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Court : Rajasthan

Decided On : Feb-21-1968

Reported in : (1968)IILLJ114Raj

Judge : Kan Singh, J.

Appellant : Ganesh Datta

Respondent : State of Rajasthan

Judgement :

Kan Singh, J.

1. This is a writ petition under Article 123 of the Constitution by one Ganesh Datta and by it he seeks to question the validity of a Government order dated 19 June 1967 superannuating the petitioner consequent to the reduction of the age of superannuation from 58 to 55 years as a result of an amendment of the Rajasthan Service Rules. The relevant facts are briefly these:

The petitioner entered the service of the former Jodhpur State as a permanent clerk on 21 February 1931. In his application for employment according to him, he gave his age as either 19 or 21 years. He takes the positions that this was gives under a mistaken advice as he thought than persons below 18 years of ago were not eligible for appointment. The petitioner then applied before the then Chief Minister of Jodhpur State for correction of his age. The Chief Minister did pass an

order on 28 August 1935 (Ex. 4) to the effect that the correct date of birth of the petitioner was 7 July 1914 and not 4 June 1911 as was entered in his service sheet and accordingly the same be corrected. It appears that thereafter there had been some correspondence between the Chief Minister of the Jodhpur State and the State Auditor and eventually on 19 November 1935 the Chief Minister passed an order (Ex. 5) saying that the request of the petitioner to change his date of birth should not be granted. In that order, which is in the form of a letter to the State Auditor, the Chief Minister observed that the petitioner Ganesh Datta appeared to be about 25 years old, although, according to his assertion, his correct date of birth was 7 July 1914 which showed his age to be only 21 years. The Chief Minister added teat Ganesh Datta admitted that he gave the wrong date of his birth (4 June 1911) deliberately in order to secure a permanent job, as he feared that if he gave the correct, date, he might be considered too young for a permanent poet. It was on account of this, that the Chief Minister thought that the clerk having himself given a wrong age to secure the job in the first instance he should suffer the consequence. The petitioner who entered the service of the ex-Jodhpur State as a clerk secured several promotions which need not be noticed. Eventually he came to be absorbed as a member of the Rajasthan Administrative Service in the State of Rajasthan. He states that in the year 1959 or so he made a representation for confection of his age, but by an order dated 7 November 1959 (Ex. 8), the petitioners representation was rejected. The petitioner again made a representation, but was not successful.

2. In challenging the order of his superannuation the petitioner contends that that order is violative of Article 311 of the Constitution inasmuch as no opportunity was given to the petitioner for establishing his correct age, in that by the time his superannuation was ordered, he had really not attained the age of 55 years which, according to him, he would be attaining sometime in 1969. The petitioner, therefore, contends that the Government was under a duty to hold a proper enquiry before ordering his superannuation. In support of assertion about his correct age he placed reliance on his Matriculation certificate.

3. I have heard Sri M. L. Joshi for the petitioner. Sri Joshi placed reliance on State of Orissa v. Dr. (Miss) Binapani Dei and Ors. 1967-II L.L.J. 266, Dakshaprasad

Deka v. Inspector-General of Police, Assam, and Ors. A.I.R. 1967 Assam 13 and Bhanwar Singh Bhup singh Rajput v. State of Madhya Pradesh A.I.R. 1863 M.P. 335/

4. Rule 56 of the Rajasthan Service Rules provides for compulsory retirement of Government servants on attaining the age of superannuation. When the rules were made, the age of compulsory retirement on superannuation was 55 years. It was subsequently raised to 58 years. Sometime in June 1967, however, Rule 56 was again amended and the pre-existing petition, was restored. Rule 7(1) of the Rajasthan Service Rules provides that when a Government servant is requires to retire, revert or cease to be on leave, on attaining a specified age, the day on which he attains that age is reckoned as a non-working day, and the Government servant must retire, revert or cease to be on leave (as the case may be) with effect from and including that day. Rule 62 of the General Financial and Account Rules of the Government makes provision for the recording of the age of a Government servant. It is provided therein that every parson newly appointed to a service or a post under Government should, at the time of the appointment, declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a Matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate data may be given. The actual date or the assumed date has to be determined according to Rule 63. It is also provided thereing that the age once recorded cannot be altered, except in the case of clerical error, without the provisions orders of the Government. Besides rules 62 and 63 in the General Financial and Account Rules, there are certain Government decisions which embodied the criteria according to which the age of a Government servant is recorded. The decision appearing in the notes appended to Rule 7 of the Rajasthan Service Rules lays down that the correct procedure for recording the date of birth is to so by the entry given in the service book of a Government servant or in his personal file and if no entry is available in either of them, the date of birth given in the school certificate may be taken as the authentic date of birth. I ought to mention that while Rules 7(i) and 56 of the Rajasthan Service Rules are statutary rules made by the Governer under Article 309 of the Constitution, the General Financial and Account Rules are only administrative rules. So are the notes appended in the compilation containing the Rajasthan Service Rules. The

