

In Re: A.K. Ghosh

In Re: A.K. Ghosh

SooperKanoon Citation : sooperkanoon.com/875357

Court : Kolkata

Decided On : Jul-02-1993

Reported in : (1993)2CALLT467(HC)

Judge : Susanta Chatterji, J.

Acts : [Constitution of India](#) - Article 226

Appellant : In Re: A.K. Ghosh

Advocate for Def. : Asoke K. Banerjee and ;Kamal, Advs.

Advocate for Pet/Ap. : J.K. Biswas and ;Sujit Kr. Mitra, Advs.

Disposition : Petition allowed

Judgement :

Susanta Chatterji, J.

1. Since all affidavits are complete and as agreed by both sides, the matter is taken up for final disposal.

2. The petitioner has filed the writ petition praying for Writ of Mandamus for commanding the respondents to rescind, revoke and recall the impugned orders being Memo No. Estt. O/Super/Cat. I/90 dated March 30, 1993 issued by the Zonal Manager (East) and Office No. PF/G-359/E.I. dated January 25, 1993

issued by the Executive Director (Per), both being in Annexure 'A' to the Writ petition, and to allow the writ petitioner to work in the post of Deputy Manager (Genl.) under the Zonal Manager (East) at Calcutta or to any other higher post with all benefits attached thereto till January 31, 1994 when the petitioner shall attain the age of 58 years.

3. It is stated in detail that the writ petitioner joined the appropriate Government authority by filling up the prescribed form giving his name, age, educational qualification and other informations as provided in the prescribed manner. It is stated that sometime in the year 1988 it was brought to the notice of the petitioner that there has been an interpolation in the entry as to the date of birth describing it as January 4, 1935 whereas it should be January 4, 1936, as per his Matriculation Certificate and the Admit Card thereto. Upon the petitioner's prayer for clearing this interpolation and/or for clarification thereto on his representation, the higher authority had recorded that the petitioner's date of birth is January 4, 1936 and pursuant thereto, the petitioner is alleged to have received service benefits including seniority and promotion etc. Subsequently, by the impugned orders in annexure 'A' to the petition, petitioner was informed that the petitioner who had been working as Deputy Manager (Genl.) of the Food Corporation of India would be deemed to have retired from service on superannuation with effect from January 31, 1993.

4. Grievance of the writ petitioner is that the said order was communicated by a forwarding letter dated 30th March, 1993 as if the petitioner has to retire from service retrospectively with effect from 31st January, 1993. The said order dated 30th March 1993 including the order dated January 25, 1993 repeating that the petitioner shall retire from service in the afternoon of 31.1.1993 are in annexure 'A' to the petition, as indicated above.

5. Being aggrieved, the writ petitioner has come up to this Court on the ground that having regard to the facts that the initially recorded date of birth of the petitioner was January 4, 1936, the same was duly certified by the then appointing authority after verifying the Matriculation Certificate of the petitioner, at no subsequent stage the petitioner can be asked to retire holding that his date of birth is January 4,

1935, without giving any opportunity to him and such asking is bad in law and the steps taken by the respondents and the acts done and/or caused to have been done in superannuating the petitioner retrospectively with effect from 31st January, 1993 are bad in law necessitating interference by the Writ Court. The writ petition is opposed by the respondents authorities by filing comprehensive affidavit-in-opposition.

6. It is disclosed, inter alia, in the said opposition that on or about January 25, 1954 the writ petitioner was appointed as a Junior Clerk in the office of the Regional Director of Food, Eastern Region, Govt. of India, Ministry of Food & Agriculture, Department of Food, Calcutta, that at the time of such appointment and joining there the petitioner duly filled in a statement of service relating to his bio-data in the prescribed form his own hand-writing where he himself made a declaration that his date of birth was a 4.1.1935 and in support of his said bio-data, including the date of birth, he signed the statement which was countersigned by an officer on behalf of the Regional Director of Food, Eastern Region. Further, that the petitioner was thereafter declared as a quasi-permanent Junior Clerk with effect from 1.1.1957 and received all service benefits, as and when arose.

