

(2003) 10 GAU CK 0010

Gauhati High Court (Aizawl Bench)

Case No: WP (C) No. 7 of 2001

Dr. B. Thangdailova

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision: Oct. 1, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 1 GLR 429

Hon'ble Judges: S.K. Kar, J

Bench: Single Bench

Advocate: C.V.L. Auva, for the Appellant; Helen Dawngliani, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Kar, J.

This is a petition for a simple direction to the respondents that date of birth of the petitioner is to be treated, for all practical purpose, on the basis of the HSLC (High School Leaving Certificate) as the correct date of birth.

2. That in the service record of the petitioner more than one date of birth have been shown due to mistake and that there was no other source of information about date of birth at the relevant time.

3. That the petitioner approached to the concerned department to say that his date of birth recorded in the service book as 11.3.44 was wrong and required to be corrected. But his representations were not considered and no correction was made and accordingly he has approached this court for relief as aforesaid.

4. The respondents contested the case by filing affidavit-in-opposition contending, inter alia, that the petitioner had joined his service in the year 1969 but came with the prayer or correction of the date of birth only on 5.5.2000 and as such the petition is suffering from inordinate delay and latches on the part of the petitioner.

The Nodal department DP&AR by whose order the petitioner is aggrieved has not been made, a party for which there is a case of non-joinder of necessary party.

5. That although his HSLC certificate has recorded his age as 16 years 3 months on 1.3.1961, meaning thereby his date of birth would be 1.12.1944, there are other source of information like Baptize certificate. That the date of birth has been recorded as 11.3.1944 in the service record and petitioner himself gave this date as his date of birth while initiating the ACR's. However, it will reveal from the ACR's of the petitioner that different dates of birth (as many as five) were put by him while filling the ACRs. But the department had always maintain the date of birth as 11.3.1944 notwithstanding these variations made by the petitioner.

6. Lastly, it was submitted that the correction of the date of birth vide representation dated 12.10.2000 made by the petitioner could not be effected due to provisions in FR-56, note 6(a) of the Fundamental and the subsidiary rules.

7. I have heard learned counsel for the petitioner Dr. C.V.L. Auva and the learned Government advocate and considered the material placed before the court.

8. It will be convenient to flash on the variations made in the recorded dates of birth by the petitioner while initiating, the ACRs as is given in the affidavit-in-opposition supported by annexed photocopies (C/II series) of the relevant ACRs. I quote from para 7 of the affidavit-in-opposition.

"Year ending Date of birth

- (i) 1/4/74-31/3/75 11/03/44
- (ii) 1/4/45-31/3/76 11/03/44
- (iii) 1/4/76-31/3/77 Nil
- (iv) 1/4/77-31/3/78 Nil
- (v) 1/4/78-31/3/79 Nil
- (vi) 1/4/79-31/3/80 11/03/44
- (vii) 1/4/80-31/3/81 11/03/44
- (viii) 1/4/81-31/3/82 11/03/44
- (ix) 1/4/82-31/3/83 11/03/44
- (x) 1/4/83-31/3/84 11/10/44
- (xi) 1/4/84-31/3/85 11/03/44
- (xii) 1/4/85-31/3/86 11/03/44
- (xiii) 1/4/86-31/3/87 11/03/44
- (xiv) 1/4/87-31/3/88 11/10/44
- (xv) 1/4/90-31/3/91 11/03/44
- (xvi) 1/4/92-31/3/93 11/03/44
- (xvii) 1/4/93-31/3/94 11/03/45
- (xviii) 1/4/94-31/3/95 01/12/44

(xix) 1/4/95-31/3/96 11/03/45
(xx) 1/4/96-31/3/97 01/12/45
(xxi) 1/4/97-31/3/98 01/12/45"

