

(1988) 07 CAL CK 0047

Calcutta High Court

Case No: C.R. No. 3534 (W) of 1983

Sadananda Sen

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 15, 1988

Citation: (1989) 1 CALLT 76

Hon'ble Judges: K.M. Yusuf, J

Bench: Single Bench

Advocate: Dilip Kumar Banerjee and Mr. Swapan Kumar Chatterjee, for the Appellant; S.N. Samajdar, for the Respondent

Judgement

K.M. Yusuf, J.

This Rule is directed against two Orders one, dated 30th September, 1982 issued by the District Compensation Officer, Purulia, superannuating the petitioner on 30th September, 1982 on attaining the age of 60 years and another, dated 31st January/4th February, 1983 rejecting the recommendation of the Additional Deputy Commissioner, Purulia, for the correction of the date of birth of the petitioner issued by the Deputy Secretary, Board of Revenue, Government of West Bengal.

2. The petitioner's case, in short, is that he was appointed as Karmachari under the Land Reforms Commissioner, State of Bihar, at Purulia in the district of Manbhum with effect from 7th September, 1948 and thereafter he was appointed as Compensation Mohurrir in Purulia under the Board of Revenue, State at West Bengal, after the reorganisation of States. By a Memo, dated 22nd July, 1980 the Additional Deputy Commissioner of Purulia informed him that he was due to retire with effect from 30th September, 1980 after attaining the age of 58 years and, as such, he was asked to complete the formalities in connection with the pension papers, etc. On receiving the said Memo the petitioner made a representation, dated 30th July, 1980 stating that his date of birth has been wrongly recorded as 8th September, 1922 instead of 1st August, 1924 and as such his date of birth in the Service Book should be corrected. He also enclosed with the said representation two

copies of certificates one, a Middle School Certificate issued by the Inspector of Schools, Chotanagpur Division, Department of Public Instruction, Bihar and Orissa, and another a School Leaving Certificate issued by the Headmaster of D.P M. High School, Rajnowagar, District Purulia, both testifying that the petitioner would attain superannuation on 31st July, 1984. The Additional Deputy Commissioner, Purulia, by Memo, dated 4th September, 1980 recommended for consideration and correction of the age of the petitioner in the Service Book after making necessary enquiries. The petitioner too made a representation, dated 29th September, 1980 to the Secretary, Board of Revenue, Government of West Bengal, praying for the correction of age in the Service Book. The Deputy Commissioner, Purulia, by his Memo, dated 3rd, July, 1982 addressed to the Commissioner, Burdwan Division, stated that the Admission Register of the school concerned was duly verified by the Deputy Magistrate and Deputy Collector who also happens to be the Officer-in-Charge of Land Reforms and the School Register reveals in Serial No. 7 that the petitioner had been enrolled as a student and his date of birth is 1st August, 1924. The Additional Deputy Commissioner forwarded original certificate of the petitioner to the Commissioner, Burdwan Division, by a special messenger. Then by a Memo, dated 25th August, 1982 the Commissioner, Burdwan Division, recommended to the Secretary, Board of Revenue, for the necessary correction of the Service Book of the petitioner and forwarded his Service Book along with his recommendation. Strangely by the impugned Memo, dated 30th September, 1982 the petitioner was superannuated at the stage of 60 years as an Ex-Bihar employee and by the impugned Memo, dated 31st January/4th February, 1983 the proposal of the Addl. Dy. Commissioner was also rejected by the Deputy Secretary, Board of Revenue.

3. Mr. Banerjee the learned Advocate appearing for the petitioner, submitted that on production of the original Middle School Certificate from the Inspector of Schools, Chotanagpur Division, Department of Public Instruction, Bihar and Orissa, and the School Leaving Certificate of the D.P.M. High School the Admission Register of which was duly verified by a Competent Officer and on that basis the Additional Deputy Commissioner and Deputy Commissioner of Purulia as well as the Commissioner of Burdwan Division recommended the case of the petitioner for the correction of the date of birth in the Service Book from 8th September, 1922 to 1st August, 1924 but the Board of Revenue rejected the Additional Deputy Commissioner's Memo of 3rd, July, thereby not accepting the recommendations of the three high officials of the Government of West Bengal. He further submitted that the impugned Memo of rejection by the Board of Revenue is not a reasoned Order. Mr. Banerjee cited two decisions in support of his contentions, namely, 87 C.W.N. 713 (Ranjit Kumar Chatterjee vs. Union of India & Ors.) and 1979 (2) C.L.J. 428 (Sisu Ranjan Das vs. Commissioner of Police & Ors.). On the basis of the aforesaid decisions Mr. Banerjee submitted that the impugned orders are liable to be quashed and the petitioner who has already been superannuated is entitled to get service benefits in accordance with law on the basis of his date of superannuation as on

31st July, 1984.

