

indi Vs. Executive Engineer (Elec), Keb

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Court : Karnataka

Decided On : Nov-18-1994

Reported in : ILR1995KAR674; 1994(5)KarLJ543

Judge : M.F. Saldanha, J.

Appeal No. : W.P. No. 19307 of 1991

Appellant : indi

Respondent : Executive Engineer (Elec), Keb

Judgement :

ORDER

Saldanha, J.

1. Heard Counsel.

2. The petitioner in this case is an ex-employee of the Karnataka Electricity Board. He was originally recruited to service by the Mysore State Electricity Board in the year 1961 and his services were thereafter taken over by the Karnataka Electricity Board. According to the records of the Karnataka Electricity Board which had proceeded on the basis of the entries made in the records of the erstwhile Company, the petitioner's date of birth was recorded as 2.12.1938. Sometime in or about the year 1991, the petitioner produced a School Leaving Certificate in

support of his contention that his medium of instruction has been 'Kannada'. A scrutiny of that Certificate disclosed that the petitioner's date of birth was recorded as 2.2.1932. The Authorities therefore issued a show cause notice to the petitioner as they proposed to correct the records in question calling upon him to produce an extract of his correct date of birth. According to him, the authorities of the Bijapur Municipality stated that the records in relation to the original extract of births were not available. He therefore produced some other supportive evidence. The authorities finally accepted the date of birth in the School Leaving Certificate and altered his date of birth from 2.12.1938 to 2.2.1932. On this basis, the petitioner was served with the notice of retirement which has been challenged by him in the present petition. Shortly after the petition was filed, the retirement order took effect and therefore, this Court did not grant any interim relief. The petitioner has consequently retired and the learned Counsel submits that the only relief admissible to him at this stage would be a revision of the records whereby he would have to be treated as having been on duty up to the date on which he would normally have retired and whatever consequential adjustments are possible in relation to his salary etc. Petitioner's Counsel has submitted that the original date of birth as entered when the petitioner was recruited to service is the correct one and that the alternation or correction done by the authorities is not permissible. He has relied on a Decision reported in : (1967)IILLJ266SC State of Orissa v. Dr. Miss Binapani Devi & Ors. In this unique Decision the Apex Court has laid down the salutary principle that the Rule of Audi Alteram Partem applies even with regard to administrative action, it was laid down that if an enquiry is to be held in relation to alternation of the candidate's date of birth, in the absence of a fair opportunity being afforded to the candidate in question, that the enquiry shall be bad in law. Petitioner's Counsel submits that in the present case, only a show cause notice was issued to him and he has submitted the documents in question in response to that, but that thereafter, if the date of birth was to be altered, that a formal enquiry ought to have been held and a form order should have been passed. He submits that the non-observance of this procedure vitiated the action.

3. As regards this head of challenge, Mr. Subba Rao on behalf of the respondents has demonstrated to me that there is substantial compliance with the Rules of Natural Justice insofar as the petitioner was informed of the basis on which the

alteration was, contemplated and that in response thereto, he has submitted whatever material he has so desired, which material has been considered by the authorities of the Board and it was thereafter rejected and the decision was conveyed to the petitioner. It is his submission that apart from this, no further formal enquiry is contemplated in law. The petitioner's Counsel insists that a full-fledged enquiry ought to have been held since the end thereof has far-reaching consequences and in keeping with the law on the point, it is necessary that the affected party must be given a fair opportunity of producing the material which he relies on and that it should be taken into consideration. All these requirements have been complied with in essence, to the extent that the petitioner was afforded an opportunity of producing evidence and dealing with the contents of the show cause notice. Beyond this, there is no necessity to holding of a formal full fledged enquiry and therefore the argument canvassed on behalf of the petitioner under this head cannot be upheld.

4. Petitioner's Counsel has thereafter relied on an earlier Decision of a learned Single Judge of this Court in Writ Petition No. 2288/1992 dated 11th March 1992 D. C. Mudigowder v. Chief Engineer (Elect.) KEB. In that case, what had happened was that there was some discrepancy with regard to the date of birth as two different dates were entered in the records and the authorities summarily accepted one of them and rejected the other. The Court found fault with this procedure and held that such alteration would prejudice the petitioner and would not be permissible without giving him a chance to have his say. The facts of that case are distinguishable from the present one and therefore the Decision in question would be of no relevance.