7. It has further been pointed that in view of the Note No. 6 in F.R.S.R. (Fundamental and Supplementary Rules), Chapter IX-Retirement the date on which a Government servant attains the age of 58 years or 60 years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or Extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this Note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit & Account Department, or an Administrator of a Union Territory under which the Government servant is serving, if :

(a) a request in this regard is made within 5 years of his entry into Government service ;

(b) it is clearly established that a genuine bona fide mistake has occurred ; and

(c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

8. It is stated further in detail in the affidavit in opposition that the authority concerned did not have any jurisdiction to rectify and/or correct, alter the date of birth of the petitioner in the service record if at the time of entry into service an employee, like the petitioner, filled in the necessary form No. VI. In the Service Book the respondents have produced before this Court, it appears clearly that the petitioner himself had filled up the form and if there is any interpolation, any person beside the petitioner, may be interested in that matter. In order to correct the said mistake the petitioner is to apply in the statutory form and the statutory rules cannot be violated in any manner whatsoever. Other allegations of the petitioner have also been controverted in the affidavit in opposition.

9. Petitioner has filed his reply reiterating the points made in the writ petition and canvassed that he cannot simply be asked to retire in this way asked for in the instant case.

10. Having heard learned Advocate for both the sides and considering the materials on record extensively, including the original Matriculation Certificate in the Service Records produced by the respondents authorities, this Court finds that in view of the Matriculation Certificate, the writ petitioner was admittedly born on January, 4, 1936. There is no allegation that the original matriculation certificate is spurious and/or is not genuine. In view of the brief expression as to the date of birth appearing in the Matriculation Certificate and if the same is considered along with the service Record this Court finds that there is reference as to the date of birth as on January 4, 1936. Whether that is 1935 or not, it is to be appreciated

whether there is correction of date of birth as envisaged in Form No. VI. The petitioner has brought the attention of the Court to the Certificate that the speculation was set at rest and his date of birth was fixed as on January 4, 1936 and considering the same, the petitioner has obtained several service benefits and those were allowed. Petitioner has further stated before this Court that it was not correct to challenge the date of birth as recorded in the service records and any step taken by the respondents against thereto was incorrect and/or mala fide. Hence the petitioner came to this Court when the respondents declared the date of retirement.

11. This Court is essentially a court of equity. Rules and Procedures are hand made of justice. This Court finds that the entry of recording date of birth of the petitioner is consistent with the entry in the Matriculation Certificate. Conscience of this Court is clear and satisfied that the petitioner was actually born on January 4, 1936, as would be evident from the Matriculation Certificate. There cannot be any second thought that the prescribed form filed and filled in by the petitioner required to be gone into, if there is any anomaly or interpolation and the same has been corrected by the higher authority being satisfied on the basis of the Matriculation Certificate, the same does not appear to be in contravention of Form VI as indicated above. The moment this Court finds that there is breach of Statutory Procedures, substantive benefits must be meted out to the petitioner, otherwise there would be gross failure on the part of the administration and this Court has to see that there is no such failure.

12. Court, with great anxiety, has looked into the original records produced by the respondents and finds that consistently the petitioner's date of birth in January 4, 1936 and hence the petitioner is to retire only on January 31, 1994. Any step taken by the respondents to superannuate the petitioner retrospective by from January 31, 1993 is consequently wrong and cannot be allowed to stand.

13. The writ petition is hence allowed without costs.

14. Let appropriate Writs be issued on the respondents commanding them to allow the petitioner to join his duties and serve till 31st May, 1994 and to obtain all service benefits in accordance with law.

15. Let Xerox copy of the order, authenticated by the Deputy Registrar (Ct.) be given to the Advocates for parties on usual terms and conditions.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com