Oriental Insurance Co. Ltd. Vs Proboth Chandra Hazarika

Court: Gauhati High Court

Date of Decision: Sept. 20, 2006

Citation: (2007) 1 GLR 410 : (2007) 1 GLT 142

Hon'ble Judges: B. Sudershan Reddy, C.J; B.P. Katakey, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.P. Katakey, J.
The appellant-Insurance Company in this appeal has challenged the judgment and order passed by the learned Single

Judge in WP(C) No. 8184 of 2005 filed by the present respondent, allowing the writ petition and directing the appellant to correct the service

record of the respondent-writ petitioner insofar as it relates to the date of birth of the writ petitioner and to allow him to remain in service till he

attains the age of superannuation on the basis of such corrected date of birth.

2. The respondents herein filed WP(C) No. 8184 of 2005 challenging the notice of retirement dated 21.11.2005, issued by the Regional Manager

of the appellant-Insurance Company intimating him that he will be relieved from his duty on 31.1.2006 on attaining the age of superannuation, on

the ground that his age originally recorded in the matriculation certificate, which was produced at the time of entry into the service in erstwhile

Sterling General Insurance Co. Ltd. was subsequently rectified by the Guwahati University in the year 1972, which Was immediately thereafter

produced before the said company, who accordingly accepted such corrected age and consequently the date of birth from 1.2.1946 to 10.2.1949

and after integration of the said company, in view of the provincialisation and taking over the assets and liabilities by the appellate Insurance

Company, the corrected age and consequently the date of birth as 10.2.1949 has been accepted, as is evident from the seniority list of officers of

the company published from the year 1996 and also by recording such corrected date of birth in the provident fund account, etc., therefore, the

appellant-Insurance Company cannot compel the petitioner to retire from service with effect from 31.1.2006, as he is due to retire only on

9.2.2009, after acceptance of the corrected age as corrected by the University authority. The learned Single Judge upon appreciation of the

materials available on record as well as on hearing the learned Counsel for the parties passed the impugned judgment and order and hence the

present appeal.

3. Mr. D.K. Mishra, learned senior counsel for the appellant-Insurance Company challenging the judgment passed by the learned Single Judge has

submitted that the writ petitioner having approached the management at the fag end of his career for correction of his date of birth in the service

record that too after the appellant issued the communication dated 10.11.2003 asking him to let the appellant know whether any order was passed

by the erstwhile Sterling General Insurance Co. Ltd. accepting the corrected date of birth, the learned Single Judge ought not to have allowed the

writ petition filed by the petitioner and directed the appellant to correct the date of birth in the service record, which was admittedly not corrected

earlier. It has further been submitted by the learned senior counsel that the date of birth has been recorded in the service book of the respondent-

writ petitioner on the basis of the declaration made by him and such date of birth cannot be corrected on the basis of the application filed by the

respondent-writ petitioner on 3.12.2003, i.e., at the fag end of his service career, as he is due to retire from service on 31.1.2006. Referring to the

seniority list published by the appellant-Insurance Company, in which the corrected date of birth, i.e., 10.2.1949 of the respondent/writ petitioner

has been reflected and on the basis of which the learned Single Judge has held that the appellant-company has accepted such corrected date of

birth, the learned senior counsel has submitted that the seniority list published on3.6.1996, 31.12.2001 as well as in the year 2004 contains a

disclaimer that though due care has been taken to re-produce the particulars of the officers printed in the seniority list correctly from the official

records, however, in case of inadvertent/error the particulars as it appear in the official records shall be final and binding. In the instant case as the

date of birth of the respondent-writ petitioner has been recorded as 1.2.1946 in the service record, reflection of the date of birth as 10.2.1949 in

such seniority list will not give any benefit to the respondent-writ petitioner. Mr. Mishra, has further submitted that unless the date of birth recorded

in the service book of the petitioner is corrected, he cannot claim the benefit of the corrected age certificate issued by the University authority,

which having not been done in the present cases, the respondent-writ petitioner is not entitled to any relief.

4. Relying on the decision of the Apex Court in Union of India Vs. C. Rama Swamy and others, , Board of Secondary Education of Assam Vs.

Md. Sarifuz Zaman and Others, and State of Punjab and Others Vs. S.C. Chadha, as well as in Civil Appeal No. 3043 of 2006 (State of Gujarat

and Ors. v. Vali Mohmad Dasabhai Sindhi) the learned senior counsel has submitted that the respondent-writ petitioner having approached the

Management for correction of his date of birth at the fag end of his career, the date of birth recorded in the respondent-writ petitioner service book

cannot be corrected. The learned senior counsel, therefore, submits that the judgment passed by the learned Single Judge requires to be interfered

with.

