

Saroj Kumar Bhattacharya Vs Bengal Immunity Ltd.

Court: Calcutta High Court

Date of Decision: Dec. 9, 1993

Acts Referred: West Bengal Services Rules " Rule 9

Citation: (1994) 1 ILR (Cal) 263

Hon'ble Judges: Nikhil Nath Bhattacharjee, J; Bhagabati Prasad Banerjee, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Bhagabati Prasad Banerjee, J.

This is an appeal against the judgment and order dated May 6, 1993, passed in Matter No. 156 of 1993

by the learned trial Judge dismissing the application. The subject-matter of the writ application was for correction of the date of birth of the

Appellant writ Petitioner. Originally, the Respondent company was a private company known as "Bengal Immunity Company Limited."

Admittedly, the Appellant-Petitioner joined the service on May 1, 1993. At the time of entering into his service, on the basis of the declaration

made by him, his date of birth was recorded as on March 21, 1935. Thereafter, on October 30, 1956, the Appellant-Petitioner made a

declaration required for the purpose of gratuity fund in which he had declared his age on September 21, 1956, as 21 years 6 months on the basis

of horoscope which tallies with the date of birth initially declared by him as " March 21, 1935. While he was in service the Appellant-Petitioner

appeared as a private candidate in School Final Examination conducted by the West Bengal Board of Secondary Education in March 1962 and he

passed in 3rd Division, and on the basis of his own statement made before the Board his date of birth was recorded in the School Final Certificate

as "10th June, 1939". Admittedly, after passing the School Final Examination no reference was made to the authority concerned for correction of

his "date of birth in the records. But, according to the Appellant-Petitioner, he wrote a letter to the authority concerned on January 9, 1979, for

treating him as School Final passed and accepting the date of birth as "10th June, 1939" as was recorded in the said Certificate. Incidentally, for

17 years he was keeping significantly silent with regard to the dispute of his date of birth, and again he made a representation on February 2, 1985.

2. It appears that the Appellant-Petitioner was president of the Bengal Immunity Workers' Union and on March 20, 1984, a meeting was held by

and between the management and the workmen in which the Appellant- Petitioner participated as a President and for the purpose determining the

age, Age Dispute Committee was constituted formulating the principle and procedure to be followed for the purpose of settlement of age dispute

by bipartite agreement between the management and the workmen. The said Age Dispute Committee was set up with a Chairman and three

members and on May 28, 1985, the Personnel Manager of the company issued a notice regarding age dispute intimating all workmen and all

concerned. The contents of the said notice dated May 28, 1985, is as follows:

From time to time, we have been receiving applications from workmen/employees disputing their date of birth/retirement as recorded with the

Company. Accordingly, an Age Dispute Committee with DM(A) as the Chairman has since been constituted and all such disputed cases have

been referred to the Committee which, in the meantime, has also settled many cases.

In this connection, it is notified that the workmen employees, having age dispute without yet referred, should submit their cases to DM(A), the

Chairman, Age Dispute Committee, on or before 21st June, 1985, after which no other case will be entertained and the age record as available

with the Company shall be final and binding.

3. On the basis of the date of birth as originally recorded and as originally declared which was supported by a subsequent declaration, a notice of

retirement was issued. This notice of retirement was the subject-matter of challenge in the writ application. In support of his case, that the

management has accepted his date of birth as June 10, 1939, instead of March 31, 1935, reliance was placed on a letter written by Shri G. Rai

Verman, the then Personnel Manager who was officiating in that post, addressed to the Appellant-Petitioner wherein the said authority has stated

that his date of birth was recorded in the records of service as June 10, 1939. The genuineness of that letter dated June 18, 1985, issued by Shri

G. Rai Verman was seriously disputed by the Respondent-company and in the affidavit-in-opposition it was categorically stilted in substance that

the said letter was a fake letter inasmuch as from the despatch register this letter with that number was not a letter addressed to the Appellant-

Petitioner at all, but to the National Insurance Company for a different purpose and further it was submitted by Mr. Chaudhuri, learned Counsel

appearing on behalf of the Respondent-company, that self-same authority had issued a notice on May 28, 1985.
Admittedly, Shri G. Rai Verman

was not a member of that company exclusively entrusted to the Age Dispute Committee and after constitution of an Age Dispute Committee and

after issue of the notice, such dispute could not be adjudicated by the said Shri G. Rai Verman who was in probation and whose service was

terminated in August 1985 because of unsatisfactory work.

