

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAS) NO.50 of 2018

Madan Raul

....

Petitioner

Mr. L. Sahu, Adv.

-versus-

State of Odisha & Others ...

Opp. Parties

State Counsel

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

Order
No

ORDER
12.04.2024

- 8.** **1.** This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
- 2.** Petitioner has filed the present Writ Petition with the following prayer.

“To quash the impugned order of retirement as at Annexure-7 which has been so passed referring to a letter of the Dy. Director of Agriculture, Sambalpur and the Hon’ble Tribunal be also pleased to quash the rejection order as at Annexure-15.

To declare and direct that the applicant has been illegally made to retire and he is liable to continue in service till 31.07.2008 taking into account his date of birth as 12.07.1950 and he be given all service benefits including future pensionary benefits on the said basis.

- 3.** Learned counsel for the Petitioner contended that Petitioner initially entered into the service on 27.02.1968 as a Peon. In the Service Book so opened after his appointment as a Peon vide Annexure-8, his Date of Birth was recorded as 12.07.1948.

3.1. It is contended that by the time Petitioner was appointed as a Peon, he had not passed his HSC Pass Examination so conducted by the Board of Secondary Education, Odisha. But in the meantime, Petitioner

passed the HSC examination held in the month of August, 1970 and in the HSC certificate so issued by the Board under Annexure-1, his Date of Birth is recorded as 12.07.1950. It is also contended that in the Transfer Certificate issued in favour of the Petitioner under Annexure-2, the date of birth of the Petitioner is also recorded as 12.07.1950.

3.2. It is contended that taking into account the date of Birth so recorded in the HSC Pass certificate and Transfer Certificate available under Annexures-1 & 2, Petitioner when was selected and appointed as a Diarist-cum-Typist, where he joined on 15.02.1973, in the Service Book so opened under Annexure-4, his Date of Birth was recorded as 12.07.1950.

3.3. Learned counsel for the Petitioner contended that such date of birth as 12.07.1950 was recorded when the Petitioner joined as against the post of Dyarist-cum-Typist on 15.02.1973 taking into account his Date of Birth so recorded in his HSC pass certificate available under Annexure-1. It is also contended that date of birth so recorded in his Service Book opened after his joining under Annexure-4 as 12.07.1950, remained as such without any objection from any quarter nor it was ever corrected by following due procedure of law.

3.4. It is contended that taking into account his date of birth as 12.07.1950, so reflected in Annexure-4, Petitioner was due to retire on attaining the age of 58 years which falls on 31.07.2008. But by taking his Date of Birth as 12.07.1948 so recorded under Annmexure-8, he was made to retire w.e.f 31.07.2006 vide order dt.17.08.2006 under Anenxure-7.

3.5. It is contended that since the Date of Birth recorded under Annexure-4 was so made taking into count the Date of Birth recorded in his HSC certificate which is not disputed. Petitioner should have been allowed to retire on attaining the age of 58 years, which falls due on 31.07.2008. But without any change in his date of birth so recorded in Annexure-4, Petitioner illegally and arbitrarily was made to retire to w.e.f 31.07.2006 vide Annexure-6.

3.6. Challenging such action of the Opp. Party, Petitioner initially approached the Principal Bench of Tribunal in O.A. No.786 of 2007. The matter was subsequently transferred to the Sambalpur Bench and re-numbered as O.A. NO.50(S) of 2018. After abolition of the Tribunal, the matter now has been transferred to this Court and re-numbered as WPC (OAS) No.50 of 2018.

3.7. It is contended that since the date of birth so recorded under Annexure-4 was made taking into account the Date of birth recorded in the HSC Pass certification of the Petitioner, Petitioner could not have been made to retire on 31.07.2006, basing on the date of birth recorded initially under Annexure-8, which is actually not the date of Birth of Petitioner.

3.8. Learned counsel for the Petitioner contended that Date of Birth recorded in the HSC pass certificate is to be taken as Date of Birth for all purposes. In support of the same, Mr. Sahu relied on the decision of this Court in the case of ***The Management of M/s. Tata Refractories Ltd Vs. State of Odisha & Others, (W.P.(C) No.7252 of 2014***), decided on **14.12.2022**. This Court in paragraph- 16 to 18 of the judgment has held as follows:

“16. Considering the rival submissions on the question of law, there cannot be two opinions that date of birth as recorded in the service record at the earliest could not be subject to change at the instance of the employee later, particularly close to the date of superannuation. However in considered opinion of this Court, the said sound proposition of law would be of no avail to the management petitioner in the facts and circumstances of the present case where the question is whether a primary evidence, that is laid to make a claim of the date of birth to be 09.08.1954 instead of 03.07.1952 as recorded in the service book when the workman entered into service, has to be accepted or not. On acceptance of primary evidence indicating the date of birth to be 07.02.1954 (Ext.3), the entry made in the Service Book has to be treated as not indicating the correct date of birth. In fact it would be evident from the evidence laid before the learned Labour Court and the written statement of the management that they did not challenge Ext.3 straight away, apart from taking a plea that the school leaving certificate was not available with the workman when he joined his service and that the workman has come up with a false story.

