

GAHC010006052013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2116/2013

BIMAL KR. MALAKAR
PRESENTLY WORKING AS DUSTING OPERATOR, GRADE-IV, FOOD
CORPORATION OF INDIA, DIVISIONAL OFFICE, AIZWAL, MOZORAM

VERSUS

THE FOOD CORPORATION OF INDIA and 3 ORS
REPRESENTED BY THE CHAIRMAN-CUM-MANAGING DIRECTOR, 16-20,
BARAKHAMBA LANE, NEW DELHI-1

2:THE EXECUTIVE DIRECTOR NE
FOOD CORPORATION OF INDIA
G.S. ROAD
ULUBARI
GHY-7

3:THE GENERAL MANAGER REGION
FOOD CORPORATION OF INDIA
G.S. ROAD
ULUBARI
GHY-7

4:THE AREA MANAGER
FOOD CORPORATION OF INDIA
DIVISIONAL OFFICE
AIZWAL
MIZORA

Advocate for the Petitioner : MRM R ADHIKARI

Advocate for the Respondent : MS.K G SARMAH

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 15-09-2023

Heard Mr. D.N. Sarma, learned counsel for the petitioner. Also heard Mr. B.K. Singh, learned Standing Counsel, Food Corporation of India (FCI) for the respondents.

2] The rejection of the prayer of the petitioner for correction of his date of birth is challenged in the present writ proceeding. The petitioner was employed as a Watchman under the F.C.I. He joined his services on 01.04.1977 and since then, he has been rendering his services without any blemish to the satisfaction of the respondent authorities.

3] It is urged by the learned counsel for the petitioner that after about 3 years of his service under the FCI, the petitioner came to learn that in his service book his date of birth has been inadvertently recorded as 03.05.1954 instead of his actual date of birth which is 10.10.1956 recorded in his birth certificate. A representation was preferred by the petitioner on 04.10.1980 with a prayer to rectify the said mistake. Several representations thereafter were also submitted by the petitioner to which no response was received from the FCI authorities. Although it is stated that the petitioner was given assurances, however, no such

correction was made to his date of birth as per the representations filed the petitioner. After about 25 years of service, the petitioner was promoted to the post of Dusting Operator and in that order also his date of birth was wrongly referred to as 10.10.1955. Thereafter, the respondent by communication dated 09.03.2012 put the petitioner to notice that he was to superannuate from his service on 31.05.2014. This communication was issued enclosing the communication no.Estt.14(1)/2010/Supn/1517 dated 25.02.2012 issued by the Regional Office of FCI. In the said communication, the date of birth was again wrongly shown as 03.05.1954 instead of his actual date of birth which is 10.10.1956. The petitioner thereafter immediately submitted an application dated 01.06.2012 pointing out the mistake to the authorities requesting for necessary correction in his date of birth. Learned counsel for the petitioner submits that the petitioner on becoming aware that his date of birth has not been correctly entered, he had been requesting the authorities by submitting several representations for making necessary corrections. However, his pleas were not resolved. It is submitted by the learned counsel for the petitioner that having come to know about the mistake in his date of birth, the petitioner has been consistently pursuing before the authorities to correct his date of birth, however, the same has not been attended to by the respondent authorities and in the meantime, the petitioner also superannuated.

4] Learned counsel for the petitioner submits that as per the birth certificate issued by the competent authority, his date of birth is recorded as 10.10.1956. Under such circumstances, it is submitted that having no alternative the petitioner had approached this Court seeking appropriate direction and order from this Court to the respondent authorities to correct the date of birth of the petitioner as per his birth certificate and allow the petitioner his due service benefits which has been denied to him because of the wrong recording of his date of birth as 03.05.1954 instead of 10.10.1956. As per the recorded date of birth, which is 03.05.1954, the petitioner has been shown as superannuated on 02.05.2014. It is submitted by the learned counsel for the petitioner that the petitioner would have retired on 10.10.2016 had the authorities corrected his date of birth as 10.10.1956 in due time.

