

State Council of Educational Research and Training Employees" Organisation and Others Vs State of Manipur and Others

Court: Gauhati High Court (Imphal Bench)

Date of Decision: May 21, 1996

Citation: (1997) 1 GLR 84

Hon'ble Judges: P.K. Sarkar, J; H.K. Sema, J

Bench: Division Bench

Advocate: T. Nanda Kumar, for the Appellant; A.G. for Manipur and H.S. Paonam, for the Respondent

Final Decision: Allowed

Judgement

H.K. Sema, J.

This petition has been preferred by an organisation called the State Council of Educational Research and Training (SCERT)

Employees Organisation, represented by its President, Vice President, General Secretary, and Asstt. General Secretary in the form of Public

Interest Litigation with a prayer for quashing the impugned order dated 1.4.96 (Annexure-5).

2. The facts of the present case is somewhat peculiar, and may be recited briefly. The dispute involved in this writ petition is with regard to the

correction of the date of birth in the service Book of Respondent No. 5. Respondent No. 5 entered in Government service on 1.3.1956 as Head

Pandit. Thereafter, he was appointed as Theory Instructor on 7.7.1961. The first volume of the Service Book of the Respondent No. 5 was

opened on 17.10.1962. The date of birth recorded in the first volume of the Service Book opened on 17.10.1962 is 1.3.1938. Respondent No. 5

signed his volume-1 Service Book on 17.10.1962, counter signed by the Deputy Director of Education, Manipur. Respondent No. 5 also put the

thumb impressions of Fingers in the first volume of the Service Book. Every page of volume-1 of the Service Book bears the signature of

Respondent No. 5 upto 7.7.1976. It appears, thereafter volume-2 of the Service Book was opened w.e.f. 1.3.1956. In the second volume of the

Service Book of the Respondent No. 5, the date of birth recorded is 1.7.1938. It is mystery as to how the volume-2 Service Book was opened

w.e.f. 1.3.1956 when volume-1 of the Service Book was opened w.e.f. 17.10.1962. This has led to us to come to irresistible conclusion that the

volume-2 of the Service Book of the 5th Respondent has been prepared well and after thought. Be that as it may, this fact may not be very

important for resolving the present dispute.

3. By an order dated 28.2.1996 (Annexure-3), the Governor of Manipur ordered the superannuation of the 5th Respondent as Incharge-Director

of SCERT w.c.f. 29.2.96 taking the date of birth of the 5th Respondent as on 1.3.1938 recorded in first volume of the Service Book. By another

order, Shri A. Ibocha Singh, Joint Secretary, Education, Government of Manipur was ordered to look after the work of Director SCERT in

addition to his normal duties until further orders consequent upon the retirement of the 5th Respondent w.e.f. 29.2.96. However, by impugned

order dated 1.4.96, the Governor of Manipur in partial modification of the Government order dated 28.2.1996 has ordered that the 5th

Respondent shall retire from service on superannuation with effect from the Afternoon of 30.6.96 taking the date of birth as on 1.7.1938 as

recorded in second volume of his Service Book.

4. In the facts and circumstances, the facts giving rise to filing of the present petition are set out below in serialim:

a) The Respondent No. 5 joined the service on 1.3.1956 as Head Pandit.

b) Volume-1 of the Service Book was opened on 17.10.1962 and the date of birth was recorded as on 1.3.1938.

c) Volume-2 of Service Book of the 5th Respondent was reconstructed and the date of birth was recorded as on 1.7.1938.

d) The 5th Respondent was retired on superannuation w.e.f. 29.2.1996 by an order dated 28.2.1996 on the basis of date of birth recorded in

volume-1 of the Service Book as on 1.3.1938.

e) By impugned order dated 1.4.1996, the date of birth recorded in volume-2 of the Service Book of 5th Respondent as on 1.7.1938 was

accepted and the 5th Respondent was ordered to be retired on superannuation w.e.f. 30.6.1996.

f) Admittedly, volume-1 of the Service Book of 5th Respondent was opened on 17.10.62 in which the date of birth was entered as on 1.3.1938,

and the 5th Respondent acknowledged the date by putting his signature all throughout his service, however, for the first time the 5th Respondent

raised a dispute with regard to verification/correction of his date of birth by a petition dated 11.12.1995, the same has been processed at various

levels culminating in passing of the impugned order dated 1.4.1996.

5. We have heard Mr. T. Nanda Kumar, learned Counsel for the Petitioner, learned Advocate General for the Respondents 1, 2 and 3, Mr. H.S.