Rajasthan Service Rules do not lay down as to what is the procedure for the recording of the age of & Government servant. To my mind, the question bow the age of a Government servant is to be recorded and what should be the basis for the Government for taking a particular age to be correct age of a Government servant are matters which lie within the administrative sphere. It is undoubtedly open to the Government to correct the age of a Government servant, if they are so satisfied about its incorrectness, but if the age has to be changed to the pre-judice of the Government servant, then principles of natural justice have to be followed and he is to be told as to what is the basis for changing his recorded age.

5. In the present case the question that pointedly arises for my consideration is whether in the circumstances disclosed the Government can be taken to have intended to inflict any of the punishments mentioned in Article 311 of the Constitution on the petitioner. Like the petitioner quite a large number of Government servants were made to retire on account of the reduction of the age of superannuation by virtue of the amendment of Rule 56 of the Rajasthan Service Rules. On the data before me, I find it exceedingly difficult to hold that the Government really intended to punish the petitioner by either dismissing or removing him from service. In the present case there cannot undoubtedly be any case for inflicting any penalty of reduction in rank. The question that crops up in the case, therefore, is as to what was the correct age of the petitioner. In other words, whether the age initial recorded by the former Jodhpur State was the correct age of the petitioner of whether the age recorded in the Matriculation certificate was the correct age of the petitioner or it was something apart from either. In a case of controversy one can neither take the Matriculation certificate to be conclusive, nor the entry in the Government records made at the time of initial entry to be conductive. The correct ago will, by and large, fall to be determined on the consideration of available evidence for or against the assertion about the age of the Government servant. This, in my view, would necessitate the recording of evidence and will undoubtedly involve an investigation into facts. This is not, in my view, convenient to do in the exercise of extraordinary Jurisdiction of this Court under Article 226 of the Constitution.

6. In a Division Bench case of this Court, Dharmendra Parihar v. State of Rajasthan and Ors. D.B. Civil Writ Petition No. 527 of 1962 which came to be disposed of in limine, but in which the Advocate-General appeared for respondents even before the writ petition came to be admitted, the Court made the following observations:

We have given due consideration to the application filed by the petitioner. It may be observed that the question as to what were the real dates of birth of respondents 2 and 3 is essentially one of after which can be determined only after recording the evidence of the parties and going through various documents and so it would not be proper for us to interfere in the matter in our extraordinary jurisdiction, it is not urged by the petitioner that he has not got an alternative remedy to challenge the decision of the Government.

That was a case in which the petitioner in that case who was at that time serving as District Judge in the State of Rajasthan felt aggrieved on account of the Government recording the age of certain other District Judges who ware senior to him not on the basis of the Matriculation certificates, but on other basis. The petitioner Farihur contended that when in the case of several other Government servants, like him, Matriculation certificates had been taken by the Government as the basis for the recording of age, a departure was made in the case of respondents, District Judges, And the age was recorded on other basis. This, according to the petitioner in that case, violated Articles 14 and 16 of the Constitution. It was also con-tended by the petitioner in that case that the respondents, District Judges, would thereby be enabled to serve for two years longer and thus would be blocking his future prospects for entering the selection grade for District Judges.

7. In the present case also the only ground of attack against the validity of the impugned order of the superannuation of the petitioner is that the petitioner had not attained the age of 65 years and that the Government had not made an enquiry after giving him an opportunity for proving his correct age. As to what, would be the correct age of the petitioner can be determined only on the basis of evidence, as have already observed.

