
(1999) 05 GAU CK 0027
In the Gauhati High Court
Case No : Civil Rule No. 847 of 1998

Yumnam Saratchandra Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 28-05-1999

Acts Referred:

Pension Rules — Rule 13

Citation : (2001) 2 GLT 175

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : N. Kerani Singh, for the Appellant; Bidyamani Devi, for the Respondent

Final Decision : Allowed

Judgement

P.C. Phukan, J.—I have heard Mr. N. Kerani Singh learned senior counsel for the petitioner as well as Mrs. Bidyamani Devi, learned Government advocate appearing for the State respondents. I have also considered the records of the case.

2. The petitioner's case in brief is that after passing Class-VIII(eight) examination he left Churachand High School, Imphal on 30.4.1956. According to School admission register, his date of birth is 5.11.1945. He entered Govt. service as a school teacher and worked as Head Pandit in the Bashikhong L.P. School. In the annual confidential report (Annexure-A/2) dated. 31.12.1969 his date of birth was recorded as 5.11.1945. Also in the employees' salary certificate dated 20.10.1988 (Annexure-A/3) his date of retirement is recorded as on 1.1.2003 treating the date of birth as 5.11.1945. Then all on a sudden without prior notice and information, the respondent No. 3, Director of Education issued the order (Annexure-A/4) dated 9.12.1994. The following is the full text of this order:-

"Government of Manipur Office of the Director of Education(S) ORDERS

Imphal, the 9th December, 1994

No.46/5/93-ED(V)(I) : Consequent on his attaining the age of superannuation Shri Y. Sharatchandra Singh Head Pandit of Bashikhong L.P. School in the scale of pay of Rs. 1200-1800 p.m. is allowed to retire from service with effect from 31.12.1994(AN).

Sd/- (Dr. R.K. Nimai Singh) Director of Education(S) Memo. No. 46/5/93-ED(V)(I) Imphal, the 9th Dec/94.

Copy to:-

1. The Accountant General, Manipur.
2. The Commissioner(Gig.), Manipur.
3. The Treasury Officer, Moirang.
4. The Inspector of Schools/Zone-II with 2(two) copies of the orders and service book of the Teacher for the school and teacher concerned. This refers to his letter No. 2(1)/45/90-ED(IS-II) Pt.II dt. 23.9.1994.
5. The School concerned.
6. The Teacher concerned.
7. The Record Keeping Officer/Education(S).
8. The Orders Book.

Sd/- (Dr. R.K. Nimai Singh) Director of Education(S)."

Immediately the petitioner filed an application (Annexure-A/5) dated 29.12.1994 to the respondent No. 3, Director of Education challenging, the order of retirement w.e.f. 31.12.1994. In the meantime, he was illegally forced to retire on 31.12.1994 afternoon. Unable to get any response to his earlier representation, the petitioner made the last request vide Annexure-A/7 dated 9.2.1998 to the respondent No. 3 Director of Education for revocation of the retirement order. The respondent No. 3 by order dated 19.2.1988 (Annexure-A9) informed the petitioner that his request for revocation of the retirement order could not be entertained. Being aggrieved, the petitioner has come up before this court in the instant writ petition with a prayer to quash and set aside the impugned order of retirement and to allow him to perform his duty as a teacher.

3. Respondent No. 3, Director of Education filed affidavit-in-opposition stating, inter alia, that in the service book the petitioner's date of birth was recorded as 1.1.1937 and hence he had to be retired from service w.e.f. 31.12.1994 on his attaining the age of superannuation i.e. 58 years vide the impugned order (Annexure-A/4) dated 9.12.1994. It has further been stated therein that as per FR 56(m) rule 6 an alteration in respect of date of birth of a Government employee/servant can be made if a request in this regard is made within 5 years

of his entry into Government service and that the petitioner submitted his representation only on 29.12.1994, i.e., after the issuance of the order for retirement. In the rejoinder affidavit, the petitioner denied that his date of birth was recorded as 1.1.1937 in his service book and asserted that after entering into the Govt. service his date of birth was duly recorded in the service book as 5.11.1945 and that the date 1.1.1937 was inserted by the interested persons by manipulation. The petitioner further submits that he has filed this writ petition not to correct his date of birth but to challenge the order of retirement based on the illegally manipulated date of birth 1.1.1937. In the rejoinder, the petitioner has prayed that the respondents be required to produce his service book to show as to how and when his date of birth 5.11.1945 was subsequently altered to 1.1.1937.