5] The respondents contested the case put up by the petitioner by filing their counter affidavit. In the affidavit filed by the respondents, they disputed that representations dated 04.10.1980 or representation dated 01.06.2012 are not available in the office records. The respondents state that by communication dated 28.08.2002 seven personnel including the petitioner were issued the said communication directing them to submit the date of birth certificate and the documents to verify the date of birth as desired by the Regional Office. It is submitted by the respondents that as per their service records the petitioner

went missing from his services and notices to that effect were published in local newspaper on 14.02.1998 and 19.06.1999. It is further stated that the copies of the representations stated to have been submitted by the petitioner, which are enclosed to the writ petition, are not available in the office records. According to the respondents, the petitioner had submitted a representation only on 01.06.2012 for correction of his date of birth which was after a gap of 34 years and as such, the belated representation filed by the petitioner has been rejected by the Department. Respondents also dispute the correctness of the birth certificate enclosed to the writ petition. Learned counsel for the respondents submits that the petitioner deliberately refrained from approaching the authority at the appropriate time seeking correction of his date of birth. Therefore, at the fag end of his career, the prayer of the correction in the date of birth of the petitioner has been rightly not entertained by the Department. It is further submitted by the learned counsel for the respondents that at the time of signing in the Service Book he had duly accepted his date of birth as 03.05.1954 and therefore, at this belated stage, no correction is permissible and accordingly, the competent authority has correctly rejected his representation.

6] An affidavit in reply has been filed by the petitioner reiterating his claims and contentions made in the writ petition. In the reply affidavit it is stated that due to sudden demise of his wife leaving behind 4 (four) minor children he had

to take leave. This leave was subsequently regularized by the Department. As such, it is not correct that the petitioner went missing or had absconded anytime during his services. It is further submitted that the Registration of Birth and Death Act came into force from 1969 and Tripura Registration of Births and Deaths Rules came into force from 1999 without having any retrospective effect and as such, at the relevant point of time it was not mandatory to get registered one's date of birth immediately after his birth. As such, the petitioner had obtained his birth certificate in year 1978, immediately after joining his services in the FCI.

7] Learned counsel for the parties have been heard and pleadings on record have been carefully perused.

8] The case projected by the petitioner is that his date of birth has been wrongly recorded as 03.05.1954 instead of 10.10.1956 in the Service Book. A photocopy of the service book has been placed before the Court by the respondents counsel appearing for the FCI. In the particulars relating to the petitioner, his date of birth is shown as 03.05.1954. He was shown to have passed the Higher Secondary Examination. The said Service Book was opened on 12.06.1982. At serial no.14 of the particulars entered under the Heading "particulars of previous experience" it is mentioned that from 1968 to 1976 he

worked as a *Sepoy* under 119 infantry battalion. If that be so, and if his date of birth is held to be as 10.10.1956 as per the contention of the petitioner, then on the date he was employed under the infantry battalion, he would have been 12 years old which is quite unbelievable. In his education qualification he has been shown as HSLC passed. However, subsequently in the history card" under education qualification he is shown to be HSSLC failed. There is no explanation as to why school certificate or at least certificate available from the Board or from the University under which he completed his High School has not been referred to or relied upon by the petitioner. The birth certificate is shown to have been issued on 15.12.1979 by the District Registrar, Birth and Death, North Tripura. The representations dated 04.10.1980 and 01.06.2012 although enclosed to the writ petition, but the same do not bear any endorsement from the respondents that they have been duly received and also the respondents have denied receipt of these representations as no record of such representations are available in the Office Record. The only case projected by the petitioner for delay in correction of his date of birth is that the petitioner had been repeatedly requesting the authority concerned for correcting his date of birth since the year 1980. From the Service Book it is found that there is an endorsement made by the Department where it is seen that the petitioner had earlier approached the Civil Court challenging his order of transfer which were

issued.

9] The Apex Court has consistently held that correction of date of birth cannot be permitted to be taken recourse to towards the fagend of one's career before a few months or years of his retirement where the person concerned has accepted his date of birth to be correct during his entire service career. As such, there can be no occasion to permit the petitioner to correct his date of birth towards the end of his career. Reference may be made to the Judgments of the Apex Court rendered in *U.P. Madhyamik Shiksha Parishad & Ors. vs. Raj Kumar Agnihotri* reported in (2005) 11 SCC 465, *Bharat Coking Coal Limited & Ors. vs. Shyam Kishore Singh*, reported in (2020) 3 SCC 411 and *Karnataka Rural Infrastructure Development Limited vs. T.P. Nataraja & Ors* reported in (2021) 12 SCC 27.

10] Having considered the matter in its entirety and also the law laid down by the Apex Court in this regard, this Court does not find any merit in the writ petition warranting any direction to the respondent for correction in the date of birth of the petitioner.

11] In view of the above facts and circumstances of the case, this Court finds that the writ petition is devoid of any merit. Accordingly, the writ petition stands dismissed.

Interim order, if any, stands vacated.

Pending Interlocutory Application(s), if any, also stands dismissed.

JUDGE

Comparing Assistant