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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.03.2014

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W.P.(C) 2005/2014

ARUN KUMAR

..... PETITIONER

VERSUS

CHAIRMAN, FOOD CORPORATION OF INDIA

(HEADQUARTERS) AND ANR

..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. J.S. Mann and Mr. K.K. Prasad, Advocates

For the Respondents: Mr. Ajit Pudussery, Mr. M. Chandra Sekhar and
Ms. Shruti Hazarika, Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. There are several prayers made in the captioned writ petition. The sum and substance of the prayers made in the writ petition is that the Food Corporation of India (FCI), with which the petitioner is presently employed should refrain from retiring the petitioner today i.e., 31.03.2014 by taking into account, what the petitioner claims is, his incorrect date of birth. The petitioner thus impugns the document, marked as Annexure P-2, which is list of employees retiring from Zonal Office (North), Noida in 2014. In the said document, the petitioner's name is shown at serial no.12, and as indicated above, he is to retire today.

2. It may also be noticed that this is a second round of litigation. The petitioner had approached this court earlier, by way of a writ petition, which was numbered as WP (C) 1220/2014. By order dated 21.02.2014, passed in that writ petition by me, the competent authority in FCI was directed to dispose of the petitioner's appeal dated 30.01.2014, in respect of the very same issue i.e., change of date of birth.

3. The other prayers are, in substance, consequential.

4. The petitioner, who had joined FCI as a Typist, on 18.03.1976; progressively reached the post of Manager (General). At the time of induction into FCI, the petitioner had admittedly relied upon his matriculation certificate which showed his date of birth as: 05.03.1954.

4.1 It is the petitioner's case that he had moved an application in 1976 itself, for correction of his date of birth; albeit after getting inducted into service with FCI. According to the petitioner, all these years there has been no decision on his application for correction of his date of birth.

4.2 To be noted, the application for correction of date of birth has not been filed, and the respondents herein, in their counter affidavit, have denied the factum of filing of any such application with them.

4.3 Be that as it may, the petitioner till 2000, on his own showing continued to reflect his date of birth as 05.03.1954 in his ACRs.

4.4 The petitioner claims that since, the rules in FCI changed which, enabled the supply of copies of service books to its employees, he, for the first time in 2001, became aware of the fact that the date of birth shown in the service book and in the history card, was 09.03.1955.

4.5 It is the petitioner's case that since this was the correct date of birth and because this date of birth was in consonance with the birth certificate issued by the Municipal Corporation of Delhi (MCD), he thereafter, reflected the correct date of birth in the records of FCI.

4.6 The issue with regard to the correct date of birth, however, came to fore in 2012 when, the Annual Performance Appraisal Report (APAR) Section of FCI, examined the records pertaining to the petitioner and, consequently, issued a memorandum dated 01.05.2012 to the petitioner, with regard to his date of birth. Since, the petitioner did not respond to the memorandum, a reminder was sent to him, on 08/11.06.2012. The petitioner, finally filed his reply on 25.06.2012, explaining his version of the events.

4.7 Since, the subsequent events were adverse to the petitioner interest, he preferred an appeal. The adjudication of the appeal was delayed which propelled the petitioner to approach this court by way of a writ petition. The said writ petition was numbered as WP(C) 1220/2014. As indicated above, a direction was issued for disposal of his appeal in WP(C) 1220/2014.

4.8 Consequent thereto, the appellate authority vide order dated 13.03.2014, passed a detailed order vis-a-vis the petitioner's appeal. By virtue of the said order, the appeal of the petitioner, was rejected.

4.9. It is precisely, for this reason, that the said order is also impugned in the present writ petition.

SUBMISSIONS OF COUNSELS

5. Mr. Mann, who appears for the petitioner says, the petitioner's case, in short, is not of correction of the date of the birth but to have FCI adhere to

the date of birth reflected in his service book. It is his contention that therefore, the burden is on the respondents, to demonstrate that 09.03.1955 is not the correct date of birth, and that, 05.03.1954, is the correct date of birth.