4. Regarding the declaration made for the purpose of gratuity fund that his date of birth is March 23, 1993, a point was specifically raised by the

Respondent-company in para. 5 of the affidavit-in-opposition. But the Appellant-Petitioner did not deny and dispute nor explain the circumstances

under which such admission was made. The learned trial Judge in his order stated that as because the Appellant-Petitioner had not explained the

position and as because he had not made out any case how he could be allowed to go back from the admission made by him in the said

declaration the learned trial Judge was unable to grant any relief in the matter.

5. After hearing the learned Counsel for the parties and after considering the facts and circumstances of the case, it is clearly evident that this

School Final Certificate was not a contemporaneous document. In this connection, a reference was made by the learned Counsel appearing on

behalf of the Respondent to the Special Bench decision in the case of Deputy Commissioner of Polices, Special Branch and Ors. v. Bhupesh

Chandra Karanjai 1993 (2) Cri. L.J. 74 wherein it was stated that the discrepancy of the date of birth in respect of the employee of the State

Government is governed by the provisions of the West Bengal Service Rule, Part I, particularly under Rule 9. It was held by the Special Bench

that, if there was any contemporaneous document or, in other words, if one has entered into the service, but at the time of entering into the service

Matriculation Certificate was missing and was not in his possession, he could apply to the authority, subsequently for the purpose of consideration

and correction of the date of birth, only on the basis of such contemporaneous document which was in existence before he had made any

declaration in ignorance of the age recorded in the Matriculation or other certificate, the genuineness of which was not disputed. In the instant case,

the School Final Certificate was not a contemporaneous document and there is a distinction between a student who had passed as regular student

and as a private student. In case of regular student, the age/date of birth is registered with the register of the School where the School Authorities

insist upon production of some records or documents or statements made from the guardian and the same is also considered in view of the

appearance of the boy by the trained and experienced teachers, and in such a case there is a very little scope for suppressing the real age or to

manipulate the age before the teachers who are dealing with thousand of similar students and in that case age recorded in the School register is

reflected in the Matriculation or School Final Certificate. That age is accepted because of certain safe-guards therein. But in case of a private

student the Board accepts the age declared by the candidate in the application form, without any verification and in case of a private candidate any

age may be declared suppressing real age and there is no machinery or there is no check and balance for verifying the actual age. As such, the

School Final Certificate in respect of a candidate appearing as a private candidate and a candidate appearing as a regular candidate cannot be

treated at par.

6. In these circumstances, no reliance could be placed on the letter issued by Shri G. Rai Verman dated June 18, 1985, in support of the

contention of the Appellant-Petitioner in view of the fact that the genuineness of the said letter is under challenge, as from the materials on record,

we cannot hold that the said letter was genuine or undisputed letter. Secondly, the writ Court decides the matter on affidavit of evidence. When

allegation is made by the management on affidavit that not only he had declared his age at the time of entering of service, but four years thereafter

he had also made a voluntary declaration about his age supported by a horoscope and for long 17 years he was keeping significantly silent when

his allegation is made in the affidavit-in-opposition and this allegation is not at all controverted in the affidavit-in-reply, in that event the Court is

bound to accept the position that he had no explanation to offer in this regard. He cannot be allowed to go back from the admission already made

in this behalf which is binding on him. The company was originally a private company. The company was taken over by the Government of India

undertaking On May 10, 1978, and only thereafter a move was made to get his date of birth corrected on the basis of age recorded in the School

Final Certificate in which he appeared as a private candidate wherein he had put his date of birth according to his choice. Subsequent

document/documents which had come into existence subsequent to his admission cannot be made a ground for correcting something with

retrospective effect. The Special Bench of this Court in that case decided that any contemporaneous document may be made a basis for claiming

the case for correction of a date of birth at a later date and not otherwise.

7. Considering the facts and circumstances of the case, we do not find any reason to interfere with the order passed by the learned trial Judge

inasmuch as no case has been made out by the Appellant-Petitioner for intervention of the order passed by the learned trial Judge. On the basis of

the materials on record, it is difficult for this Court to sustain the claim made ""by the Appellant-Petitioner.

8. Accordingly, we agree, with the view expressed by the learned trial Judge. We do not find any substance in the appeal. The appeal is

accordingly dismissed without any order as to costs.

Nikhil Nath Bhattacharjee, J.: I agree.