

Harekrishna Das Vs. Chairman, Paradeep Port Trust and anr.

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Court : Orissa

Decided On : Oct-14-2004

Reported in : 99(2005)CLT43; [2005(104)FLR956]

Judge : P.K. Mohanty and ;L. Mohapatra, JJ.

Appeal No. : Original Jurisdiction Case No. 6287 of 2002

Appellant : Harekrishna Das

Respondent : Chairman, Paradeep Port Trust and anr.

Advocate for Def. : S.K. Padhi, Adv.

Advocate for Pet/Ap. : Jagannath Patnaik, Adv.

Disposition : Application dismissed

Judgement :

L. Mohapatra, J.

1. The petitioner, who is working as Assistant Engineer (Electrical) Marine Engineering Division, Paradeep Port Trust has filed this Writ Application challenging the legality of the notice of superannuation dated 16.6.2002 (Annexure-7) and has further prayed for a direction to the opposite parties to allow him to continue in his post till 30th June, 2006 on the basis of date of birth entered

in his Service Book.

2. The case of the petitioner is that he had applied for appointment against the post of Overseer in Paradeep Port Trust through Employment Exchange. In January, 1972 he was called to attend an interview for the post of Overseer (Electrical) and was also instructed in the said letter to produce all documents in original in support of actual age, qualification and experience along with mark sheets at the time of interview. The interview was held on 1.2.1972 and the petitioner was selected and joined as Overseer (Electrical) on 12.5.1972. According to the petitioner, he had passed High School Certificate Examination in the year 1964 and in the certificate issued by the Board of Secondary Education his date of birth was wrongly mentioned as 23.6.1944 in stead of 23.6.1948. Therefore, an affidavit was filed before the authority stating that the date of birth of the petitioner is 23.6.1948 and not 23.6.1944 as indicated in the certificate issued by the Board of Secondary Education. The further case of the petitioner is that the affidavit filed indicating correct date of birth of the petitioner was accepted by the opposite parties and the same was entered into the Service Book. In view of the above, the claim of the petitioner is that he is entitled to be retained in service till 30th of June, 2006 and could not have been served with a notice of superannuation in 2002 on the basis of the entry made in the certificate issued by the Board of Secondary Education.

3. A counter affidavit has been filed on behalf of the Opp. Parties 1 and 2 and it is stated in the said counter affidavit that as per direction of the Accounts Officer, Paradeep Port Trust information were collected from all the employees who were due to retire within five years. While the incumbency registers of the Officers were verified, it was found that in the case of the petitioner the date of birth as mentioned had been erased by white fluid and a new date of birth had been inserted as 23.6.1948. The further stand of the Opp. Parties 1 and 2 is that the date of birth of the petitioner has been indicated as 23.6.1944 in the certificate issued by the Board of Secondary Education, but interpolation had been made in the Service Book which was in custody of the concerned department showing the date of birth as 23.6.1948. Considering the date of birth indicated in the certificate issued by the Board of Secondary Education as well as on consideration of the

interpolation made in the Service Book, the opposite parties decided to superannuate the petitioner with effect from 30th June, 2002 and accordingly, issued notice in Annexure-7 on 12th June, 2002.

4. Shri Jagannath Patnaik, the Learned Senior Counsel appearing for the petitioner submitted that the date of birth as mentioned in the certificate issued by the Board of Secondary Education did not reflect the correct date of birth as a result of which an affidavit had been filed before the authority indicating the correct date of birth as 23.6.1948. It was further submitted that on the basis of such affidavit, records were prepared subsequently and all the Annexure attached to the Writ Application such as gradation list, prepared from time to time clearly indicate the date of birth of the petitioner as 23.6.1948. On the basis of such document, it was contended by Shri Patnaik that the authorities having accepted the date of birth of the petitioner to be 23.6.1948, at the time of service of the petitioner, they could not have changed the date of birth as 23.6.1944 to the prejudice of the petitioner and without giving him any notice to show cause or opportunity of hearing. It was further contended by Shri Patnaik that the duplicate Service Book which was supplied to the petitioner indicates both the dates of birth i.e., 23.6.1944 as well as 23.6.1948 and out of the said two dates, the authorities accepted the date of birth as 23.6.1948 and reflected the same in the different gradation lists. With regard to interpolation made in the original Service Book, it was contended by the Learned Counsel for the petitioner that the original Service Book was in custody of the department and the petitioner had no access to the same and, therefore, the allegation that at the instance of the petitioner such interpolation has been made cannot be accepted. It was also contended that the interpolation made in the original Service Book could not have been done by the petitioner as both the dates of birth as reflected in the duplicate Service Book were to be the advantage of the petitioner as the authorities had accepted the date of birth to be 23.6.1948.

