(1999) 2 ILR (Cal) 293

Calcutta High Court

Case No: M.A.T. No. 2262 of 1998

Balaram Chandra Jugi		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: April 8, 1999

Acts Referred:

- West Bengal Panchayat Rules, 1958 - Rule 15, 65, 92

Citation: (1999) 2 ILR (Cal) 293

Hon'ble Judges: D.P. Sengupta, J; Basudev Panigrahi, J

Bench: Division Bench

Advocate: J.K. Biswas, for the Appellant;Swapan Kumar Mukherjee and Ziaul Islam, for the Respondent

Final Decision: Dismissed

Judgement

Basudev Panigrahi, J.

This Appeal has been filed against the judgment/order dated February 30, 1998 passed by the learned single judge in W.P. No. 11156 (W) of 1997 whereby and whereunder the learned judge was pleased to dismiss the writ petition. The Appellant who is the writ Petitioner before the learned single judge was appointed as a chawkidar on and from November 1, 1962. It was described in the Service Register at the time of entry into service that the Petitioner was 25 years of age. It has been stated in the writ petition that immediately after having come to know from the Pradhan of Goalpara Gram Panchayat that the writ Petitioner would retire on and from November 30, 1997, he submitted a representation/ declaration in the prescribed form through the Pradhan to the competent authority to rectify the wrong entry of his date of birth in the service register. It was indicated in the representation that his date of birth, in fact, was on January 21, 1945, but it was wrongly noted in the service register that he was 25 years on the date of jnoining the service.

2. The writ Petitioner has further claimed that in the admission register of Goalpara High School his date of birth was entered as January 21, 1945. Therefore, on the basis of such date of birth, the service register was required to be corrected. The matter was, however, said to have been enquired into by the Sub-Divisional Officer and after being satisfied by enquiry he directed the date of birth to be corrected in the service register. Despite such communication when the authorities did not take any step to correct his date of birth he was constrained to move the court by filing the writ petition. In the writ petition being Civil Order No. 13261 (W) of 1995 this Court directed the District Panchayat Officer to consider the writ petition treating it to be a representation and dispose of the same in accordance with law. On the basis of such representation, the District Panchayat Officer held a roving enquiry and found the date of birth entered into the School register appeared to be spurious one and therefore he communicated to the other authorities not to rely upon the transfer certificate vis-a-vis the admission register.

3. The grounds also noted by the District Panchayat Officer were that in the admission register there had been no signature either by the parents or by the guardian. Therefore, he found ex facie the transfer certificate was unreliable. Thus the Appellant being aggrieved by the said order passed by the District Panchayat Officer has filed the present writ petition. inter alia, praying to issue a writ of mandamus directing the Respondents to correct the date of birth of the Petitioner as on January 21, 1945, relying upon the certificate issued by the Head Master of Goalpara High School. However, it was also prayed to call for the records in connection with the date of birth of the Petitioner/Appellant from the proper authority. The Appellant has also made a prayer to quash the order passed by the District Panchayat Officer, Malda, dated May 5, 1997 and to implement and act upon the order passed by the S.D.O., Malda forthwith.

4. The learned judge after due consideration of the case of both parties was however, inclined to dismiss the writ petition on the grounds that the date of birth could not be corrected at such a belated stage, much less, just few years before retirement. The learned single judge has also relied upon the judgment of the Supreme Court.

5. Mr. Biswas, learned Advocate appearing for the Appellant has strenuously urged that in this case the learned single judge has committed an apparent error by holding that the writ Petitioner has prayed for correction of his date of birth as January 21, 1945. On being confronted to the prayer portion of the writ petition, the learned Advocate appearing for the Appellant has submitted that the writ Petitioner does not press the prayer (i) of the writ petition.

6. It has been strongly contended by the Appellant that the writ Petitioner was appointed in 1962 while the West Bengal Gram Panchayat Act, 1958 so also the Rules framed thereunder were applicable. It was highlighted by the Appellant that it is the District Magistrate or any other officer authorised by him who is competent to appoint Chawkidar and Dafadar. Since the S.D.O. is the appointment authority, the order to change the date of birth of the Petitioner passed by him,, therefore, is valid. In this respect, we feel it

convenient to extract Rule 92 of the West Bengal Panchayat Rules, 1958:

Recruitment-(1) Whenever any vacancy occurs or is likely to occur in the post of a dafadar or a chowkidar, the Anchal Panchayat shall report the fact to the District Magistrate or any other officer authorised by the District Magistrate in writing in this behalf through the Inspector of Panchayats and also to the Officer-in-Charge of the police station concerned and shall within a reasonable time submit a nomination roll in Form J. annexed to these rules, to the District Magistrate or such other officer authorised by the District Magistrate in writing in this behalf through the Inspector of Panchayats. The nomination shall be made by the Anchal Panchayat at a meeting.

(2) If the District Magistrate or the officer authorised by the District Magistrate is satisfied that the person so recommended may be appointed, the District Magistrate or the Officer so authorised shall appoint him and shall forward a sanad in Form K, annexed to these rules for delivery to the dafadar or chowkidar. The sanad in Form K shall be bound up with a copy of the Acquittance roll (form D).