5. The petitioner's learned Counsel submitted that admittedly from the date of petitioner's original recruitment, the records did show his date of birth as 2.12.1938. Under these circumstances, he submits that the K.E.B. had already shown his date of birth as 2.12.1938 when the petitioner's services were taken over. Learned Counsel submits that these records have presumptive value insofar as the Court must assume that the correct date of birth was entered at the time when the petitioner was originally recruited. In support of this submission, learned Counsel has produced before me the original copy of the order served on the

petitioner at the time when he was recruited into service whereby condition No. 7 very clearly specifies that proof of the date of birth is required to be furnished. It must therefore be assumed that such proof was in fact furnished and it was only on that basis that the original entry was made. If this is the position and if it is through no fault of the petitioner's that the records relating to his birth were not available in the year 1991 when the Municipality was asked to produce the same, the petitioner cannot be made to suffer from this.

6. Mr. Subba Rao on behalf of the Corporation has submitted that quite apart from the Corporation being justified in relying on the School Leaving Certificate produced by the petitioner in the year 1991 that the Corporation had directed the Vigilance Officer to make enquiries and that the Officer had conducted enquiries at that time and recorded the petitioner's statement with regard to the different schools in which he was studying. It is pointed out that in the course of such enquiries in which the petitioner had participated that the Police Officer had verified the details from the Government K. E. School No. 1 from which it was disclosed that the petitioner was studying in the second standard as on 14.8.1941. On this basis, the respondents submitted that it is inconceivable that if the petitioner's date of birth was 2.12.1938, that at the age of 3 years he should have been in the second standard. Mr. Rao has submitted that the fact remains the Board did make all necessary enquiries before relying on the School Leaving Certificate in the year 1991 and that consequently, the action of the Board is fully justified. Mr. Rao also canvassed the additional submission that this being a Writ Proceeding, that it is not permissible for the parties to agitate the disputed question of fact and ask for an adjudication of the same. As regards that last argument, I need to record that no doubt disputed questions of fact which involve a detailed evaluation of the oral and documentary evidence cannot be gone into a Petition filed under Article 226. Nevertheless, where in order to decide a Writ Petition, a mere cursory evaluation of the facts is required in order to decide a disputed issue, there cannot be any bar for this Court evaluating the facts and determining the questions.

7. I have perused xerox copy of the Certificate produced in the year 1991. This Certificate is a mere School Leaving Certificate. The back ground of this case

indicates that the petitioner, for whatever reason, had been prosecuting his studies in different schools and there is nothing on record to indicate on what basis those schools had recorded his date of birth. It is true that the Certificate does reflect the date of birth as 2.2.1932. I have however scrutinised the other entries in this Certificate and I find that it has very clearly been recorded that the petitioner was admitted in the year 1952 in that school in Standard 9, if the petitioner's date of birth is to be taken as having been correctly recorded, it would mean that he was 20 years old on that date when he was in the 9th standard which is again inconceivable. If his date of birth is in fact December 1938, having regard to the normally prevailing age of a student of that class, the fact that he was in the 9th standard at that age appears to be far more reasonable and probable.

8. On a consideration of the material before me, it is necessary to uphold the petitioner's contention that the alteration of the date of birth in the facts and circumstances of this case was unjustified. I am conscious of the fact that normally, a Court is extremely strict with regard to permitting challenges in matters relating to date of birth. Those challenges however invariably proceed on the footing that the original entries in the records were incorrect and that at a belated stage the same should be corrected. In this case, we are presented with the reverse position where all that the petitioner has asked for is that the original entries as they originally existed in the records should be the ones which must be relied upon. The challenge is to a subsequent alteration which in the facts and circumstances of this case appears to be total and completely justified. The effect of the action of the Board would mean that greater creditability is given to a School Leaving Certificate than to the personal records of the erstwhile Company which obviously had recorded the petitioner's date of birth as 2.12.1938. In this view of the matter, to my mind, the action as far as the alteration is concerned is liable to be struck down.

9. The respondents shall have to proceed on the basis that the petitioner's date of birth as originally reflected in the records namely, 2.12.1938 is the correct one. The petition accordingly succeeds. The respondents are directed to take appropriate corrective action on the aforesaid basis within a period of four months from today. It is clarified that in the light of the aforesaid finding, the impugned

order dated 20.8.1991 Annexure-E to the Petition is quashed. The petitioner will have to be reinstated in service with consequential benefits. In the circumstances of the case, there shall be no order as to costs.

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