5. Shri S. K. Padhi, the Learned Senior Counsel appearing for the Paradeep Port Trust submitted that at the time of interview not only the certificate issued by the Board of Secondary Education but also the affidavit sworn in by the brother of the petitioner were produced in relation to the date of birth. As is evident from the duplicate Service Book, both the dates have been entered into the Service Book

but subsequently it was found that in the original Service Book the date of birth has been interpolated and has been mentioned as 23.6.1948. Since the interpolation was made in the date of birth of the petitioner, it was contended by Shri Padhi that the same can only be done at the instance of the petitioner. Shri Padhi further contended that at the time of selection the Selection Committee had prepared documents in respect of all the candidates who attended the interview and in those papers the date of birth of the petitioner has been indicated as 23.6.1944. Therefore, from the inception, the Port had accepted the date of birth of the petitioner as 23.6.1944 and not on the date of birth as indicated in the gradation lists which is based on the interpolated date as mentioned in the duplicate Service Book.

6. Having considered the arguments advanced by the Leaned Counsel appearing for both the parties and on verification of records, we find that in the duplicate Service Book supplied to the petitioner two dates of birth have been mentioned. It is stated in the duplicate Service Book that 23rd June, 1948 is the date of birth as per affidavit and 23rd June 1944 is the date of birth as per High School Certificate Examination. The duplicate Service Book was received by the petitioner some time in the year 1974. The original Service Book which was produced by Shri Padhi clearly shows that interpolation had been made with regard to date of birth and the same has been indicated as 23rd June, 1948.

7. In view of the above, it is clear that at the time of entering into service there were two different dates of birth available before the authorities as per the affidavit filed by the petitioner and the certificate issued by the Board of Secondary Education. From the documents produced by Shri Padhi, the Learned Counsel appearing for the opposite parties at the time of hearing of the case, it is clear that a Selection Committee was constituted consisting of three members and 15 (fifteen) candidates were interviewed by the Committee for the purpose of appointment including the petitioner whose name finds place at serial No. 13. Another sheet of document produced by Shri Padhi indicates the marks awarded to all the candidates and the said document clearly shows that the date of birth of the petitioner had been shown as 23.6.1944. The name of the petitioner finds at serial No. 99 in respect of the candidates whose names finds place in the interview

held on 1.2.1972. It is, therefore, clear that the Selection Committee accepted the date of birth of the petitioner as 23.6.1944. Two dates of birth were mentioned in the Service Book because of the fact that an affidavit was filed by the petitioner stating the date of birth of the petitioner is 23.6.1948. When two dates of birth were mentioned in the duplicate Service Book and the petitioner was supplied with the duplicate Service Book in September, 1974 he should have objected to the two entries made in the Service Book immediately after receipt of the duplicate Service Book. Having not done so, it is left with the authorities to accept either of the two dates mentioned in the Service Book. Now the question that arises for consideration is as to whether the date of birth as mentioned in the certificate issued by the Board of Secondary Education is to be accepted or the date of birth as mentioned in the affidavit filed by the brother of the petitioner is to be accepted. There cannot be any dispute that the certificate issued by the Board of Secondary Education in the High School Certificate Examination is much more authentic and acceptable than the affidavit filed by the petitioner without any supporting document with regard to date of birth. The certificate issued by the Board of Secondary Education is on the basis of entries made in the School Registers and the School Registers are maintained on the basis of the declaration made by the petitioner or on the basis of Birth Certificate.

In this connection, reference may be made to the decision in the case of Zenuddin v. Travancore-Cochin State reported in AIR 1954 TC 32. In the aforesaid case there was discrepancy between the date of birth as recorded in the College Register and Service Records. The Court held that the State employing the Government Servant, has an absolute right to accept the date as recorded in the College Register. It was also held that the State Government was within its rights in deciding that in all cases of discrepancy between the dates of birth as entered in the College Registers and the Civil List, the former shall prevail, and such a decision did not violate any of the provisions of the Constitution. Apart from the above, it is clear from the duplicate Service Book that the same was supplied to the petitioner in September, 1974 indicating two dates of birth. Since the stand of the petitioner is that he had no access to the original Service Book and had no knowledge about the interpolation made in the original Service Book, it was the duty of the petitioner to immediately raise objection with regard to two entries

made in respect of his date of birth so that there could be no confusion at the time of superannuation. Having not done so, the petitioner cannot at the fag end of carrier raise such dispute. The Apex Court very well settles the law in this regard. For reference one may look into the case of Hindustan Lever Ltd. v. S. M. Jadhav and another reported in AIR 2001 SC 1666.

8. We therefore, on consideration of the documents prepared at the time of selection of the petitioner indicating his date of birth as 23.6.1944 as well as the certificate issued by the Board of Secondary Education indicating the same date of birth hold that no illegality has been committed by the opposite parties in issuing notice of superannuation to the petitioner in Annexure-7 on the basis of the date of birth as mentioned in the certificate issued by the Board of Secondary Education and accepted by the opposite parties at the time of interview.

9. The Writ Application accordingly fails and the same is dismissed.

P.K. Mohanty, J.

10. I agree.