5.1 Mr. Mann, further submits that the petitioner was handicapped in not reflecting his correct date of birth in his ACRs till 2001, as the service book of the petitioner, was not available to him and to the employees of FCI generally, till 2000.

5.2 The learned counsel submits that in case of doubt, the document on which reliance ought to be placed by this court, is the municipal record. He says that the birth certificate issued by the MCD, shows that the petitioner's date of birth is, 09.03.1955. Mr. Mann also says that the veracity of the said certificate is established by the fact that the date of registration of the event birth in the MCD certificate is indicated as 15.03.1955.

5.3 In support of his contention, the learned counsel for the petitioner, relies upon the judgment of the Supreme Court in the case of ***CIDCO Vs. Vasudha Gorakhnath Mandevlekar, (2009) 7 SCC 283.***

6. Mr. Pudussery, who appeared on behalf of the respondents, has filed a counter affidavit, at short notice. The urgency in the matter required him to file an affidavit with expedition.

6.1 Mr. Pudussery, briefly, based on the counter affidavit filed on behalf of FCI, highlighted the following aspects :-

(i). Since 1987, the petitioner was posted in various Sections of the FCI, which pertained to the Personnel Division;

(ii). the original service book and the history card relied upon the petitioner, were somehow destroyed, and thus, had to be re-casted;

(iii). the re-casted service book does not bear the attestation or counter signatures of the appropriate authority.

(iii)(a). though, it may be pertinent, at this stage to note, that while, the service book does not bear the signatures, the last page of the accompanying history card, does bear the signature of the concerned authority.

6.2 The issue with regard to discrepancy in the date of birth came to fore when, the APAR Section of FCI examined the record pertaining to the petitioner and other employees. The petitioner's response having not been found suitable, he was put in the list of employees due to retire in 2014.

6.3 The FCI, has issued a circular no.59 of 1986 wherein, it is provided that in the absence of rules and regulations framed by it, rules and regulations in force in the Central Government, would be followed. It is thus contended that in the Central Government, the period available for correction of date of birth is five (5) years and, admittedly, the petitioner did not apply for correction of his date of birth, within the period of five years. To be noted, the respondents thus, in effect, denied having received any application as contended by the petitioner till 1976 for correction of the date of birth.

6.4 The petition is woefully delayed. There is no explanation qua the delay and latches, and hence, no relief ought to be given to the petitioner,

6.5 Unless, the petitioner, is able to show conclusively based on the material available with him, that 09.03.1955 is his the correct date of birth, this court would not to entertain the present petition.

6.6 The fact that CIDCO's case stands on a different footing is discernible from the following:

(i) That the petitioner's date of birth has been consistently reflected as 05.03.1954, in the office order and seniority lists, generated by FCI. For this purpose, reliance is placed on office order bearing nos.197 dated 06.06.1997, and the seniority lists dated 09.04.2003, 07.11.2007, 31.12.2008, 10.02.2010, 01.11.2010, 01.05.2011, 01.05.2012, and so on, till 2014.

6.7 It is contended that each of the seniority lists, referred to above, carried a note, which was clearly indicative of the fact that the officials had 90 days' time to register their objections with regard to not only the factum of assignment of seniority, but also, other "*service particulars*".

6.8 In support of his submissions, the learned counsel relied upon the judgment of the *Supreme Court in Union of India Vs. Harnam Singh, (1993) 2 SCC 162* and *Secretary and Commissioner, Home Department and Ors. Vs. R.Kirubakaran, 1994 Supp (1) SCC 155*.

REASONS

7. I have heard the learned counsel for the parties. According to me, what clearly emerges from the record is as follows :-

(i). admittedly in the matriculation certificate, the petitioner's date of birth is shown as : 05.03.1954;

(ii). the certificate issued by the MCD shows the petitioner's date of birth as : 09.03.1955.