Paonam, learned Counsel for the 5th Respondent and Mr. Jayanta, learned Counsel for the Applicant in Misc. Case No. 274/96 impleaded as

party Respondent No. 6 and 7. At the time of hearing of this writ petition, Mr. Jayanta was allowed to argue on behalf of the Respondent No. 6

and 7 in Misc. Case No. 274/96.

6. At the time of hearing of this writ petition, a considerable amount of time has been spent with regard to the maintainability of the present writ

petition as PIL, which, in our view was unnecessary wastage of time.

7. In Janata Dal Vs. H.S. Chowdhary and Others, the Apex Court has laid down two tests in para 113 of its judgment as correct tests for

entertaining the petition as PIL, these tests are:

(1) Enforcement of fundamental rights of those who genuinely do not have adequate means of access to the judicial system or denied benefit of the

statutory provisions incorporating the directive principles of State Policy for amelioration of their condition, and

(2) preventing or annulling executive acts and omissions violative of constitution or law resulting in substantial injury to public interest. (underline is

ours)

8. In our view, the case in hand is squarely covered under No. 2 test. In the instant case, if the 5th Respondent is allowed to continue as Director

(SCERT) upto 30.6.1996 by a subsequent order, despite the fact (that he was allowed to retire on superannuation w.e.f. 29.2.1996 on the basis of

date of birth recorded as on 1.3.1938 in volume-1 of his Service Book, it would definitely cause substantial injury to the public interest at large,

because the 5th Respondent had to be paid his pay and allowances from (the Exchequer of the public for which he has no right thereby causing

substantial injury to the public interest. We are, therefore, of the clear view that the present petition in the form of public interest litigation is

maintainable.

9. Having resolved this point, we now proceed to advert the dispute raised in this petition. The sole question in our opinion to be determined in the

present dispute is, whether the 5th Respondent is permitted to raise a dispute with regard to the verification or correction of his date of birth

recorded in the Service Book at this belated stage at the far end of his service.

10. The issues before us are no more res-integra. This point has been settled by a catena of decisions of the Apex Court.

11. Note 5 to Fr 56 (m) was incorporated in 1979, and it provides for request to be made for correction of date of birth within five years from the

date of entry into service. The intention of the rule making authority in providing the period of limitation for seeking the correction of the date of

birth of the Government servant has to be examined which is to discourage stale claims and belated applications for alteration of date of birth

recorded in the Service Book at the foot end of the service. The Apex Court had occasioned to examine the effect of Note 5 to FR 56 (m) and the

intention of the rule making authority incorporating Note 5 to FR 56 (m). Avoiding multiplicity, we may cite few decisions of the Apex Court.

12. In Union of India Vs. Harnam Singh, the Apex Court interpreted Note 5 to FR 56 (m) in para 12 of its judgment at page 171 asunder:

It could not be the intention of the rule making authority to give unlimited time to seek correction of date of birth, after 1979, to those Government

servants who had joined the service prior to 1979, but restrict it to the five year period for those who enter service after 1979. Indeed, if a

Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-

suit him on the ground that he had not applied for correction within five years of his entry into service, but the case of Government servant who

applied for correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious

construction of the provision to hold that in the case of those Government servants who were already in service before 1979, for a period of more

than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time

after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with

the intention of the rule making authority.

13. The same view was taken in National Airport Authority Vs. M.A. Wahab,

14. In State of T.N. Vs. T.V. Venugopalan, it has been held that, if an employee already in service at the time of enforcement of such a rule,

should make the application for correction within five years from the date of enforcement of the rule, otherwise he would lose his right to make

such an application.

15. In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, an application filed for correction of date of birth after 33

years of service and only about a year before superannuation was held to be not sustainable.

16. In State of Orissa and Others Vs. Brahamarbar Senapathi, it was held that, application for change in date of birth if filed after five years of

entry into Government service is liable to be summarily rejected.

17. In the backdrop of the catena of decision referred to above, we shall now examine the problems at hand.

18. Admittedly, the volume-1 of the Service Book was opened on 17.10.1962. The date of birth recorded as on 1.3.1938 had bears the thumb

impression and signatures of the 5th Respondent in all the pages of the Service Book. Therefore, the date of birth recorded as on 1.3.1938 was

accepted by the 5th Respondent at the time when his volume-1 Service Book was opened. The entire Service Book also bears the signature of the

5th Respondent upto 7.7.1976.