5. Per contra Mr. Mahanta, learned senior counsel for the respondent-writ petitioner has submitted that though at the time of entry into service in

erstwhile Sterling General Insurance Co. Ltd. on 7.2.1970, he submitted the matriculation pass certificate; issued by the Guwahati University

reflecting his age as 17 years 1 month as on 1.3.1963 and consequently the date of birth as 1.2.1946, he in fact pursuant to the gazette notification

dated 27.8.1969 published by the Guwahati University giving time to make application for correction of the age reflected in the matriculation

certificate, immediately applied for the correction of his age in the matriculation certificate, prior to joining his service in the said company.

According to the learned Counsel the University authority thereafter on 17.3.1972 corrected his age as 14 years 20 days as on 1.3.1963 and

consequently the date of birth as 10.2.1949, which document was immediately furnished to the erstwhile Sterling General Insurance Co. Ltd. and

the said company accordingly acted upon such corrected age as well as the date of birth.

6. Mr. Mahanta has further submitted that the corrected date of birth has been accepted even by the appellant-Insurance Company as is evident

from the seniority list published by the authority as on 31.12.1995, 1.4.2001 and also 1.4.2004, wherein, the date of birth of the respondent-writ

petitioner has been reflected as 10.2.1949, except in the seniority list as on 1.4.2004 where it was inadvertently mentioned as 2.7.1949, in place

of 10.2.1949. Supporting the judgment passed by the learned Single Judge, the learned senior counsel has further submitted that it is evident from

the other official records like the income taxpaper as well as provident fund account that the appellant-company had accepted the corrected date

of birth for all purposes as the respondent-writ petitioner''s date of birth has been reflected in all those records as 10.2.1949. According to the

learned senior counsel it is not the case that the respondent-writ petitioner had approached the appellant Insurance Company for correction of date

of birth at the fag end of his career as submitted by the learned senior counsel for the appellant. Mr. Mahanta, referring to the communication dated

10.4.2003 issued by the appellant-Insurance Company has further submitted that it is evident from the said communication that corrected

matriculation certificate relating to the age issued by the university authority was available on record of the Management and, therefore, in the reply

dated 3.12.2003 the respondent-writ petitioner intimated the appellant about the actual happenings, which cannot be treated as an application for

correction of date of birth and to suggest that the same was filed at the fag end of his career and as such he is not entitled to any benefit.

7. According to the learned senior counsel it is being not the case of filing application for correction of date of birth in the service record but in fact

being the case of not correcting the date of birth in the service book after accepting the corrected date of birth in the year 1972 itself, i.e., within

two years of entry into his service, the learned Single Judge has rightly directed the appellant-Insurance Company to make the necessary

correction and not to retire the respondent-writ petitioner from service before attaining the age of superannuation, taking his date of birth as

10.2.1949. Relying on the decision of the Apex Court in Union of India Vs. Harnam Singh, , the learned senior counsel has submitted that it is not

that the date of birth once recorded in the service book cannot be corrected at all subsequently, but such correction is permissible provided the

employee seeking correction produces document in support of his claim which is of an unimpeachable character and such application is not filed at

the fag end of his career. The learned senior counsel submits that the appellant-Insurance Company never challenged the corrected age certificate

issued by the University authority and in fact has admitted the fact of such correction but though has accepted the same did not make necessary

correction in the service book of the respondent-writ petitioner. The respondent-writ petitioner also did not apply for correction of date of birth in

the service record, after the erstwhile Sterling General Insurance Co. Ltd. was merged with the appellant-company as the corrected date of birth

was accepted by the erstwhile company, contended by the learned senior counsel.

8. The respondent-writ petitioner passed the matriculation examination under Guwahati University on 1.8.1963 and in the certificate issued by the

University authority his age was reflected as 17 years 1 month as on 1.3.1963 and consequently the date of birth as 1.2.1946. A Gazette

notification dated 27.8.1969 was published by the Registrar of Guwahati University giving an opportunity to all persons to file application for

correction of the age entry in the matriculation certificate provided the conditions stipulated in the said notification are satisfied. The respondent-

writ petitioner accordingly filed an application for correction of the age entry in his matriculation certificate from 17 years 1 month to 14 years 17

days on the basis of the birth certificate issued by the Municipal Authority. During pendency of such application before the University authority, the

writ petitioner was appointed in erstwhile Sterling General Insurance Co. Ltd. and as the age entry in the matriculation certificate was not corrected

till date, he obviously submitted the uncorrected matriculation certificate wherein his age has been recorded as 17 years 1 month as on 1.3.1963

and consequently the date of birth as 1.2.1946. Accordingly his date of birth was recorded as 1.2.1946 in his service book. However, the

University authority on . 17.3.1972 issued the corrected matriculation certificate, on the basis of the prayer made by the writ petitioner, showing his

age is 14 years 20 days as on 1.3.1963 and consequently the date of birth as 10.2.1949.

9. It is the case of the respondent-writ petitioner that on receipt of the said corrected matriculation certificate dated 17.3.1972 he immediately

submitted the same to his employer, i.e., erstwhile Sterling General Insurance Co. Ltd. and accordingly his corrected age as well as the date of

birth was accepted. According to the appellant-Insurance Company though the corrected matriculation certificate is available on record, no

correction was made in the services book of the respondent-writ petitioner relating to his date of birth and it still remains to be 1.2.1946 though as

per the corrected matriculation certificate the date of birth is 10.2.1949.

