
(1999) 01 GAU CK 0015

Gauhati High Court (Aizawl Bench)

Case No: Writ Petition (C) 2 of 1998

R. Lianchhawana

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision: Jan. 29, 1999

Acts Referred:

- Registration of Births and Deaths Act, 1969 - Section 17

Citation: (1999) 1 GLT 589

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

Bench: Single Bench

Advocate: H. Lalrinthanga, Lalthlamuaou and R. Lalriwaurna, for the Appellant; Nelson Sailo, for the Respondent

Judgement

P.C. Phukan, J.

I have heard Mr. H. Lalringthanga, learned Counsel for the Petitioner and Mr. Nelson Sailo, learned Government Advocate, Mizoram, for the Respondents.

2. Briefly, the facts not in dispute are that the Petitioner was appointed as Lower Division Assistant on 31.10.60 under the then existing Mizoram District Council, and was confirmed as such on 17.6.70. In his service book his date of birth was entered as 12.9.39. This was later corrected as 1.10.42 by the District Council on 8.7.70 on the basis of the Petitioner's Matriculation Certificate (Annexure-1). The relevant entry in his service book (Annexure-II) read as under:

5. Date of birth 1.10.42 Corrected as per
by Christian era Matric Certificate.
as nearly as
can be prescribed
Sd/- Illegible
8.7.70

Secretary,
Executive Council
Mizo District
Council

Sd/- Illegible
Revenue Officer,
Mizo District
Council

3. On dissolution of the Mizo District Council, the Petitioner was "absorbed in the service under the Govt. of Mizoram with effect from 29.4.72." vide page 6 in volume I of the Petitioner's service book (Annexure-II). Learned Govt. Advocate has produced a letter No. A. 21014/1/97-Ex. 135 dated 6.10.97 from the Petitioner's controlling Officer Superintendent of Excise, Lunglai to the Commissioner of Excise. This letter shall form a part of the records. The relevant portion thereof is extracted below:

...it is noticed that there was wrong entry on the date of birth...was altered by the Executive Secretary, Mizo District Council with Official according to Matriculation Certificate.... I would therefore beg to send herewith the "Service Book of Pu R Linchhawna, H.A. of this office for onward submission to the Secretary, Government of Mizoram, D.P. & AR (CSW) for favour of approval for the alteration of date of birth....

4. Instead of approval came the following W/To message dated 23.12.97 (Annexure-VI) to the Superintendent of Excise, Lunglai from the Commissioner of Excise:

On attaining superannuation age of 58 years Pu R. Lianchhawna, head assistant of your Office, is hereby released to go on superannuation pension with effect from 23.12.97 (F.N.). Letter follows. Necessary action for regularisation of the period of his excess service from 30.9.97 to 22.12.97 may be initiated from your end urgently.

5. In addition to the above W/T message the Commissioner of Excise issued an office order dated 23.12.97 (Annexure-VII) releasing the Petitioner from service with immediate effect. - hence this Writ Petition against such release from service on superannuation.

6. It is submitted on behalf of the Petitioner in para 4 of the Writ petition that in his service book his date of birth was wrongly entered as 12.9.39 without reference to any supporting document and without his knowledge and that the error, when detected, was duly corrected to be 1.10.42 on the basis of his Matriculation Certificate by his appointing authority, the then existing District Council on 8.7.70 while he was in service under the Council. Needless to say that the Matriculation Certificate, when its authenticity is not questioned as in the instant case, is one of the most reliable modes of proof of age. In the instant case, not only the Matriculation Certificate, his Certificate of Birth (Annexure-III), (authenticity of which is also not questioned) issued u/s 17 of the Registration of Births & Deaths Act, 1969 by the Registrar of Births & Deaths Mizoram as well as records (Annexure IV & V) of his bio-data maintained in the Offices of his former controlling Officer District

