

(1989) 03 CAL CK 0009

Calcutta High Court

Case No: C.R. No. 4049 (W) of 1982

Bhanu Sashi Das Dey

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: March 16, 1989

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 93 CWN 895

Hon'ble Judges: Kalyanmoy Ganguli, J

Bench: Single Bench

Advocate: Arun Prokash Sircar, for the Appellant; S.N. Ganguli and Mrs. Lina Mazumdar, for the Respondent

Final Decision: Allowed

Judgement

Kalyanmoy Ganguli, J.

In this application under Article 226 of the Constitution of India, Memo No. 3693, dated 9th February, 1982 of the Superintendent, Government Printing Press, West Bengal communicating the decision of the Joint Secretary (Commerce & Industries Department), dated 4th February, 1982 turning down the prayer of the petitioner for rectification of the date of birth of the petitioner, has been challenged.

2. The case of the petitioner is that he was appointed as Binder in the Government Printing Press West Bengal with effect from 10th February, 1944. The further case of the petitioner is that when he entered the said service his date of birth was recorded as 28th January, 1924 by some other Officer and the petitioner was required to sign the Service Book. The petitioner states that the date of birth was not given by him and without verification he was asked to sign the said entry in the Service Book which he did in good faith.

3. It is the definite case of the petitioner that he was born in Calcutta on 21st February, 1928 as would appear from the certificate issued by the District Inspector of Schools, Calcutta District which is Annexure A to the writ petition. The said Annexure is a certificate issued by the said District Inspector of School and in fact is a pass certificate of the Primary (Muktab) Final Examination which the petitioner passed in the year 1938. From the said certificate it appears that his age was 10 years 8 months 9 days on the 1st November, 1938. On the basis of the calculation made according to the said certificate his date of birth becomes 21st February, 1928.

4. The petitioner alleges that the appointing authorities did not care to verify the actual date of birth of the petitioner before recording the same in his Service Book,

5. The petitioner came to know for the first time, sometime in the month of October, 1980, that a retirement list was being drawn up in respect of those of the employees in the said Press who were to retire in the coming two years and that the petitioner was being cited in the said retirement list. It appears from the said list that the date of birth of the petitioner was recorded in his Service Book as 28th January, 1924. The petitioner immediately made a representation to the appropriate authority enclosing along with the said certificate of the public examination, viz., Primary (Muktab) Final Examination issued on 21st July, 1939 by the District Inspector of Schools, Calcutta.

6. The rectification of the date of birth was refused by the Superintendent of the Government Press, inter alia, on the ground that after a lapse of 32 years the application for rectification could not be entertained by the said Superintendent and he referred the case to the Government. The Controller of Printing & Stationary, Government of West Bengal, Respondent No. 4 turned down the suggestion of the Respondent No. 3 to have the case of the petitioner for rectification of his age by the remark "regret".

7. Failing to get any relief at the level the petitioner moved this Court under Art. 226 of the Constitution of India whereon a Civil Order was issued by the Hon'ble Mr. Justice Dipak Kumar Sen (as His Lordship then was) who on 17th September, 1981 disposed of the said writ application in the presence of the Learned Advocate appearing for the State by directing the Respondents, inter alia, to consider afresh the petitioner's representation in respect of age in accordance with law and in particular taking into account the School Leaving Certificate of the petitioner which is Annexure B to the said writ application. His Lordship directed that the decision was to be taken by 15th January, 1982. A copy of the said judgment passed by His Lordship has been annexed to the writ petition being marked with the latter A1.

8. On the basis of the aforesaid judgment, the petitioner once again approached the Authorities concerned and forwarded a copy of the said "pass certificate" referred to hereinabove to the concerned Authorities.. But curiously enough the Authorities concerned wanted the petitioner to produce the School Leaving Certificate in

original from the "Southern Academy" where he attended last and his original Primary (Muktab) Final Examination Certificate. The petitioner complied with the requirements but could not produce the Certificate from "Southern Academy", the School he last attended as the said school was not in existence at that point of time.

9. It may be noted here that although the respondents were directed to come to a final decision by the 15th January, 1982, that is before his proposed date of retirement, the respondents did not do so for reasons best known to them as a result whereof the petitioner had to retire from service with effect from 1st February, 1982, although, according to him, the petitioner was to have retired with effect from 21st February, 1986.

9a. Ultimately, however, the petitioner received the Memo impugned in the writ petition on 16th Feb., 1982, informing him that his prayer for rectification of his age had been turned down by the Government by an Order passed on 4th February, 1982. A copy of the said Memo has been annexed to the writ petition and marked with the letter E.

10. The said Memo No. 3693, dated 9th February, 1982 being Annexure E to the writ petition categorically states that the Certificate issued by the District Inspector of School, Calcutta District which is the Pass Certificate in relation to the Primary (Muktab) Final Examination was returned along with that Memo. From this it appears that the Authorities concerned had in fact looked into the said Certificate issued by the Competent Authority. There is no allegation that the Certificate is either a forged one or that it was procured clandestinely.

11. From the extract of the Order which is Annexure H to the writ petition it appears that the Special Secretary, in coming to the conclusion, had adopted a peculiar procedure. He in fact proceeded on the basis that the entries made in the Service Book are to be treated sacrosanct unless can be dispelled by any recognised documents like Matriculation Certificate, etc. The Certificate, being Primary (Muktab) Final Examination Certificate, is also an authentic document issued by a Public Officer in the discharge of his public duty and is admissible in evidence. This aspect eluded the said Special Secretary and he rejected the prayer of the petitioner to rectify his date of birth on the basis that no proof of any recognised and authentic documents possessing any super evidentiary value than the fact recorded in the Service Book could be exhibited for the purpose of rectification of the age or the date of birth recorded in the Service Book.

12. I am afraid, I cannot accept such reason. The Primary (Muktab) Final Examination Pass Certificate issued by a Public Officer in the discharge of his official duty is an 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 Certificate is to be

accepted as a genuine document. Rule 9 of the West Bengal Service Rules, Part-I deals with, inter alia, rectification of the date of birth of a Government employee and the language used in the said Rule is to the effect that such rectification may be made "at any time".

13. Considering the discussions above I hold that the date of birth of the petitioner is 21st February, 1928 and accordingly his date of retirement would be 21st February, 1986 (F.N.). It appears that according to the date of birth recorded in the Service Book the petitioner was made to retire with effect from 1st February, 1982,

14. The respondents are directed to treat the petitioner's date of retirement as 21st February, 1986 and to recalculate all his retirement benefits including provident fund, gratuity, pension, etc., on that basis. The respondents are also directed to consider whether the petitioner in between these dates would have earned any increment or promotion.

15. All such calculations are to be made within four months from the date of communication of this order and the differences are to be paid to the petitioner within one month thereafter. The pension is to be readjusted accordingly and the arrear, if any, would also be paid within the time specified hereinbefore. The current amount of pension is to be readjusted within 2 months from the date of communication of this order.

16. The application is allowed. The Rule is made absolute. Let a writ in the nature of mandamus issue accordingly,

There will be no order as to costs.