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(2014) 3 GLD 83 : (2014) 3 GLT 464

Gauhati High Court

Case No: Writ Petition (Civil) No. 3844 of 2013

Satyen Talukdar

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** July 17, 2014

**Citation:** (2014) 3 GLD 83 : (2014) 3 GLT 464

**Hon'ble Judges:** Tinlianthang Vaiphei, J

**Bench:** Single Bench

**Advocate:** P.D. Nair, G. Alam, H. Rohman, S. Gogoi and P. Talukdar, Advocate for the Appellant; R.K. Bora, GA, H.K. Mahanta, S.M.T. Chistie, B. Gogoi, A. Chetri and R.K. Neog, SCs, Advocate for the Respondent

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### Judgement

Tinlianthang Vaiphei, J.

The petitioner in this writ petition is questioning the legality of the decision of the respondent authorities to retire him from service on 30.6.2012 instead of 31.7.2012 on the basis of the wrong calculation of his date of birth from the age recorded in his matriculation certificate. The facts material for disposal of the writ petition are virtually not in dispute. The petitioner used to be an officer of the Assam Civil Service and was serving as Deputy Secretary in the Education (Elementary) Department, Government of Assam when he was retired from service. He passed the High School Leaving Certificate Examination conducted by the Board of Secondary Education, Assam in the year 1969. In the matriculation certificate issued in connection therewith, his date of birth was not recorded, as in all the cases in those days, but what was recorded is that he was "aged 16 years 8 months on the first of March 1969". If his date of birth is to be determined on the basis of his age so entered, in terms of the principles of calculation accepted by this Court in [Nagendra Nath Talukdar Vs. State of Assam and Others](#), which in turn, was based on the decision of the Apex Court in [A.T. Brij Paul Singh and Others Vs. State of Gujarat](#), undoubtedly, his date of birth is worked to be 2.7.1952. It is, however, an undisputed fact that he had obviously miscalculated his date of birth to be, and was unwittingly accepted by the respondent authorities, "1.7.1952". If the date of birth of the

petitioner is correctly calculated with reference to his age as 16 years and 8 months as on 1.3.1969, it should be 2.7.1952 with the result that he would be retiring on superannuation only on 31.7.2012 and not on 30.6.2012 when he was forced to retire.

2. The respondent No. 6, however, issued the communication dated 9.8.2011 intimating the petitioner that he was due to retire from service on 30.6.2012 as per the record maintained by the Department of Personnel of the Government of Assam. On receipt of the communication, he submitted his representation to the respondent No. 6 on 31.12.2011 bringing to his notice that his date of birth had been wrongly computed as 1.7.1952 which should have been computed as 2.7.1952 and that his date of superannuation should, in accordance with FR 56(a), be 31.7.2012. In his representation, he had also referred to the decision of this Court in Nagendra Nath Talukdar case (supra). When this representation proved to be futile, another representation was submitted by him to the respondent No. 2 to that effect. After a year or so, after his retirement, the respondent No. 2 vide his letter dated 9.4.2013 informed him of his inability to correct his date of birth. In the meantime, he was prematurely retired from service purportedly on attaining the age of superannuation with effect from 30.6.2012 i.e. one month before his due date of superannuation. Aggrieved by this, this writ petition has been filed by the petitioner challenging his premature/forced retirement.

3. The State-respondents in the Departments of Personnel, Education (Elementary) Department and Pension and Public Grievances filed a common affidavit-in-opposition while the Finance Department filed a separate affidavit-in-opposition. According to the respondents, the petitioner had joined the Assam Civil Service (II) on 17.7.1985 and before that, he had served under the N.F. Railways as Clerk, Senior clerk and Law Assistant respectively. In the service book maintained by the NF Railways also, his date of birth was recorded as 1.7.1952 as is recorded in the service book maintained by the Government of Assam. As per the Pass Certificate of the HSLC examination supplied by him along with his original application submitted by him to the Assam Public Service Commission, he was aged 16 years and 8 months as on 1.3.1969: his date of birth is thus 1.7.1952. His pension papers had already been processed and released to him on 18.9.2012. According to the answering respondents, the request made by the petitioner for alteration of his date of birth cannot be entertained being barred by S.R. 8(c) of the Assam FR & SR, which stipulates that no such alteration can be made except in rare cases where a manifest mistake has been made and such mistake should be rectified at the earliest opportunity and the request therefore should be made, at any rate, within three years of the date of his actual superannuation. These are the contentions of the State-respondents in rejecting the request for allowing him to retire on 31.7.2012.