17. In Bharat Coking Coal Ltd. v. Chhota Birsa Uranw : (2014) 12 SCC 570 the Hon'ble Supreme Court dealing with a matter where two dates of birth of the respondent employee were recorded in service record, i.e., date of birth recorded as // 14 // Page 14 of 19 15.02.1947 in Form-B, a statutory form stipulated under the Rules which was signed twice by the respondent employee whereas certificate issued on passing “Mining Sardarship”, the date of birth was recorded as 06.02.1950 corresponding to date recorded in School Leaving Certificate, have held the following (at paragraphs 8, 9, 10, 15 and 16 of SCC) :

“8. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in Home Deptt. v. R. Kirubakaran [Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] , which is as under: (SCC pp. 158-59, para 7)

“7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment

keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.”

(underlined to supply emphasis)

The same approach had been followed by this Court while deciding on date of birth disputes irrespective of the relief being in favour of the workman or the employer. (See *State of Punjab v. S.C. Chadha* [(2004) 3 SCC 394 : 2004 SCC (L&S) 469] , *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] , *State of Gujarat v. Vali Mohd. Dosabhai Sindhi* [(2006) 6 SCC 537 : 2006 SCC (L&S) 1445] and *State of Maharashtra v. Gorakhnath Sitaram Kamble* [(2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582] .)

9. Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organization. Even this Court in spite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum. (See *State of Maharashtra v.*

Gorakhnath Sitaram Kamble [(2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582] , High Court of Madras v. M. Manickam [(2011) 9 SCC 245 : (2011) 4 SCC (Civ) 588 : (2011) 2 SCC (L&S) 464] and High Court of // 16 // Page 16 of 19 A.P. v. N. Sanyasi Rao [(2012) 1 SCC 674 : (2012) 1 SCC (L&S) 310] .)

10. As stated earlier, this Court needs to decide the manner in which date of birth has to be determined. It is the case of the appellant that as the respondent raised the dispute at the fag end of his career and as there exists a set of records being the Form B register which is a statutory document in which the date of birth has been verified by the respondent himself twice, other non-statutory documents should not be given precedence and the orders of the High Court must be set aside. This claim of the appellant does not stand in the present matter. As determined, the dispute was not raised at the fag end of the career; on the contrary, it was raised in 1987 almost two decades prior to his superannuation when he first came to know of the discrepancy. It has been held in Mohd. Yunus Khan v. U.P. Power Corpn. Ltd. [(2009) 1 SCC 80 : (2009) 1 SCC (L&S) 83] , that: (SCC p. 84, para 14)

(underlined to supply emphasis)

“14. ... An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer.” Thus, the case of the respondent should not be barred on account of unreasonable delay.

15. As noted by us, the respondent in 1987 on coming to know of the wrong recording of his date of birth in his service records from the nomination form sought rectification. Therefore, such rectification was not sought at the fag end of his service. We have further noticed that the High Court duly verified the genuineness of the school leaving certificate on the basis of a supplementary affidavit filed by Shri Dilip Kumar Mishra, Legal Inspector of the appellant Company on 6-9-2010 before the High Court. It has been admitted in the said supplementary affidavit that the school leaving certificate has been verified and has been found to be genuine. We have further noticed that Implementation Instruction 76 Clause (i)(a) permits rectification of the date of birth by treating the date of birth mentioned in the school leaving certificate to be correct provided such certificates were issued by the educational institution prior to the date of employment. The question of interpreting the words “were issued” was correctly interpreted, in our opinion, by the High Court which interpreted the said words for the purpose of safeguarding against misuse of the certificates for the purpose of increasing the period of employment. The High Court correctly interpreted and meant that these words will not apply where the school records containing the date of birth were available long before the starting of the employment. The date of issue of certificate actually intends to refer to the date with the relevant record in the school on the basis of which the certificate has been issued. A school leaving certificate is usually issued at the time of leaving the school by the student, subsequently a copy

thereof also can be obtained where a student misplaces his said school leaving certificate and applies for a fresh copy thereof. The issuance of fresh copy cannot change the relevant record which is prevailing in the records of the school from the date of the admission and birth date of the student, duly entered in the records of the school.

16. Therefore, the order of the High Court does not call for any interference. We endorse the reasoning given by the High Court and affirm the same. In these circumstances, we do not find any merit in the appeal. Accordingly, this appeal is dismissed.”

