

(1992) 11 CAL CK 0003

Calcutta High Court

Case No: Matter No. 3516 of 1991

Md. Naqui Ahmed

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 17, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1993) 1 ILR (Cal) 409

Hon'ble Judges: Susanta Chatterji, J

Bench: Single Bench

Judgement

Susanta Chatterji, J.

The present petition has been filed praying, inter alia, for a Writ of Mandamus to command the Respondent Tramways authority to rectify the error in the Petitioner's Service Book with regard to the date of birth of the Petitioner and correct the same on the basis of the date of birth as recorded in the Admit Card of the School Final Certificate and other documents.

2. It is stated in details that the Petitioner was recruited as a Tram Conductor in the Calcutta Tramways Company on January 29, 1957. The Petitioner, however, passed School Final Examination in the year 1962 and he was promoted after being qualified in the Departmental Examination and he worked as an Inspector in the Traffic Department. The Petitioner states that the Respondents have wrongfully recorded his date of birth in the Service Book as January 29, 1932. According to the Petitioner, his date of birth ought to have been recorded as December 14, 1939. The Petitioner made an application for rectification of the date of birth and no steps had been taken to correct the record by the Respondents and the Petitioner was however, informed that his representation and/or appeal had been rejected, after taking into consideration of all the facts in details. Stating all the facts, the Petitioner has filed the present writ petition seeking reliefs as indicated above.

3. The writ petition is opposed by the Respondent Tramways authorities by filing a comprehensive affidavit-in-opposition. A reply has also been filed by the Petitioner reiterating the same points as made in the writ petition.

4. The Learned Counsel appearing for the Petitioner has strongly argued that the Petitioner is entitled to reliefs inasmuch as his date of birth has been erroneously recorded in the service records and on the basis of the documents referred, he is entitled to the reliefs as prayed for. The sheet-anchor of the case is that the Petitioner passed the School Final Examination in 1962 and his date of birth is recorded as December 14, 1939. Admittedly, the Petitioner was appointed in the year 1957 and he passed the School Final Examination in the year 1962. But before his appointment he appeared previously in the School Final Examination and in the Admit Card the date of birth is endorsed as December 14, 1939. It is argued that the date given in the School Final Certificate and the date in the above Admit Card are same.

5. The Learned Counsel for the Petitioner has further argued that the date of birth appearing in the Admit Card and the date of birth in the School Final Certificate clearly indicate that the Petitioner had not attained the age of superannuation.

6. Mr Milan Bhattacharjee for the Tramways Company Ltd. has submitted that in view of the regulation of the then Tramways Company Ltd. there was an age bar for being employed as a minor. In view of the previous regulation the Petitioner could not be employed before he attained the age of 21 years. In the Service Book the age has been declared by the Petitioner and he cannot seek the relief from the writ Court which is essentially a Court of Equity. The Petitioner, according to him, has not come with clear hands, and as such, he is not entitled to such relief.

7. The Petitioner has, however, challenged the service records, and according to him, he submitted representations which have not been disposed of at the relevant point of time and in proper perspective.

8. Attention of this Court has been drawn to a judgment of this Court in Nihar Ranjan Bhowmick v. State of West Bengal 1990 (7) S.L.R. 359. The Division Bench found that if there are sufficient records, there is no bar to rectify the date of birth in the service record. The date of birth given in the Matriculation Certificate was apparent. It was, however, found that there was no hard and fast rule for appointing a minor person. However, the employee may not obtain benefit during his minority, but the error ought to have been corrected on the basis of the Matriculation Certificate.

9. Another case has been referred being Union of India v. Bejoy Krishna Roy 1987 (5) S.L.R. 454. Here, the Administrative Tribunal considered Indian Railway Establishment Manual and in view of the school leaving certificate, the age was corrected. It is submitted that in view of the Admit Card and the subsequent School Final Certificate the age of the Petitioner should be correctly recorded and he should

get benefit. The Petitioner has also challenged the regulation as indicated above.

10. Mr. Bhattacharjee appearing for the Respondents has also submitted, inter alia, that those reported decisions have to be appreciated according to the facts and circumstances of the said cases. The ratio of the decision of Nihar Ranjan Bhowmick 1990 (7) S.L.R. 359 (supra) is not applicable inasmuch as in the Government service as referred there, there was no hard and fast rule for employing a minor, but in the present case at the time of appointment by the previous Tramways Management, there was a specific regulation and nobody could be appointed before he attained the age of 21 years. Attention of this Court has been drawn to the case of *Janaki Jadav v. Coal India Ltd.* 1990 (1) C.L.T. 235. The case was sought to be distinguished and it was submitted that the Petitioner was not entitled to any relief in view of the facts of the present case.

11. With great anxiety this Court has considered the submissions made on behalf of the respective parties. The argument advanced on behalf of the Petitioner that there was no regulation at any point of time is not appreciated by this Court. The regulation has since been produced before this Court, and it cannot be overlooked since it was not brought to the notice of the Petitioner as alleged. This Court also does not appreciate that in the Service Book the Petitioner has signed without filling up the entries. If the signature is admitted and the entries were not filled up by the Petitioner, the Petitioner has to prove that apparent state of affairs are not real. The Petitioner has not been able to rebut the presumption, if any. It is also not proved that the service record has been filled up by others subsequently and the Petitioner has signed the blank Service Book. The onus lies upon the Petitioner to prove that the entries in the Service Book are not real. The Petitioner has also failed to satisfy the conscience of this Court that he did not fill up the Service Book at the time of appointment.

12. It is strongly argued that the Petitioner is not entitled to rectify the mistake, if any, as he had obtained employment by increasing his age in order to avoid the prevailing regulation and again he cannot file a writ petition to obtain equitable reliefs so as to avoid superannuation on the basis of his service records. But the Management cannot avoid its responsibility to superannuate a person if he has not reached the age of superannuation. This Court is of the view that while the Petitioner appeared in the previous School Final Examination and obtained the Admit Card, he has given the correct age and at that point of time he was not employed, and the question of suppression of facts does not arise. The subsequent endorsement of age in the School Final Certificate is consistent with the age appearing in the Admit Card.

13. The Petitioner has made a representation for correction of his age on the basis of such evidence. The matter and/or representation made by the Petitioner ought to have been considered in accordance with law by giving a chance of hearing to the Petitioner and by passing a speaking a reasoned decision. It is not appreciated as to

why the Respondent Management has failed to perform its duties to consider the representation in the proper perspective.

14. Considering all the aspects the writ petition is disposed of by directing the Respondent Tramways authorities to consider the representation of the Petitioner for rectification of his date of birth on the basis of the Admit Card and the School Final Certificate produced by the Petitioner within a period of 6 weeks from the date of communication of the order and by passing an appropriate decision as to the rectification of the date of birth on the basis of such evidences. It is made clear that the Petitioner will not be entitled to any service benefit for his earlier appointment until he reached the age of 21 years on the basis of age in the said Admit Card.

15. There will be no order as to costs.

16. This order will not prevent the Respondent authority to take any other appropriate action against the Petitioner in accordance with law.

17. All parties to act on a signed copy of the operative part of this judgment on the usual undertaking.