Agriculture Officer and last Controlling Officer Superintendent of Excise respectively shows the Petitioner's date of birth as 1.10.42. There is nothing in the affidavit-in-opposition filed on behalf of Respondents that they ever questioned the correction of this date of birth 1.10.42 till the Respondent No. 4 Commissioner of Excise sent the impugned W/T message (Annexure VI) and issued the impugned order Annexure-VII), releasing the Petitioner from service with effect from 23.12.97 without actually altering the Petitioner's date of birth from 12.9.39 to 1.10.42 in his Service Book. Even at this unbelievably belated stage the Respondents raised this question and decided that the Petitioner's date of birth is 12.9.39 and not 1.10.42 without giving the Petitioner any opportunity to show cause. The only contention made in the affidavit-in-opposition is that the Mizoram District Council altered Petitioner's date of birth without following the procedure prescribed under note 6 to FR 56. Note 6 reads as under:

The date on which a Government servant attains the age of fifty eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary School Certificate or extracts from Birth Registrar. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if

(a) a request in this regard is made within 5 years of his entry into Government service;

(b) it is clearly established that a genuine bona-fide mistake has occurred.

....

7. Mr. Sailo, learned Govt. Advocate, contends that note 6 was not followed in as much as no sanction of the concerned Ministry or Department of the Government for alteration of the Petitioner's date of birth was obtained and no request was made by the Petitioner in this regard within 5 years of his entry into service. However, note 6 is required to be followed by the concerned Government Department for alteration of the date of birth of a Government Servant. But when the Petitioner's date of birth was altered on 8.7.70, he was not a Government servant; he was still a servant of the District Council constituted under the Sixth Schedule of the Constitution. There was, therefore, no question of the District Council following the procedure prescribed under note 6 for alteration of the date of birth of its own employee, the Petitioner.

8. Mr. Lalringthanga, learned Counsel for the Petitioner, submits that even if the Petitioner were a Government servant when his date of birth was altered on 8.7.70, note 6 to FR 56 would not have been applicable, for, note 6 took effect from 15.12.79 only which could not have been given retrospective effect. I agree with Mr. Lalringthanga.

9. There is, therefore, no force in the contention advanced by Mr. Sailo, learned Government Advocate, that the Petitioner's date of birth 12.9.39 as initially entered in his service book remained unaltered because the so-called alteration made by the District Council without following the procedure prescribed under note 6 to FR 56 is no alteration in the eyes of law. Hence, 1.10.42 has to be treated as the Petitioner's date of birth, and it has to be held that his date of birth was initially wrongly entered as 12.9.39 in his Service Book without reference to any supporting document, and the error, when noticed, was rightly corrected by the District Council on the basis of his Matriculation Certificate while he was still in service under the Council, and more than 25 years after his absorption in the service under the Government of Mizoram consequent on dissolution of the Mizoram District Council, the Respondents could not have altered his date of birth as 12.9.39 without giving him any opportunity to show cause and could not have released him from Government service on the basis of his illegally altered date of birth. The Petitioner claims re-instatement with all service benefits including arrears of back pay for the period he was illegally ousted from service, and in support of such claim Mr. Lalringthanga, learned counser for the Petitioner, refers to a decision in *Manorma Verma (SMT) vs. The State of Bihar and Ors.*, 1994 Supp. (3) SCC 671 wherein it has been held:

We do not see any justification for the High Court not allowing the Appellant back wages after it came to the conclusion that the termination was illegal. Ordinarily, the consequential order of grant of back wages must follow, unless there are reasons on record which would justify a departure from the normal order. We do not see any reason on record to come to the conclusion that the Appellant was not entitled to back wages. There is also nothing on record to show that during the period she was out of service, she was gainfully employed elsewhere. In the circumstances we allow this appeal and set aside that part of the High Court's order by which the Appellant was denied back wages and award her back wages from the date of termination of service till she was reinstated in service.

10. In the instant case, there is nothing on record to show that the Petitioner was gainfully employed elsewhere during the period he has been out of services.

11. In view of what is stated above, the impugned W/T message dated 23.12.97 (Annexure-VI) and impugned order dated 23.12.97 (Annexure-VII) releasing the Petitioner from service are quashed and set aside. The Respondents are directed to accept 1.10.42 as the Petitioner's date of birth and to re-instate him in service. For the period between his wrongful retirement and reinstatement, the Petitioner shall be entitled to full salary and other service benefits as if he was in service during such

period.

12. The Petitioner shall furnish a copy of this Judgement and order to the Respondent No. 4 the Commissioner of Excise, Government of Mizoram and the Respondent shall comply with the above directions within six weeks from the date of receipt of the same.

13. This Writ petition is allowed as indicated above. No costs.