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**(1995) 12 CAL CK 0002**

**Calcutta High Court**

**Case No:** C.O. No. 2393 (W) of 1992

| | |
|---|---|
| Babu Ram Pandey | APPELLANT |
| Vs | |
| Mining and Allied Machinery Corporation and Others | RESPONDENT |

**Date of Decision:** Dec. 20, 1995

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** 100 CWN 231 : 100 CWN 230 : (1996) 74 FLR 2027 : (1996) 1 ILR (Cal) 141 : (1997) 3 LLJ 1295

**Hon'ble Judges:** A.K. Dutta, J

**Bench:** Single Bench

**Advocate:** Sumita Mookherjee, Tarun Kanti Ghosh and Sushama Dutta, for the Appellant; P.K. Chattopadhyay, Saptansu Basu and Uday Sen, for the Respondent

**Final Decision:** Dismissed

**Judgement**

A.K. Dutta, J.
By this Writ application under Article 226 of the Constitution of India the Writ Petitioner Babu Ram Pandey (hereinafter referred to as Petitioner) has prayed the Court for "a writ of or in the nature of Mandamus be issued compelling the Respondents and/or their servants or agents to rectify the date of birth of your Petitioner from January 15, 1937 to January 15, 1942.", along with the other reliefs prayed for therein, for the reasons stated and on the grounds made out therein.

2. The Petitioner contends that he was appointed with the Respondent Corporation in October, 1963. He is presently serving as Fire Supervisor, Grade-I, in the Fire Service Department. At the time of his appointment he could not produce his School Leaving Certificate as that was left with his relations some years back and he did not know about its whereabouts. He had stated his date of birth at the time of his appointment to be

January 15, 1942. But the Dealing Clerk, who had filled in a Form, had recorded his date of birth to be January 15, 1937. He could recently find out his School Leaving Certificate after the demise of his maternal uncle from his belongings, recording his date of birth therein to be January 15, 1942. He had thereafter approached the Respondents for correction of his date of birth in his Service Book accordingly. He was asked to produce the original certificate and the admit card for the purpose. He had submitted the Xerox copy of the Certificate and he had stated that he was willing to produce the original of the said certificate. But the Respondent No. 2 by letter dated August 13, 1991 had informed him that his date of birth cannot be rectified at this later stage. Hence the instant writ application.

3. The writ application is resisted by the Respondent-Corporation by filing Affidavit-in-Opposition and annexing certain relevant documents therein. It is contended inter-alia, by them that the Petitioner had declared his date of birth all throughout since the time of joining the service to be January 15, 1937. His date of birth had accordingly been recorded in his Service Book to be January 15, 1937. His present plea at this belated stage that his date of birth is January 15, 1942 on the basis of the alleged School Leaving Certificate, which seems to be suspicious cannot be entertained at this stage.

4. The Petitioner leans long and relies too heavily upon the relevant School Leaving Certificate, being Annexure "B" to the Writ Application, the original of which was shown during the hearing, in support of his aforesaid contention that his date of birth is January 15, 1942. He accordingly prays for directing the Respondents to correct his date of birth in his Service Book in terms thereof. True it is, a learned Single Judge of our Court in : A.K. Ghosh, Cal L.T.1993(2) HC 467. has directed correction of date of birth of the Petitioner therein on the basis of the Matriculation Certificate, as the conscience of the Court was clear and the Court was satisfied that the Petitioner was actually born on the date recorded in the Matriculation Certificate, and the recording of his date of birth in his Service Book was inconsistent with the entry in the Matriculation Certificate. Another learned Single Judge of our Court in Bhupesh Chandra Ghosh v. Commissioner of Police, Calcutta and Ors. 1993 (2) CLJ 17, had also directed correction of age of the Petitioner recorded in his Service Book on the basis of School Leaving Certificate as there was no document therein to support the recording of his date of birth in the Service Book, holding that rejection of the Petitioner"s prayer for correction of his age without proper consideration, in the facts and circumstances of that case, was arbitrary and not sustainable. Another learned Single Judge of this Court in Bhanu Sashi Das Dey Vs. The State of West Bengal and Others, had also held that "the Primary (Muktab) Final Examination Pass Certificate issued by a Public Officer in the discharge of his official duty is a piece of admissible evidence which the authorities concerned were expected to rely upon in preference to the entries made by the officer in the service book of the petitioner without any authentic verification thereof. In the absence of any allegation that such pass certificate was obtained either by fraud or forgery, the said certificate is to be accepted as a genuine document."