From the entries in the ACRs as quoted above it is seen that from 1974 onwards the date of birth has been recorded mostly as 11.3.1944 till 1994 excepting the year 1983-84, 1987-88 where the date of birth has been recorded as 11.10.44 and in 1993-94 date of birth was given 11.3.1945 changing the year from 1944 to 1945. For the first time in the ACR initiated by the petitioner in 1994-95 he put his date of birth as 1.12.1944 which is calculated for the first time on the basis of his Matriculation Certificate after about 20 years of his service. Then again, the year has been changed from 1944 to 1945 on the subsequent ACRs of three years, i.e., 1995-96, 1996-97, 1997-98, the last entries of "45" is clearly indicate of taking a new stand in recording the date of birth shifting the year from 1944 to 1945 and it will not be out of place to infer/presume that it was done purposefully for gain as contended by the respondents. However, keeping the mind open, let us examine the legal aspect of the matter in a restrained and cautious way.

9. It may be worth noting here that Hon"ble Calcutta High Court in *Puspa Rani Chakraborty (Smt.) v. Allahabad Bank* 2000 (1) SLR 795 Cal held that as follows :

"The right to get date of birth corrected either on the basis of Matriculation Certificate or otherwise is not a legal right far less a constitutional right - Even if there is some legal right the same can be waived and the employer is not always bound to correct the date of birth."

In another case reported as *G.M. Bharat Coking Coal Ltd. v. Shib Kumar Dushad* 2000 (5) SLR 604 (SC) ; Hon"ble Apex held that:

"Where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under the Service Rules or General Instructions issued by the employer and it is not the case of employee that there has been any arithmetical mistake or typographic error patent on the face or record there was no scope that the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should interfere with the decision of the employer."

10. It is no doubt that School Leaving Certificate is one or the good piece of evident to prove date of birth in absence of other reliable evidence but it has been constantly held by different courts that all correction of date of birth should be made at the earliest point of time without any case of unexplained or inordinate delay. It was also held that if the Officers made a declaration about the date of birth at the time of entry in his service doctrine of estoppel is applicable and subsequently he cannot claim the correction of date of birth, refer *Union of India v. C. Rama*

Swamy, 1997 (2) SLR 584 (SC) . [Union of India \(UOI\) Vs. Ram Suia Sharma](#), it was held that:

"a Court or a Tribunal at the belated stage cannot entertain a correction of date of birth duly enter in the service record and in such situation any order or direction by the Tribunal to consider correction after 25 years is per se illegal."

There are several other decisions on this point to say that date of birth given by the officer at the time of his entry in the service particularly when no action taken by person concerned within 5 (five) years of the knowledge of the mistake, any application for correction at a belated stage is to be rejected summarily. In *Union of India v. Kantilal Hematram Pandya* 1995 (2) SLR 54 (SC) it was held as follow :

"State claims and belated applications for alterations of the date of birth recorded in the service book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement, need to be scrutinized carefully and interference made sparingly and with circumspection."

11. Coming to the present case I find the there was a consistent entry in the service record initiated by the petitioner himself giving his date of birth as 11.3.1944 and it continued for quite long period spreading over about 20 years when suddenly he woke up and started agitating against the wrong entry of date of birth. The HSLC certificate was issued to him, as per the date of certificate, sometimes after 12.9.1961. So it was definitely within the knowledge of the petitioner who admittedly enter into service in the year 1969. But no attempt was made by him for this period over 30 years. Even in the year 1994-95 when he made the entries in the ACR about the date of birth being 1.12.1944, there is nothing to show that he submitted any representation for correction of the same at that time. He made attempt for correction only on 5.5.2000 in his capacity as Director of Health Services vide his letter under Memo No. A.19013/2/94-DHSE/Vol-II dated 5.5.2000, that is, less than two years next before his retirement. Law is well settled as discussed above that such petition for correction of date of birth cannot be entertain at such belated stage. It was held that under such situation the principles of natural justice cannot be stretched to the ridiculous edge of opportunity at every state. [State of Madhya Pradesh Vs. R.P. Sharma](#),

12. In the result, I find that the facts and circumstances of this case do not require any interference of the court. It is well settled that any case of correction of date of birth, already recorded, is to be agitated in appropriate time with bona fide intentions and invariably, there should be no laches or inordinate and unexplained delay etc.

13. Petition is rejected. No cost.