courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 19/10/2025

Bhadu Karmakar (Smt.) Vs Viswa Bharati

F.M.A.T. No. 3686 of 1992

Court: Calcutta High Court

Date of Decision: Dec. 22, 1999

Citation: (2000) 1 ILR (Cal) 97

Hon'ble Judges: Satyabrata Sinha, J; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Asutosh Paul, for the Appellant;Partha Sarathi Sengupta, for the Respondent

Judgement

Satyabrata Siniha, J.
This appeal arising out of an order dated November 26, 1992 passed by a learned Single Judge of this Court in C.O.

No. 19369 (W) of 1992 whereby and whereunder the writ petition filed by the Appellant herein was dismissed.

2. The writ Petitioner is the Appellant. According to her, when the process of appointment was going on, the Deputy Chief Medical Officer filled

up the form and directed her to put her thumb impression. She was latter on appointed. She was asked to submit the proof of her age by the

Registrar of the Respondent No. 1 by a letter dated August 23, 1979, pursuant whereto she filed an affidavit affirmed by her elder brother on

February 13, 1976 stating her date of birth as January 2, 1941.

3. On July 22, 1992 she received a letter from Deputy Registrar(Admn.) of the Respondent No. 1-university wherein it was stated that she would

attain the age of superannuation of November 28, 1992.

4. According to the writ Petitioner, no opportunity of hearing was given to her before arriving at the said findings and without getting her age

determined by a Medical Board.

5. The Petitioner in para. 21 the writ petition stated:

That the Respondent authorities with a view to compelling the Petitioner to retire from service has wrongly interpolated and/or incorporated as date

of birth 27.11.92 by correcting the date of birth which was supplied in the year 1976 with an affidavit affirmed by the elder brother of the

Petitioner as 2.1.41 and have corrected the date of birth by taking unilateral decision and issued the purported letter dated 20.7.92 and illegal

informed the Petitioner that the Petitioner will superannuation from the service on the basis of wrong recording of the date of birth as well as

interpolation made by the Respondents in the service book of the Petitioner as such the purported letter dated 20.7.92 is illegal and should be set

aside and/or quashed your Petitioner submits that the Respondents in reply to the representation of the Petitioner dated 22.8.92 informed the

Petitioner by their letter dated 1.9.92 that on 9.1.88 Petitioner appeared before the age screening committee and the committee has decided the

date of birth as 27.11.92 (sic) and they were not accepting the affidavit which was affirmed by the eider brother of the Petitioner in the year 1976

where the date of birth of the Petitioner has been mentioned as 2.1.4.1 but the Petitioner has never been appeared before the age screening

committee on 9.1.88. According to the said provisions of Saw the screening committee cannot determine the date of birth.

6. The Respondents in affidavit-in reply to the said statement averred:

With reference to paragraph 21 of the said petition I say that the affidavit affirmed by the elder brother of the Petitioner was not acceptable to the

University and as such the University m 1979 and again in 1986 requested the Petitioner to produce necessary document in support of her claim as

to her date of birth of and when the she was unable to produce the same, she was requested to attend before the Age Screening Committee by the

letter dated 4th January, 1988. On the basis thereof the Petitioner appeared before the Age Screening Committee on 9th January, 1988 and her

correct age was determined on the basis of the information given by the Petitioner to the said Committee. It is denied that the said date of birth has

been changed as alleged or at all. I deny that the Petitioner did not appear before the Age Screening Committee as falsely alleged or at all. I deny

and dispute that the correction of the date of birth of the Petitioner as recorded in the Service Book of the Petitioner is illegal or contrary to the

provisions of law or has been made, without giving any opportunity of being heard to the Petitioner or that the order dated 20th July, 19.82 and 1st

September, 1992 should be set aside or quashed as alleged or at all.

7. According to the Respondents, it is at the instance of the "Karma Samiti" - the union of which writ Petitioner, was a member insisted that instead

and place of setting up of a Medical Board, an Age Screening Committee be constituted pursuant whereto such a committee was constituted. It is

stated that the writ Petitioner appeared before the said Committee, wherein her date of birth was determined as November 27, 1932 instead of

June 2, 1941.

8. The learned trial Judge by reason of the impugned order, inter alia, held:

I am unable to accept the contention of the learned Advocate for the Petitioner, simply so by reason of the fact that it is at the instance of

Karmasamity that the Petitioner''s employment was confirmed with the University and it is that resolution of the karmasamity on the basis of which

the Age Screening Committee and the subsequent finding of the committee leaves no manner of doubt that the age determined by the Age

Screening Committee ought to have binding effect.

9. The Learned Counsel appearing on behalf of the Appellant, inter alia, submitted that in view of the settled principles of law that a date of birth

recorded in the Service Book cannot be altered without complying with the principles of natural justice and as the same had not been complied

with in the case of the writ Petitioner, the order impugned in the writ application must, be set aside.

10. Mr. P.S. Sengupta, the learned Senior Counsel, appearing on behalf of the Respondents, on the other hand, submitted that the Age Screening

Committee was constituted at the instance of the Karmasamity of which the writ Petitioner is a member. It has been submitted that whenever an

employee appeared before an Age Screening Committee a "tick-mark" had been put against his/her name and the age had been determined. It has

further been submitted that the Petitioner in the writ application, inter alia, stated that in reply to her representation she was informed about the

decision of the Age Screening Committee but she had never appeared before the said Committee on January 9, 1998 as alleged.

11. The only question which, thus, falls for consideration is as to whether the action on the part of the Respondent is legal?

12. It may be true that an Age Screening Committee was constituted but such a Committee, in our considered opinion, was not competent to

determine the exact date of birth as admittedly the same did not consist of a Medical Experts nor any action was taken for carrying out the requiste

Medical Test including ossification Test. It is now well known that even by taking recourse to the Ossification Test, exact date of birth cannot be

ascertained and there may be variation to the extent of a few years.

13. Furthermore, in this case a dispute has arisen as to whether the Petitioner, in fact, appeared before the Age Screen Committee or not. In a

case where different dates of birth appear in different records maintained by the employer, the proper course would be to refer the concerned

employee to a Medical Board. The Age Screening Committee comprises of lay persons and not medical experts and thus, cannot be said to be

technically competent to determine the age of the writ Petitioner-Appellant. We, therefore, are of the opinion that interest of justice will be sub-

served if the Petitioner is referred to a Medical Board to be constituted by Civil Surgeon (Suri), and the reports submitted may be acted upon by

the 1st Respondent. Such a report must be made within two months from the date of communication of this order. One of the members of the said

Committee may be a Rediologist and another an Orthopedic Surgeon. We are issuing the aforementioned directions keeping in view the fact that

no opportunity of hearing was granted to the Petitioner before altering her date of birth. This appeal is, thus, allowed and the impugned order is set

aside, in the fact and circumstances of this case there will be no order as to costs.

14. Xerox certified copy of the judgment, if applied for be supplied on priority basis.

M.H.S. Ansari, J.

15. I agree.