4. Mrs. Bidyamani Devi, learned Govt. Advocate, has produced the service book of the petitioner. On close scrutiny, I find that all the entries on the page next to the cover including the one recording the petitioner's date of birth as 5.1.1945 are in the same ink and appear to be in same handwriting written in one sitting. Against the entry for recording the date of birth is written "1.1.1937 (1st January, 1937)" in different ink and different handwriting. The initially recorded date of birth 5.11.1945 was left untouched and still remains there unstruck. At least till 20.10.1988 there was only one date of birth 5.11.1945 in the petitioner's service book as is evident from his salary certificate (Annexure-A/3) dated 20.10.1988 showing his date of retirement as 1.1.2003 treating his date of birth as 5.11.1945. Also in his Annual Confidential Report (Annexure-A/2) dated 31.12.1969 recorded by the Deputy Inspector of Schools and accepted, by the Inspector of Schools, his date of birth has been shown as 5.11.1945. The authenticity of these two official documents showing the petitioner's date of birth as 5.11.1945 has not been challenged by the State respondents, neither in the affidavit-in-opposition nor in the course of argument before this Court. The position emerges, therefore, is that at the time of entry into the Government service, the petitioner's date of birth was recorded as 5.11.1945 in his service book. Subsequently, it was altered to 1.1.1937.

5. Curiously enough, the affidavit-in-opposition filed by the State respondents is silent about the subsequent alteration of the petitioner's date of birth - not a single word denying subsequent alteration, not a single word as to why and when the alteration was made. Only at the time of argument, Ms. Bidyamani Devi, learned Government Advocate, urges that there was no subsequent alteration and that the date of birth "1.1.1937" has been there since the service book was first prepared. This is thoroughly unconvincing in view of what I have said in preceding paragraphs. Reiterating that 1.1.1937 has been there since the beginning. Ms Devi argues that the petitioner's date of birth could not have every been recorded as 5.11.1945, for, in that case he would have entered Govt. service before he attained 18 years of age, which is not permissible. Mr. Korani Singh, learned senior counsel for the petitioner, submits that "boy service" i.e. service rendered before attaining age of 18 years was not ruled out when the

petitioner entered into Government service since Rule 13 of the Pension Rules provides that such boy service shall not be counted for any purpose.

6. Ms. Devi further submits that the date of birth "1.1.1937" was recorded on the basis of a school certificate produced by the petitioner himself showing that he was 19 years old when he left school after passing class-VIII. This has not been stated anywhere in the affidavit-in-opposition. In any case, "1.1.1937" was inserted subsequently. As regards furnishing of the school certificate on the basis of which 1.1.1937 is stated to have been recorded, the petitioner in his application, Annexure-A/5 dated 29.12.1994 to the respondent No. 3 Director of Education says that after passing Matriculation examination he claimed higher pay scale and then as required by the authority, he hurriedly collected a school certificate, which turned out to be incorrect, and furnished the same to the authority. However, a correct certificate, Annexure-A/1 from the same school showing his date of birth as 5.11.1945 was furnished later. Once the date of birth of the petitioner was recorded in his service book according to then available document/information, subsequently it could not have been altered according to the "19 years old Class-VIII School certificate" as aforesaid without affording to the petitioner a reasonable opportunity of being heard against such alteration. It is not disputed that no such opportunity was afforded to the petitioner. It has been held in Chitta Ranjan Roy's case reported in 1973(1) SLR (Calcutta) that the date of birth entered in service book according to the Municipal records could not be subsequently changed according to the Matriculation Certificate without affording to the officer concerned a reasonable opportunity of being heard. In another Parmeshwarappa G.R. v. Solicitor & Ex-Officio Dy. Secy, case reported in 1983 (1) SLR 329, it has been held that the State Government has no suo motu power to alter any entry relating to a date of birth of an employee.

7. In view of the above, the impugned order, Annexure-A/4 dated 9.12.1994 requiring the petitioner to retire w.e.f. 31.12.1994 based on the subsequently altered date of birth 1.1.1937, alteration made suo motu without affording to the petitioner reasonable opportunity of being heard cannot be allowed to stand. The same is quashed.

8. The respondents are directed to reinstate the petitioner in service with all consequential benefits treating 5.11.1945 as his date of birth till it can be altered, if at all, following the due procedure and relevant rules and affording to the petitioner a reasonable opportunity of being heard by serving show-cause notice on him. But in no case any order requiring him to retire with retrospective effect shall be passed.

9. As requested, let a copy of this judgment and order be furnished to the learned Government Advocate, Manipur.

10. The petitioner shall furnish a certified copy of this judgment and order to the respondent No.3 Director of Education, Government of Manipur, who shall comply with the above direction of this Court within two months from the date of receipt

of thereof.

11. This writ petition is allowed as indicated above. No costs.