7. Under the aforementioned Rules it is the District Magistrate or any other officer authorised by him appears to be the competent authority for appointment of chowkidar and dafadar. The Appellant has laid much stress that it was the District Magistrate who had authorised the local S.D.O.s to deal with the appointment of chawkidar and dafadar. But no such order or notification has been placed before us showing that the S.D.O. was empowered to appoint chowkidar and dafadar. In the absence of such notification we, however, agree with the observation of the learned single judge that the S.D.O. was not legally competent to deal with the change of date of birth of the writ Petitioner.

8. It is significant to note that the writ Petitioner joined the service on November 1, 1962. He was described 25 years old at the time of his appointment. Accordingly, there was an entry in the service book that at the time of the joining the service the writ Petitioner was 25 years old and therefore a notice was sent to the Pradhan for his retirement. In the meanwhile he submitted a declaration which was recommended by the Pradhan on February 17, 1992. It is submitted by the Appellant that there was an enquiry by the S.D.O. Malda, and after verification of the school admission register it was ascertained that the date of birth of the writ Petitioner was January 21, 1945. A xerox copy of the transfer certificate was enclosed in the application. It has been shown that the Petitioner had passed annual examination and was promoted to Class VIII on December 31, 1956. It is not understood when the Appellant was aware that he studied at Goalpara High School during 1955-56 in Class V, what prevented him from producing the copy of the transfer certificate at the time of joining as chawkidar. Had such certificate been filed, there would have been no controvercy or dispute as regards his date of birth.

9. It is submitted by Mr. Biswas that transfer certificate was not available with Appellant at the time of joining service and so it couid not be submitted/Even if such submission is accepted at its face value, the certificate was issued to him on October 21, 1982. It could

have been then open to the Petitioner to submit a representation for making an enquiry. The conduct of the Appellant seems to be somewhat "suspect" as he remained quiet from at least 1982 till it was submitted on February 2,.1992.

10. Strong reliance was placed on the order of the S.D.O. dated April 7, 1995. But we found that the S.D.O. was not legally empowered to conduct an enquiry as regards the date of birth of the Appellant and even if such an enquiry reveals the date of birth to be January 21, 1945, no credibility should be attached to it. Moreover, the State Government was not given a chance to place the record before the S.D.O. so that the correct picture could have been placed before him.

11. The Petitioner had challenged the action of the authorities for not having acted upon the orders passed by the S.D.O. in Civil Order No. 13261 (W) of 1995. Accordingly, the District Panchayat Officer, Malda, had an occasion to make an enquiry as regards the date of birth of the Appellant. On a thorough and extensive enquiry it was noticed that no reliance could be placed upon the transfer certificate on the ground that the admission register did not contain the signature of the father or any guardian: In all reasonableness, the admission register should and must contain the signature of the parents. How there could be a departure only in the Appellant''s case. Therefore, the date of birth as claimed by the Petitioner was held to be untrue.

12. The sole controversy centers round in this case is as to whether the date of birth of the Petitioner can be accepted as January 21, 1945 or as noted in the service register. This Court while exercises the writ jurisdiction cannot and should not make a roving enquiry to determine the date of birth of the person. The District Panchayat Officer, being directed by this Court, had an occasion to verify the admission register and also the transfer certificate and he reasonably arrived at the conclusion that the date of birth as noted in the school leaving certificate did not reflect, the correct picture. At that time the writ Petitioner was obviously less than 18 years of age. Therefore, the service book which reveals that he was 25 years of age appears to be more plausible and credible. In this case reliance can be placed upon, a judgment reported in Union of India Vs. C. Rama Swamy and others, of the said judgment runs as follows:

25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment one of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing " authority for adjuding his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained

by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be relevant consideration to assess his suitability.

13. The Supreme Court in another decision State of Orissa and Others Vs. Brahamarbar Senapathi, held as follows:

4. A reading of these rules clearly shows that every person on entering government service shall declare his/her date of birth which shall not differ from any such declaration expressed or implied for any public purpose before entering service. The date of birth shall be supported by documentary evidence such as Matriculation Certificate, Municipal Birth Certificate and entered in his/her service record. No alteration of the date of birth of government servant shall be made except in case of clerical error without prior approval of the State Government. An application for effecting a change in the date of birth shall be summarily rejected if filed after five years of entry into government service, etc. From what has been stated in paragraph 7 of the order of the tribunal, it would appear that the Respondent became aware of the entry in the service register in the year 1970. Admittedly, no action has been taken within five years thereafter. Under these circumstances, Rule 65 as referred to above is clear that his claim for alteration shall be sumarrily rejected without any further inquiry. Now the Respondent sought to place reliance on School Certificate in which the date of birth was entered as June 27, 1934. Obviously, he must have had the knowledge of the School Certificate but he failed to produce it when he entered into the service or had knowledge of the entry made in the service register as May 18, 1929 as early as 1970. Under these circumstances the tribunal committed a manifest error in correcting the date of birth. Rule 65 is mandatory and the tribunal had not given due consideration to it.

14. We found that the xerox copy of the transfer certificate does not appear to be genuine and bonafide and therefore on the basis of that no direction can be given to the Respondent to correct the date of birth of the Appellant in the service registe Rule 15. Accordingly, agreeing with the views of the learned single judge we find there is no merit in the appeal and the same is dismissed.

D.P. Sengupta, J.

15. I agree.