4. From the affidavits filed by the respondents, it becomes obvious that there is no dispute, nor can there be any dispute, that the actual date of birth of the petitioner, in terms of the judicially accepted and recognized principles for computation of the date of birth with reference to the age entered in his matriculation certificate, is 2.7.1952 and not 1.7.1952. On the basis of this date of birth of the petitioner, it is crystal clear that his date

of superannuation would have been 31.7.2012 and not 30.6.2012 as held by the respondent authorities. Thus, there is no dispute about the date of birth of the petitioner as per his age recorded in his matriculation certificate, which was used as the basis of the entry of his date of birth in his service book. It is, however, the contention of Mr. H.K. Mahanta, the learned senior Government Advocate, that the request for alteration of his birth having been made by the petitioner at the belated i.e. one year or so before his date of retirement, the same could not be entertained by the respondent authorities being barred by S.R. 8(c) of the FR & SR. to fortify his submission, he draws support from the decision of the Apex Court in [State of Gujarat and Others Vs. Vali Mohmed Dosabhai Sindhi](#), . He also contends that having allowed the respondent authorities to process his pension papers on the basis of his date of birth as 30.6.2012 and having also drawn his pension so sanctioned, the petitioner is now barred by the doctrine of estoppel from claiming his date of birth as 2.7.1952.

5. For better appreciation of the rival contentions of the parties, it will be apposite to reproduce hereunder the provisions of S.R. 8(c) of FR & SR:

"No alteration in the date of birth of a Government servant should be allowed except in very rare cases where a manifest mistake has been made, Such mistake should be rectified at the earlier opportunity in the course of (1) periodical re-attestation of the entries in the first page of service book, and (2) preparation of annual statement of a permanent establishment (Financial Rule Form No. 11) in which is noted an incumbent's birth. In no case request for change in the date of birth of a Government servant made on a date within three years of the date of his actual superannuation should be entertained."

6. Even a cursory look at the provisions extracted above will unmistakably reveal that what is interdicted therein is alteration of the date of birth in the Service Book of a Government servant entered at the time of his initial appointment, for which there can hardly be two opinions. After all, correction of date of birth at the belated stage is likely to have a chain reaction, inasmuch as others waiting for years, below him for their respective promotions, are being affected in this process. However, in the instant case, what is sought to be corrected is not the date of birth of the petitioner but correct computation of his date of birth on the basis of the age entered in his Pass Certificate of the HSLC examination, which already forms a part of his Service Book and, that too, only on the basis of the judicially recognised principles of computation. Thus, it is not change of his date of birth but to compute his correct date of birth on the basis on irrefutable proof, namely, his matriculation certificate, which was submitted by him at the time of joining the service. In my judgment, this is nothing but an error apparent on the face of record. As this is not a case for alteration of the date of birth of the petitioner, but only to set the record right, the embargo placed by SR 8(c) of FR & SR does not, and cannot extend to the request made by the petitioner for correct computation of his date of birth on the basis of the material already available in his Service Book. By allowing the request of the petitioner, I am sure, there will not be any chain reaction as the promotional prospect or seniority of a third party is not likely to be affected at all.

7. The question of estoppel will not also arise in this case inasmuch as no fraud has been committed by the petitioner. Estoppel is based on equity and good conscience, and the object is to prevent fraud and secure justice between parties by promotion of honesty and good faith and by preventing them from approbating and reprobating at the same time. Before an estoppel can arise, there must first be a representation of an existing fact distinct from mere promise de futuro made by one party to the other, secondly that the other party believing it must have been induced to act on the faith of it and thirdly that he must have so acted to his detriment. The respondent authorities have never acted to their detriment on the representation made by the petitioner. Where is then the question of barring the petitioner from claiming correct computation of his date of birth based on the materials already available in his Service Book maintained by the respondent authorities? At this stage, it may be noticed that the petitioner as early as 31.12.2011 had made a representation to the respondent No. 6 bringing to his notice that his date of birth had been wrongly computed as 1.7.1952 instead of 2.7.1952 and his date of superannuation should rather be 31.7.2012 in terms of FR 56(a) by referring therein to the judgment of this Court in Nagendra Nath case (supra). Instead of disposing of this representation, he fell into deep slumber and proceeded to reject it only on 9.4.2013 i.e. long after the petitioner was forced to retire on 30.6.2012. In this view of the matter, I am of firm view that the decision of the respondent authorities rejecting the request of the petitioner for correct computation of his date of birth on the basis of the material already available in his Service Book on the ground that his case is barred by SR 8(c) of FR & SR and also that he had already retired and got his pension, suffers from arbitrariness and non-application of mind, which warrants the interference of this Court. The offshoot of the foregoing discussion is that this writ petition succeeds. The impugned memorandum dated 19.7.2012 retiring the petitioner from service on superannuation on 30.6.2012 (Annexure-7) is hereby quashed. It is hereby declared that the petitioner is deemed to have retired from service on superannuation on 31.7.2012. Consequently, the respondent authorities are directed to pay the pension and other service benefits due to him as if he had retired from service with effect from 31.7.2012. The exercise shall be carried out by them within a period of two months from the date of receipt of a copy of this judgment. No costs.