10. The aforesaid erstwhile Sterling General Insurance Co. Ltd. upon provincialisation merged with the present appellant-company in the year

1974. The present appellant-company though had in its record the corrected matriculation certificate issued by the Guwahati University on

17.3.1972 never at any point of time prior to 10.11.2003 asked the respondent-writ petitioner about his corrected date of birth and for the first

time by the said communication asked the writ petitioner as to whether any order was passed by the erstwhile Sterling General Insurance Co. Ltd.

accepting such certificate correcting his age as well as the date of birth. The writ petitioner on receipt of such communication submitted his reply

dated 3.12.2003 intimating the appellant-Insurance Company that the same was immediately produced before the erstwhile Insurance Company in

the year 1972 and the same was. accepted and acted upon. In the said reply it was also pointed out that even the present appellant-company also

accepted his date of birth as 10.2.1949 as is evident from the various seniority lists published by it as well as other service records, such as the

Income Tax paper and the papers relating to the Provident Fund, wherein the date of birth has been reflected as 10.2.1949. The writ petitioner in

the said reply however, has asked the appellant company to correct his service book if not already been corrected, pursuant to the corrected

certificate issued by the Guwahati University authority which was produced before the erstwhile Insurance Company in the year 1972 and is

available on the record of the appellant-Insurance Company. Such reply submitted by the respondent-writ petitioner cannot be treated as an

application filed by him for correction of his date of birth in the service record at the fag end of his career, as evidently the said corrected certificate

issued by the University authority correcting the age and consequently the date of birth was produced in the year 1972, otherwise the same would

not have been on the record of the appellant-Insurance Company.

11. The fact that the corrected age and consequently the date of birth was accepted by the appellant-Insurance Company is also evident from the

seniority lists published as on 31.12.1995, as well as on 1.4.2001, wherein the date of birth of the respondent-writ petitioner has been reflected as

10.2.1949, though in the seniority list published by the appellant as on 1.2.2004 there is a typographical mistake regarding the date of birth which

is shown as 2.7.1949 in place of 10.2.1949. It also evident from the judgment passed by the learned Single Judge that except making necessary

correction in the service book of the respondent-writ-petitioner, the appellant-Insurance Company has in fact corrected all other records including

the record of payment of Income Tax as well as the Provident Fund. The said position has not been disputed by the appellant-Insurance Company

either before learned Single Judge or before this court. Therefore, it is evident that the appellant-Insurance Company for all purposes has accepted

the date of birth of the respondent-writ petitioner as 10.2.1949, on the basis of the corrected matriculation certificate, relating to age, issued by the

Guwahati University on 17.3.1972, which was within two years of the date of his initial entry into the service. What was left out to be corrected is

the entry in the service book of the respondent-writ petitioner, which the learned Single Judge has rightly directed to be corrected in view of the

aforesaid facts and circumstances. Hence, it cannot be said that the petitioner has applied for correction of date of birth at the fag end of his career

by filing the reply dated 3.12.2003, as contended by the learned senior counsel for the appellant. The contention of the appellant that as the

aforesaid seniority lists contain a disclaimer, the entry relating to the date of birth has to be as per the service book, also cannot be accepted for the

reason that the note appended to such seniority lists is not a disclaimer but for the purpose of correction of any entry inadvertently crept in. The

appellant-company as discussed above reflected the corrected date of birth of the respondent-writ petitioner in consecutive seniority lists

published, apart from reflecting the same in other service records.

12. There is no dispute about the proposition of law enunciated by the Apex Court in its various judgments cited by the learned Counsel for the

parties and hence same are not discussed in details. The Apex Court has held that it is open to an employee to seek correction of date of birth

originally entered into the service book on the basis of unimpeachable and irrefutable proof in support of such claim, however, such claim cannot

be accepted at a belated stage, i.e., at the fag end of his career. In the instant case as discussed above the learned Single Judge has found that after

the Guwahati University authority issued the corrected matriculation certificate relating to the age, on 17.3.1972, the same was placed before the

erstwhile Insurance Company and was in fact accepted and acted upon. From the discussions made above it is also evident that the appellant-

Insurance Company had also accepted the said corrected age certificate and consequently the date of birth of the respondent-writ petitioner as

10.2.1949, on the basis of the corrected matriculation certificate available on its record. The appellant-Insurance Company has not challenged the

existence of such corrected matriculation certificate or the age and consequently the date of birth of the respondent-writ petitioner recorded

therein.

13. That being the position, we are of the view that the learned Single Judge has rightly passed the judgment and order impugned in the present

appeal. The judgment passed by the learned Single Judge does not suffer from any infirmity requiring interference by this court. Hence, the appeal

filed by the appellant-Insurance Company is dismissed.