8. The next question is whether the Government should be compelled to embark on an enquiry. The Rajasthan Service Rules, as I have already observed above, do not lay down any procedure for the holding of such an enquiry. In my view, therefore, it will be difficult to spell out a mandate, on the basis of the statutory rules, which the Government may be commanded to carry out. Learned Counsel for the petitioner submitted that the holding of an enquiry was necessary in accordance with the principles of natural justice, I have given my earnest consideration to this submission but I am unable to hold that there is a lis between the Government and the petitioner regarding the question of age in so far as the petitioners wants his age to be corrected to his advantage. I have already observed above that if the Government were to change the age to the pre-judice of a Government servant, they will have to follow the principles of natural Justice and the Government servant concerned will have to be afforded an opportunity to have his say against the proposed alteration is the age so recorded. In the present case the petitioner's age was recorded by the former Jodhpur State and it was with the integration of the former Jodhpur State with Rajasthan that he came to be absorbed to the service of the Rajasthan State. The State Government took the previous record received from the former Jodhpur State as the basis to finding out the age of the petitioner. The notes and the decision contended in the compilation below Rule 7 of the Rajasthan Service Rules show that it is the (sic) policy of the Government to go by the service record in the first instance and it is only when no service record is available that the State Government adopts the Matriculation certificate as the basis. So far as the new (sic) in service are concerned, it is true, the State Government takes a Matriculation certificate as the basis for recording the age. However, here I am not concerned with a new entreat in the service of the Rajasthan State. The petititioner was an employee of the former Jodhpur State and if the Government has adhered to the age that was found recorded in service records of the petitioner received from the ex-Jodhpur State, then it cannot be said that the Government have acted contrary to their declared policy in each masters.

9. I may now briefly refer to the three cases cited by Sri M. L. Joshi.

10. In State of Orissa v. Dr. (Miss) Binapani Dei and Ors. 1967-II L.L.J. 266 (vide supra), the records showed to start with a certain age of the petitioner. On account

of certain complaints a received by the Government an enquiry was made about the correct age of the petitioner and on the basis of the report of the enquiry officer the State Government had made the so-called correction. As this was done without affording an opportunity to the petitioner, their lordships held that this violated the principles of natural Justice. Petitioner's case is not of that type and, therefore, this case is not, in my opinion, of any help.

11. In Bhanwarsingh Bhup Singh Rajput v. State of Madhya Pradesh : AIR 1963 MP335 (vide supra), the learned Judges were dealing with a case where the date of birth of a Government servant as mentioned in his service book was put down not on the basis of the information supplied by the servant or any scientific basis or targible(sic) material, but on the basis of a surmise by only having a look at the Government servant. It was in that context that the learned Judges held that the retirement of the Government servant was had being violative of Article 311 of the Constitution. In the present case there is no gainsaying the fact that to start with the former Jodhpur State recorded the age of the petitioner on the basis of what be stated in his application. This could not conceivably be characterized as recording of age on the basis of sumrise. It may be that the admission of age by the petitioner was itself wrong but that is not the question that affords similarity between the Madhya Pradesh case : AIR 1963 MP335 (vide supra) and the present case. The age of the petitioner being recorded on the basis of what he stated at the time of entry to service, the same distinguished his case from Madhya Pradesh case : AIR 1963 MP335 (vide supra).

12. Lastly, I may deal with the Assam case A.I.R. 1967 Assam 18 (vide supra). The learned Chief Justice who delivered the judgment inter alia referred to Madhya Pradesh case [A.I.R. 1963 M.P 385] (vide supra) as well. It will observed that if a particular petitioner disputes the fact and prima facie makes out a case on the basis of some evidence, then in that even the retirement of the Government servant before he reaches his correct age would amount to punishment. The learned Chief Justice also observed that it was the duty of the State Government to afford an opportunity to the Government servant to prove his correct age. With all respect, I am unable to read the Rajasthan Service Rules which I have to consider to contain a mandate for the State Government to hold an enquiry.

According to the well-known case of Parshotam Lal Dhingra v. Union of India 1968-I L.L.J. 544 Article 311 of the Constitution is attracted only when the infliction of penalties mentioned therein is intended. The observations made by their lordships. Para. 25 of the judgment, bear this out. As the retirement of the petitioner was of ordered along with hundreds of other Government servants on accounts of the reduction of the age of retirement, on the data before me I am unable to hold even prima facie that the Government ever intended to punish the petitioner within the meaning of Article 311 of the Constitution. In my view, the matter is one which resolves itself into whether there has been breach of terms of contract of service as based on the Rajasthan Service Rules. In other words, the question is whether the Government can be said to have noted(sic) in breach of Rule 58 of the Rajasthan Service Rules on the ground that the petitioner had really not attained the age of superannuation (sic) therein. This is a matter which, an I have already observed, cannot properly be determined in a proceeding under Article 226 of the Constitution. The petitioner has, if at all, an alternative remedy of a civil suit and, if no advised, he should pursue that normal remade.

13. In view of what I have observed above. I do not find any force in this writ petition which I hereby reject.

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