4. The State did not file any Affidavit-in-Opposition rebutting the statements made on oath in the writ application but Mr. Samajdar, who appears for the respondents, produced before the Court the Service Book in original of the petitioner which bears the date of birth of the petitioner as 8th September, 1922. But no record of the case has been produced. The Service Book is signed by the petitioners in English with date below the signature as 8.2.51. The whole emphasis of the argument advanced on behalf of the State is on: why the petitioner was silent all along since 1951 when his date of birth was 1st August, 1924 and why he did not make representation immediately after signing the Service Book ? Further he puts the question: why only on receiving the impugned Memo-of superannuation he did send representation to the authorities regarding the correction of age ? Save and except the above no submission was placed by the learned State Advocate.

5. After considering the facts and circumstances of the case and the argument advanced by the parties, I have no hesitation in accepting the argument advanced by Mr. Banerjee appearing for the petitioner which has substantial merits. It indeed appears strange that the Board of Revenue rejected the recommendation of the Additional Deputy Commissioner, Purulia; Deputy Commissioner, Purulia; and the Commissioner, Burdwan Division, when those recommendations were made after full investigation and satisfaction that the date of birth of the petitioner is 1st August, 1924. It is strange that the Board of Revenue did not find reason in accepting the proposal as contained in Memo No. 1351/L.R, dated 3rd July, 1982 wherein the Additional Deputy Commissioner, Purulia specifically stated that the Deputy Magistrate and Deputy Collector who also happens to be the Officer-in-Charge of Land Reforms himself verified the Admission Register of the school concerned and was satisfied that the petitioner, Sadananda Sen's date of birth was at 1st August, 1924. Furthermore, there appears to be no reason why the Board of Revenue will reject the Middle School Certificate issued by the Inspector of Schools Chotanagpur Division, Department of Public Instruction, Bihar and Orissa. Further the order rejecting the recommendations for the correction of date does not contain any reason whatsoever. A perusal of the Service Book indicates that the columns have been filled in by someone other than the petitioner whereas the petitioner simply signed his name in not matured letters in English and the ink differs. It is obvious that the petitioner who entered into the service of the State of Bihar as a Karmachari had little of education and such an error is not very uncommon. I wonder why the State of West Bengal did not come up with any Affidavit-in-Opposition to rebut the allegations of the petitioner. It is well settled law now that in the absence of any counter Affidavit the High Court has to accept the statements made on oath by the petitioner as prima facie evidence ([Controller of Court of Ward, Kolhapur and Another Vs. G.N. Ghorpade and Others,](#))

6. The two decisions cited by Mr. Banerjee very much support his contentions: The Respondent Nos. 2 and 8 violated the principle of natural justice by turning down the proposals of three high State officials for correction of the petitioner's date of birth in the Service Book without assigning any reason. A wrong recording of the date of birth in the Service Book would not estop the petitioner from challenging the correctness of date even at the pension-stage on the basis of authentic document, i.e., School Leaving Certificate. This principle has been laid down in *Ranjit Kumar Chatterjee vs. Union of India & Ors.* (supra) The decision in *Sishu Ranjan Das vs. Commissioner of Police & Ors.* (supra) goes a step further wherein the Calcutta High Court held that entry in the service record is not a declaration under Rule 9(1) of the W. B. Services Rules, Part I, and no time limit has been prescribed for correction of the date of birth under Rule 9(5) of the said Rules. It was further held in this case that it is immaterial if one makes representation for correction of age after receiving the notice of superannuation on the basis of authentic document. The age can be corrected at any time at any stage.

7. In that view of the matter the Rule is made absolute I set aside and quash the Memo, dated 30th September, 1952 issued by the District Compensation Officer, Purulia and the Memo, dated 31st January/4th February, 1983 issued by the Deputy Secretary, Board of Revenue, Government of West Bengal. Let writ or writs in terms of prayers (A) and (B) be issued. As the petitioner has already been superannuated, I direct the respondents that all his service benefits till the date of superannuation, i.e., 31st July, 1984 as admissible in law should be paid to him within four months from date. There will be no Order as to costs