(underlined to supply emphasis)

Applying the principles laid down in *Bharat Coking Coal v. Chhota Birsa Uranw* (supra), it has to be held on the basis of the School Leaving/Transfer Certificate (Ext.3) which is conclusive in nature, the opposite party-workman has made out a case for correction of date of birth. Further not correcting date of birth has resulted in real injustice to the workman. The evidence so produced by the workman has been further certified by the superior authority : Block Education Officer of the issuing authority : of the school wherefrom School Leaving/Transfer Certificate was issued. The date of issuance of the School Leaving/Transfer Certificate is 09.08.1967, the duplicate being issued on 25.07.1978. The period of study of the petitioner in the school as referred to in the School Leaving/Transfer Certificate is from 22.07.1965 in Class-VI when he took admission and did pass the Middle School Certificate Examination. It can be seen that the workman/opposite party as early as on 03.07.1978 in his statement recorded by the doctor of the company had stated his age to be 24 years thereby indicating his year of birth to be 1954. The fact of recording of date of birth of the O.P. NO.3-employee to be 03.07.1952 in the school admission register when he took admission on 22.07.1965 is much prior to he seeking employment with the petitioner-employer in 1978 when he was medically examined on 03.07.1978.

18. In view of the above discussions, the writ petition is dismissed upholding the award dated 31.12.2013 passed by the learned Labour Court, Sambalpur in I.D.Case No.31 of 2013 with the following further orders :

since the workman concerned has already superannuated on attaining the age of superannuation and received his retiral dues, his wages from 01.08.2012 till the date of retirement, i.e., 28.02.2014 are to be calculated taking in view then prevailing schedule of wages and other entitlements like increments etc, the differential amount deducting the amount received by the workman, if any shall be paid to the workman within a period of eight weeks from the date of pronouncement of this judgment. The last pay drawn by the workman as would be fixed on 28.02.2014 which would be his date of superannuation by taking the date of birth to be // 19

// Page 19 of 19 07.02.1954, shall be fixed and accordingly the retiral dues are to be recalculated within the said period of eight weeks. The differential amount of recalculated retiral dues and the amount that has been actually received by the workman shall also be paid within eight weeks.

Ordered accordingly.

4. Mr. S. Jena, learned A.G.A on the other hand while justifying the retirement of the Petitioner vide Annexure-7 w.e.f 31.07.2006 contended that since Petitioner while entering into his service as a Peon, his date of birth was recorded as 12.07.1948 under Annexure-8, he was made to retire on attaining the age of 58 years, which fell due on 31.07.2006. Subsequently while joining as against the post of Diarist-cum-Typist with opening of a new Service Book, though date of birth of the Petitioner was recorded as 12.07.1950, but taking into account the date of Birth so recorded in Annexure-8 and the said date of birth being taken as the date of Birth of the Petitioner, he was made to retire on attaining the age of 58 years, which fell due on 31.07.2006. It is accordingly contended that no illegality or irregularity has been committed by the Opp. Parties in making the Petitioner retired w.e.f 31.07.2006 taking into account the date of birth available under Annexure-8.

5. Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that Petitioner while entered into service as a Peon, he had not passed the HSC examination and in the service Book so opened under Annexure-8, his Date of birth was recorded as 12.07.1948. But as found from the HSC Pass Certificate issued by the Board under Annexure-1 as well as Transfer Certificate issued by the School under Annexure-2, the date of birth of Petitioner is recorded as 12.07.1950. The said date of Birth was also recorded rightly in the Service Book opened in favour

of the petitioner under Annexure-4, after he joined as a Diarist-cum-Typist on 15.02.1973. Placing reliance on the decision as cited supra, this Court is of the view that date of birth recorded in the HSC Pass Certificate is to be taken as the Date of birth for all purposes.

5.1. In view of the same, this Court is of the view that the date of Birth recorded as 12.07.1950 in Annexure-4 should have been taken as the date of birth of the Petitioner and he should have been made to retire on 31.07.2008 in place of 31.07.2006.

5.2. Therefore, this Court is inclined to quash the order dt.17.08.2006, so issued under Annexure-7 and consequential rejection available vide order dt.16.11.2006 and Annexure-15. While quashing the order available at Annexure-7 and Annexure-15, this Court held the Petitioner to have continued in service till 31.07.2008. However, since the Petitioner has not discharged any duty for the period 01.08.2006 to 31.07.2008, he will not be entitled to get any salary for the said period. However, the pay of the petitioner be fixed on notional basis and pensionary benefits of the Petitioner be revised accordingly. After such revision of the pension and other pensionary benefits, differential amount be released in favour of the petitioner. The entire exercise shall be undertaken and completed by Opp. Party Nos.2 & 3 within a period of three (3) months from the date of receipt of this order.

The Writ Petition is accordingly disposed of.

(Biraja Prasanna Satapathy)
Judge

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