7.1 For some strange reason, at the time of gaining employment, the petitioner had produced his matriculation certificate, and not, the MCD

certificate, though the date of birth, even according to him, was registered with the MCD, as far back as on 15.03.1955. This certificate, however, was obtained by the petitioner, evidently, on 19.07.2012.

7.2 It is not in dispute that even though the office order of 06.06.1997 showed the petitioner's date of birth as 05.03.1954, he took no steps to either press his claim for correction, in consonance with his stand that an application for the said purpose was filed way back in 1976 or anytime thereafter when, in the seniority lists issued after 01.04.2003, his date of birth was shown as 05.03.1954. The petitioner, admittedly, till 2000, continued to show in his ACRs his date of birth as 05.03.1954.

7.3 The petitioner, apparently, started showing his date of birth as 09.03.1955, after the receipt of service book by him.

7.4 The anomaly, came to fore, only when, the APAR Section of FCI carried out a scrutiny, in 2012.

8. With the aforesaid facts emerging in this case, what this court is required to determine is, as to whether the petitioner's version that he had applied for correction of his date of birth in 1976 is correct as it is repeatedly stressed upon by courts that correction of date of birth should be sought at the earliest.

8.1 The petitioner's argument that since the correct date of birth got reflected in service book and hence the burden is now on FCI to prove that 9.3.1955 is not the correct date of birth is untenable for more than one reason in this particular case.

8.2 First, the controversy as to the correct date of birth had its genesis in the petitioner himself informing FCI, at the stage of being inducted in

employment that his date of birth was 05.03.1954. The FCI, quite correctly, took this as the correct date of birth, since the petitioner himself claims that said information was supplied based on his matriculation certificate.

8.3 Second, though the petitioner claims that he filed an application for correction of his date of birth in 1976, neither a copy of the application is filed nor was any action taken, admittedly, to have a formal order being passed by FCI on the said application.

8.4 Third, FCI, denies receipt of any such application.

8.5 Fourth, till 2000, the petitioner continued without protest to show his date of birth as : 05.03.1954.

8.6 Fifth, even when office order of 1997 was issued and seniority lists from 09.04.2003 were put in public domain which continued to show the petitioner's date of birth as 05.03.1954, no steps were taken by him to press the purported application filed in 1976.

8.7 Lastly, though the seniority lists carried a note which entitled officer to register their objections vis-à-vis "service particulars" within a period of 90 days, no steps were taken by the petitioner in this behalf.

9. Therefore, if in the aforesaid circumstances, I were to apply the test of preponderance of probability, the petitioner's version of having filed an application for correction of date of birth in 1976, appears to be incorrect. If that be so, this writ petition would have to fail.

10. Besides, there are several imponderables as to how in the service book of the petitioner's date of birth came to be shown as 09.03.1955. FCI's version that records were destroyed and recasted; the fact that petitioner worked in Personnel Section from time to time (though he claims that he did

not work in that particular section which dealt with employment records) or, even the absence of signatures on the service book, cannot be examined at this late stage – the blame for which must be at the door-step of the petitioner.

11. In view of the lack of diligence on the part of the petitioner, in taking recourse to an appropriate remedy, I am not inclined to interfere in the matter, while exercising the jurisdiction under Article 226 of the Constitution. There is an enormous unexplained delay which is clearly unreasonable and, therefore, contrary to the dicta laid down by the Supreme Court in various judgments including its judgment in the case of *Harnam Singh*. The petitioner, will thus have to live with the state of events as they obtain.

12. Mr. Mann's submission that extension of service by a period of one year cannot work to the detriment of FCI, in my view, misses the point that continuation in service does have a cascading effect. Extension of tenure of even one employee, can deprive other employees of their myriad legitimate service benefits, one such example being promotion.

13. Thus, for the reasons given hereinabove, I find no merit in the petition. The same is, accordingly, dismissed.

RAJIV SHAKDHER, J

MARCH 31, 2014

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