5. A Division Bench of this Court in Nihar Ranjn Bhowmick v. State of West Bengal and Ors. 1991 (1) Clause 93. where the recording of the Petitioner"s date of birth in his Service Book was on no material and there was neither any material to show that he had made any declaration to the effect that he was born on the particular day, had also held as follows:-

"Mere self-serving declaration of a recruit, in particular, in public employment, can never be the proof of age of the declarant. Ordinarily the oral statement can hardly be useful to determine the correct age of a person. The question, therefore, largely depends on the document and the nature of their authenticity. Entries in the School Register and Admission Form regarding the date of birth, on the basis whereof the age is recorded in the Matriculation Certificate constitute a good proof of age. When the genuineness or authenticity of the Matriculation Certificate is not disputed or challenged, the date of birth as recorded in such certificate must be taken to be correct".

6. As against that, a learned Single Judge of the Gauhati High Court in M.A. Jalil v. State of Manipur and Ors. 1995 Lab. IC 203, has held that a Matriculate employee, having knowledge of his date of birth, seeking change in the date of birth recorded in his Service Book on the basis of the Matriculation Certificate after 27 years is not entitled to correction of his date of birth. A similar view has also been taken by the Supreme Court in Union of India and others Vs. Kantilal Hematram Pandya, holding that the failure of the employee to mention alleged correct date of birth in Option Form declaring his date of birth and while filing Provident fund withdrawal and a representation made by him for correction of his date of birth three decades after joining the Service, and when the delay in filing the application for correction of his date of birth was inordinate and unexplained and the correctness and genuineness of the Certificate produced was not free from doubt, the Petitioner employee would not be entitled to the relief prayed for.

7. On perusal of the materials on record, more particularly, the Annexure annexed to the Affidavit-in-Opposition filed by the Respondents Nos. 1 to 3 herein, I find that the Petitioner had joined the service of the Respondent-Corporation in October, 1963. As stated by him in Paragraph 1(h) of the Writ application, he had passed the School Leaving Certificate before joining the service. Admittedly, therefore, he was not totally illiterate. His date of birth appears to have been recorded in his Service Book and other official papers to be February 15, 1937 presumably on the basis of declaration made by him at the time of joining the service in October, 1963, and subsequently as well. The Annexure "A" at Pages 12 and 13 of the aforesaid Affidavit-in-Opposition filed by the aforesaid Respondents would clearly show that the Petitioner had submitted Attestation Form, in triplicate, for the purpose on August 27, 1963, containing all relevant particulars and informations regarding him, including his date of birth. stated to be "January 15, in serial No. 7 thereof, bearing his signature thereon. It is sadly sought to be contended by him that the Attestation Form was not filled up by him. But having regard to the particulars contained therein there could be little denying that the same must have been filled up at his instance and under his instruction/declaration. It would seem significant and

observable to note that the correctness of none of the entries made therein, excepting the entry regarding his aforesaid date of birth therein, is disputed by him. The very fact that all the other relevant entries therein had undeniably been correctly made would further seem to give the clearest and conclusive indication that the entries therein must have been made on the basis of the particulars furnished and declared by Petitioner himself. There could be no escape from the inescapable conclusion, in the aforesaid circumstances, that his date of birth mentioned therein to be January 15, 1937 must have been furnished and declared by him at the time when the relevant Attestation Form was filled in as far back as August 27, 1963. A literate man, as he was, he could neither be expected to have simply put his signature thereon without making sure whether the same had been correctly filled in or not. It would further oddly appear therefrom that his father''s middle name, wrongly entered therein in Serial No. 5(a) thereof had been corrected, clearly suggesting that the same must have been corrected at his instance, and certainly not at the instance of the person who had filled up the same, who could not be expected to know his father''s full name correctly.

8. Let alone the aforesaid Annexure ''A'' at Pages 12 and 13 of the aforesaid Affidavit-in-Op-position, the particulars of employment at Page-14 thereof submitted by the Petitioner on October 16, 1963, bearing his signature thereon, would also clearly show that all the requisite particulars therein, including his date of birth stated to be January 15, 1937, had been furnished therein. Here as well his father''s middle name in serial No,2 thereof having been wrongly entered had been corrected, obviously at his instance. The correctness of none of the entries therein, excepting the date of birth entered in Serial No. 8, thereof, is disputed by the Petitioner. For much the same reasons already indicated above, the particulars of employment in page No. 14, including the entry of his date of birth therein to have been January 15, 1937, must also be held to have been furnished and declared by him. The page No. 15 of the said Affidavit-in-Opposition would further show that the relevant page of the Service Book bears the signature of the Petitioner himself, containing his requisite particulars therein. He appears to have stated his educational qualification in Serial No. 4 thereof to be ''Matriculate''. His father''s middle name in serial No. 7 thereof not having been correctly entered appears to have been corrected, most certainly at his instance. Here as well he appears to have stated his date of birth at Serial No. 3 thereof to be January 15, 1937. A Matriculate, as he is stated to be, must certainly have been aware of his date of birth.

9. Page-16 of the aforesaid Affidavit would further clearly show that while making declaration regarding Leave Travel Assistance on October 16, 1963, bearing his signature thereon, the Petitioner had furnished the relevant particulars thereunder, including his date of birth in Serial No. 2 thereof entered as January 15, 1937.

