



Serial No. 01
Supplementary I List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 42 of 2024

Date of CAV : 29.10.2024

Date of pronouncement: 07.11.2024

Shri. Soidur Rahman Mollah

.....Appellant

- Versus -

1. The State of Meghalaya, represented by the Commissioner & Secretary to the Government of Meghalaya, Home (Police) Department, Meghalaya, Shillong.
2. The Director General of Police, Meghalaya, Shillong.
3. The Additional Director General of Police, Meghalaya, Shillong.
4. The Inspector General of Police, Meghalaya, Shillong.
5. The Superintendent of Police, Resubelpara, District North Garo Hills, Meghalaya.
6. The Accountant General (A&E), Meghalaya, Shillong.

.....Respondents

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S.K. Hassan, Adv.
Ms. M. Rahman, Adv.

For the Respondents : Mrs. N.G. Shylla, Sr. GA with
Ms. I. Lyngwa, GA [For R 1-5]
Ms. E. B. Passah, Adv. vice
Mr. K. Kharmawphalng, Adv. [For R 6]

i) Whether approved for Yes



reporting in Law journals etc.:

- ii) Whether approved for publication in press: No
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J U D G M E N T

(Delivered by the Hon'ble, the Chief Justice)

Soidur Rahman Mollah, the appellant-writ petitioner was a motor mechanic in the office of the Superintendent of Police, Resubelpara, District North Garo Hills, Meghalaya. He was appointed in service on 3rd March, 1988. On the basis of his year of birth recorded as 1964 in the verification roll of the concerned department (no date or month of birth is on record), he was superannuated after 30th June, 2022, at the recorded age of 58 years. He claims that his date of birth is 24th January, 1967, also entered in the records, that he ought to retire on 31st January, 2025 and that he has been wrongfully discharged from service.

He preferred the instant writ petition in this Court **[WP(C) No. 297 of 2023 : Shri Soidur Rahman Mollah vs. State of Meghalaya and others]**.

The learned single judge hearing the writ thoroughly disbelieved him, dismissed his claim and rejected the writ petition.

Hence, this appeal.



It is quite common for an employee particularly a government employee, just before retirement, to claim that his actual age is less than that recorded in the records of the employer, to ask for rectification of the records so as to postpone his imminent retirement. The courts have frowned upon this kind of a litigant. It has viewed the claim to an earlier date of birth with suspicion and thought this kind of an employee to be an opportunist and an unscrupulous person.

On most occasions such claims are not entertained. In few select cases where the employer was manifestly at fault in recording the age of the employee and there was good reason why the employee could not approach the court at an earlier point of time specified by the rules to seek age rectification, the courts have allowed the claim for age revision.

These legal principles would be evident from the authorities cited by Mrs. N.G. Shylla, learned Sr. GA for the respondents, mentioned below.

In State of Madhya Pradesh and others vs. Premlal Shrivastava: (2011) 9 SCC 664 the court frowned upon the correction of the date of birth of a government employee on the eve of his retirement, maintaining that correction of the date of birth could only be effected



within the time stipulated by the rules and should not be allowed thereafter, unless there was negligence or a manifestly incorrect entry. See also **Karnataka Rural Infrastructure Development Limited vs. T.P. Nataraja and others: (2021) 12 SCC 27** and **Secretary and Commissioner, Home Department and others vs. R. Kirubakaran: (1994) Supp(1) SCC 155**.

The same principle was applied in **Bharat Coking Coal Limited and others vs. Shyam Kishore Singh: (2020) 3 SCC 411** with the additional observation that having accepted an entry throughout his tenure, an employee could not be allowed to change it at the very end of it.

On the other hand when the date of birth as claimed by the employee is supportable from the records but the employer thinks that such recording is erroneous or ignores it and proposes to consider the later recorded date of birth as correct, the court has not allowed such exercise to be done without hearing the employee.

In **Shankar Lal vs. Hindustan Copper Limited and others: (2022) 6 SCC 211**, the voluntary retirement benefits under the Voluntary Retirement Scheme (VRS) of Hindustan Copper Limited were reduced by the act of the employer unilaterally raising the date of



birth of the employee. The employee's stand was that his date of birth was 21st September, 1949 and this was recorded in the service book of the employer when he joined service in 1971. The case of the employee was at the time of his retirement, he came to know that his date of birth was raised to 21st September 1945. The employer took the stand that its recording of the date of birth as 21st September, 1949 was an act by mistake. Aniruddha Bose, J. delivering the judgment of the Supreme Court remarked as follows:

“23. The employer has taken a stand that the date of birth recorded of the appellant in the service book was an act by mistake. This is a weak explanation in our opinion. Several subsequent steps were taken by the employer in relation to the appellant's employment on the basis of the entry in his service book. The employer are the custodian of these records. They acted all along on the basis of the service entries till the appellant took VRS. It has been pleaded by the appellant that at the time of his appointment, the office of the respondent company entered in all their records his date of birth as 21-9-1949. In the light of these facts, we are not inclined to accept the version of the employer that service book recordal was a mistake. The employer, a public sector unit in this case, was expected to act with a certain element of responsibility in maintaining the service records of their workmen and ensure that there is uniformity in particulars concerning individual employees. There is no explanation as to how this mistake occurred and how pay slips continued to be issued carrying the mistaken date of birth for such a long time. The High Court in our view ought not to have had accepted “mistake” as the cause for different entries in different documents.

27. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the



principles of natural justice. The decision not to follow the service book recordal was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e. 21-9-1949 was the birthdate of the appellant and this was a long established position. Moreover, since in the own records of the employer two date were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice.

29. The very reasoning on which an employee is not permitted to raise age-correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to be permitted to fall back on the Form B which would curtail the VRS benefit of the appellant."

Some points arise in this appeal, which do not usually arise in most cases.

The unusual element in this case is that the appellant-writ petitioner was appointed in service on 3rd March, 1988. In the verification roll which was filled up by him and thereafter approved and entered in the records of the department, his year of birth was stated to be 1964. The date and month were not stated.

Some six days after his joining, the school which the appellant attended till class VII, on 9th March, 1988, issued a certificate stating



that according to the records of the school, his date of birth was 24th January, 1967. However, learned counsel for the respondents tells us that at some point of time not known to the authorities, the date of birth, 24th January, 1967 was entered in the records. How it was entered and who entered it is not known. This latter date of birth was not approved by the department. However, learned counsel for the appellant-writ petitioner shows us identity cards at pages 40 and 43 of the stay petition said to be issued by the Meghalaya Police, where his date of birth is recorded as 24th January, 1967. In the notice for superannuation pension dated 10th May, 2022, at page 45 of the appeal against Serial 6, his date of birth is shown as 1964 in brackets and 24th January, 1967 outside the brackets. In the statement of accounts of the Principal Accountant General, for the year ending 31st March, 2022 at page 52 of the petition, his date of birth is shown as 24th January, 1967. Therefore, according to the verification roll which is an admission by the appellant-writ petitioner, his date of birth is 1964 whereas according to other records of the department, it is 24th January, 1967.

Learned counsel for the respondents very rightly pointed out that it was quite surprising and suspicious that the school certificate certifying the date of birth was issued six days after the appellant/writ



petitioner's joining service and it was equally surprising and suspicious that it was accepted by the department. Furthermore, even when the date of birth was recorded as 1964, no steps were taken by the appellant-writ petitioner till he nearly reached the age of retirement for recording 24th January, 1967 as the date of birth.

The appellant-writ petitioner has withdrawn all the retirement benefits after retirement.

The question arises when in so many records, the date of birth of the appellant/writ petitioner is shown as 24th January, 1967, on what basis the employer police department proceed to issue the superannuation notice declaring his year of birth as 1964.

In fact, the Superintendent of Police, North Garo Hills, Resubelpara admitted in a communication dated 19th April, 2022 that initially, the date of birth recorded in the records was 1964, thereafter 24th January, 1967 "is found to have entered in his Service Sheet (Vol-I) as "(1964) 24th January, 1967". However, he added that "no Official order of the Competent Authority could be seen in his Service Records/Service Book for changing his Date of Birth from 1964 to 24th January, 1967."

We declare the following principles.



A government employee may seek age rectification if it is permitted by the rules of employment and within the time provided for that purpose. Where a government employee, on the eve of retirement proposes to seek age correction, the effect of which would be to postpone the date of retirement it should normally not be allowed unless some manifest error in the record or culpable negligence in its preparation is evident. In these exceptional cases, the court might venture to get the age of the employee reassessed. However, if as in this case there are two entries against the date of birth of a government employee in the records, the latter one claimed by the employee to be the correct date and the earlier one by the employer, the employer should not take any unilateral decision to decide on the correct date of birth of an employee which is to be entered in the records. Before making a determination of the date of birth, an employee must be given a reasonable opportunity of hearing and upon hearing, and considering the case of the employee reasonably, should a decision be taken in this regard. This kind of a decision can be taken at any time during the tenure of the employee, even if it is at the “fag end” of his tenure.



That was not done in this case and the appellant-writ petitioner made to retire after 30th June, 2022, considering his year of birth as 1964.

Now, this brings this case close to the facts in the judgment of the Supreme Court in **Shankar Lal vs. Hindustan Copper Limited and others: (2022) 6 SCC 211**. If the respondents as employer were to superannuate the appellant on the footing i.e., the date of birth was 1964 and not 24th January, 1967, both of which were in the records, it amounted to the employer taking a decision on the age of the employee at the time of his retirement. The judgment declared “the very reasoning on which an employee is not permitted to raise age-correction plea at the fag end of his service to extend his tenure should apply to the employer as well.” Therefore, what was needed was to give the appellant a hearing and pass a reasoned order with regard to his age as laid down by Bose, J in that judgment.

In those circumstances, we partly allow this appeal by directing the competent authority of the respondents to take a decision as referred to in the said communication of the Superintendent of Police dated 19th April, 2022 after giving a hearing to the appellant and by a reasoned order within two months of communication of this order. On the basis



of the decision taken, the respondents could either affirm the decision to superannuate the appellant or take a fresh decision on his date of birth and superannuation with consequential reliefs. The impugned judgment and order is set aside

This appeal is accordingly, partly allowed.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice

