively prove that an advantage has been gained by representing date of birth which is different than that the one claimed later on. The Apex Court emphasised that it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is relevant factor to assess suitability, elder person is ordinarily considered to be more mature, therefore, more suitable in such a case the Apex Court emphasised that it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age after taking that advantage. In such a situation it would be against public policy to permit such a change to enable longer benefit to the person concerned. In that case, the Apex Court further observed as follows:-

"In such a case, even in the absence of a statutory rule like rule 16A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the Court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in *Manak Chand* case does not lay

down the correct law."

18. As noticed above, the petitioner obtained an employment on the basis of the declaration made by him including the declaration relating to his date of birth. After getting the employment, he remained silent over 26 years and made a grievance relating to the alleged wrong recording of his date of birth in the service book at the fag end of his service career to gain some more years of service. He is estopped from doing so, after making a particular declaration relating to date of birth on the basis of the school certificate produced by him at the time of joining the service. The petitioner cannot be permitted to obtain 6 more years of service on the basis of his purported school certificate obtained by him after about 16 years of leaving the school and 11 years from the date of joining the service, veracity of which has already been tested above. Such a stand led to not responding to the direction of the Principal of the college as contained in her letter dated 26.2.2004 and suppression of the same in the writ proceeding.

19. For the foregoing reasons, I do not find any merit in the writ petition and the same stands dismissed.

20. There shall be no order as to costs.