10. It would further oddly appear from page-19 of the aforesaid Affidavit-in-Opposition that the Petitioner during his medical examination on first entry into the service under the Corporation, had also stated before the Medical Officer concerned on September 9, 1963 that his age then was 26 years, clearly confirming that the year of his birth was 1937 A.D.

11. In Page-17 of the aforesaid Affidavit-in-Opposition the Petitioner, while making application on March 2, 1988 for encashment of Leave Travel Concession for the Block year 1988-1991, had also stated his age to be 51 years, again confirming that the year of his birth was 1937 A.D. AH the aforesaid papers appear to bear the Petitioner''s signatures thereon.

12. With things as they are, there could be little mistaken that the Petitioner, a Matriculate, knowing his date of birth, as he must, had all throughout been consistently and consciously declaring "and stating his date of birth to be January 15, 1937 since the submission of the Attestation Form as far back as August 27, 1963. It would oddly appear from Annexure "A" at Page-11 of the Writ Application that the Petitioner had for the first time sought for correction of his date of birth on February 4, 1991 stating that his date of birth should be read as January 15, 1942. instead of January 15, 1937, for the reasons stated therein, after about 28 years on the ground stated in Paragraph-5 of the Writ Petition that he had recently found out his School Leaving Certificate from the belongings of his Maternal Uncle after his demise, wherein his date of birth is recorded as January 15, 1942. It is curious to note that there was not the merest and faintest whisper by him for all these long period of about 3 decades regarding the existence of any such School Leaving Certificate or the custody thereof. The disclosure by him about its existence and production of the same after a long delay of about 28 years, shortly before his superannuation, seems to raise reasonable doubt as to its genuineness. No explanation whatsoever has been offered by the Petitioner for the inordinate delay (about 28 years) in making the application for correction of his date of birth, reinforcing the suspicion regarding the genuineness of the School Leaving Certificate belatedly produced by him. It would again be interesting to note from Annexure "B" at Page-17 of the Petitioner''s Affidavit-in-Reply, affirmed on July 26, 1995, the English transliteration of the relevant School Leaving Certificate dated March 31, 1957, translated by Translator, High Court, Appellate Side, Calcutta, that the Petitioner, who is stated to have passed the High School Examination held in March/April, 1956 in 3rd Division, had taken the following Subjects in the Examination:

1. Elementary Hindi / Hindi,

2. Elementary English / English,

3. Mathematics/Home Science,

4 (3). Book Craft and Craft relating thereto,

5 (4). Economics,

6 (5). General Knowledge,

7 (6). X.

13. But page-16 of the said Affidavit-in-Reply would amazingly show that a Mark Sheet for the said examination appears to have been issued by one S.P. Singh, described as Principal! I wonder how the Mark-sheet for the High School Examination stated to have been conducted by the Board of High School and Intermediate Education, Uttar Pradesh, could conceivably have been issued by the Principal of an Institute, and not by any authority of the Board. The said mark-sheet, annexed by the Petitioner in his aforesaid Affidavit-in-Reply, and sought to be relied upon by him, does neither seem to bear the signature of the said Principal! The endorsement at the bottom thereof seems to be "Sd/- S.P. Singh". Interestingly also, Page-17 of the said Affidavit-in-Reply, the English transliteration of the said School Leaving Certificate, would clearly seem to show that the Petitioner had taken Mathematics/Home Science as one of his subjects in the examination. But the alleged Mark-sheet at Page-16 would clearly show that no mark was allotted to the Petitioner either in Mathematics or in Home Science in serial Nos. 4 and 5 thereof. The suspicion as to the correctness and genuineness of the School Leaving Certificate produced by the Petitioner and relied upon by him, does not, therefore, seem to be misplaced or misconceived. The correctness and genuineness of the School Leaving Certificate, produced by the Petitioner, in the aforesaid facts and circumstances, does not seem to me to be free from doubt.

14. In view of the discussions above and having regard to the decision of the Supreme Court in Union of India and Ors. v. Kantilal Pandiya (supra) the Petitioner"s representation for correction of his date of birth made 28 years after joining the service without issuing any explanation for such inordinate delay in making application for correction of his date of birth cannot clearly be entertained. The Petitioner would not be entitled to correction of his date of birth, as prayed for by him. The Writ Petition should thus clearly fail, as it must.

In the result, the Writ Application be dismissed.

In the facts and circumstances of the matter, I make no order as to costs.

Interim order, if any, stands vacated.

15. The prayer for stay of the operation of the Judgment and Order is made by the Ld. Advocate for the petitioner which is opposed by the Ld. Advocate for the respondents. In the absence of any operative part of the order and for the reasons already discussed in the body of the judgment, the prayer for stay is rejected on due consideration.