19. Pay slip issued by Accountant General on 23.11.1995 also accepted the date of birth recorded in the Service Book was on 1.3.1938, and the

Officer is due to retire on 29.2.1996. Therefore, the contention of the learned Advocate General that the Service Book of the 5th Respondent was

reconstructed, and the date of birth has been recorded in reconstructed Service Book as on 1.7.1938 has been belied by the Pay slip issued by

the Accountant General on 23.11.1995 annexed as Annexure R-11 in the Misc. Application No. 274/96 filed by the 5th Respondent. It is further,

contended by learned Advocate General that the correction of the date of birth of the Petitioner has taken some time in 1983. This submission

cannot be accepted for more than one reasons. If in fact, the decision has taken by the appropriate authority of correction of date of birth of the

5th Respondent in 1983, the 5th Respondent ought not have made to retire on superannuation w.e.f. 29.2.1996 taking his date of birth as on

1.3.1938.

20. Secondly, relevant file has been produced before us by the learned Advocate General at the time of hearing of this petition. A perusal of Note

25 in file No. 2/3/79-ETC, the case of the Respondent for correction of date of birth from 1.3.1938 to 1.7.1938 has been rejected on the

following grounds:

Notes above may be seen. This is regarding the date of birth of Shri K. Mani Singh i/c Dir. SCERT. The claim of the Officer may not be accepted

on the following ground:

(i) The request is time barred.

ii) The request is made now when he is due to retire on superannuation.

iii) The change of date of birth in the Vol. II of his service book was done without the administrative approval of the admn. dept.

iv) As per his service book Vol. I & II he has joined service on 1.3.1956. If his date of birth is 1.7.1938 than he is 17 yrs. 8 months old at the time

of joining service and most probably below the minimum age of joining service. If his date of birth is taken as 1.3.1938 then his age at the time of

entry into service would be exactly 18 years. Most probably there was no mistake while entering the DOB as 1.3.38.

As such the officer may be allowed to retire on superannuation on 29.2.96.1 have discussed with Secy. (Edn). Shri A. Ibocha Singh JS Edn. may

be made incharge Dir, SCERT till regular arrangement is made.

Submitted for kind order.

21. From the note 25 as quoted above, it clearly appears that the alleged construction of volume-2 of Service Book in which the date of birth of

the 5th Respondent has been shown as on 1.7.1938 has been made without consent and prior approval of the competent authority. If that is so,

the reason is quite obvious, for extraneous consideration.

22. The undisputed facts are these:

The volume-1 Service Book of the 5th Respondent was opened on 17.10.1962, and the date of birth recorded as on 1.3.1938. The 5th

Respondent acknowledged the date of birth recorded and accepted by the competent authority. For the first time he has filed an application dated

11.12.1995 for verification of the age recorded in his Service Book after almost 33 years of service and at the fag and of his service.

23. The case of the 5th Respondent is that, the reconstruction of the second volume of the Service Book was necessitated on the basis of

Matriculation certificate issued by the University of Gauhati. This contention cannot be accepted. 5th Respondent passed the Matriculation in 1955

as appeared from the certificate dated 14.7.1955. He joined the service on 1.3.1950. Therefore, he entered into service after passing

Matriculation examination. But it appears he failed to produce the certificate when he entered into the service or had acknowledged of the entry of

his date of birth recorded in the Service Book. Even if assuming, that the 5th Respondent possess some materials, his past inaction for about 40

years from the date of joining service precludes him that the entry of his date of birth in service record was incorrect. He may possess a right, if

claimed within the limitation, but once the limitation set by the rules are over, the right automatically extinguishes. He is now not permitted to raise a

dispute that the date of birth recorded in his service book is not in accordance with the date of birth recorded in Matriculation Certificate at the fag

end of his service.

24. In the instant case it appears the 5th Respondent deliberately did not produce the matriculation certificate at the time of entering into Service,

because the age recorded in Matriculation Certificate in 1955 (Annexed as Annexure-R8 in the counter of 5th Respondent) is 16 years 8 months

on the First of March 1955. If the age recorded is correct he will be minor on 1.3.1955 the date on which he entered Govt, service and would not

be eligible for Govt, service. This would show that the 5th Respondent had not entered Govt, service with clean hand. He is now not permitted to

turn back and say that his date of birth was not recorded in accordance with his matriculation certificate at the fag end of his service to suit his own

benefit at the costs of others.

25. We are tempted to quote the observation of the Apex Court in Secretary and Commissioner, Home Department and others Vs. R.

Kirubakaran, This is what the Apex Court observed:

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 re-

action, 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 the promotion forever. 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.

26. For the reasons aforesaid, this writ petition is allowed by quashing and setting aside the impugned order dated 1.4.1996 (Annexure-5). The

5th Respondent shall be deemed to have been retired w.e.f. Afternoon of 29.2.1996.

Looking into the facts and circumstances of the case, parties are asked to bear their own costs.