

GAHC040002052022

2024:GAU-AP:965



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

Case No. : WP(C)/77/2022

Vimal Goswami
S/o Late H.G.Goswami,
Presently residing at HQ 1444 BCC (GREF CAMP), Near Jengthu Bridge, Manmow,
District Namsai, Arunachal Pradesh, Pin Code 792103

VERSUS

THE UNION OF INDIA and 2 Ors.
Represented by Ministry of Defense Secretary, Govt. of India 101-A, South Block,
New Delhi

2:Joint Secretary (Border Roads)
Age: 0
Occupation :
Ministry of Defense (BR Wing)

Govt. of India (Formerly designated as Secretary
BRDB) Sena Bhawan
'B' Wing
New Delhi 110011

3:The Director General
Age: 0
Occupation :
Border Roads Seema Sadak Bhawan Ring Road
Delhi Cantt
New Delhi - 11001

Advocate for the Petitioner : Rintu Saikia, Ligam Nochi,Limi Bam,Bomchi Taipodia,Kirnya
Lollen,Idak Bam,Yamini Linggi

Advocate for the Respondent : Marto Kato, DSGI

Linked Case : IA(C)/102/2024

Vimal Goswami

Age: 57

Occupation :

Address: Son of Late H G Goswami

presently residing at HQ 1444 BCC (GREF) camp near Jangthu Bridge

Manmow

Namsai District

Arunachal Pradesh 792103

VERSUS

The Union of India and Anr

Age: 0

Occupation :

Address: represented by Ministry of Defense Secretary

Govt of India

101 A South Block

New Delhi

2: The Joint Secretary (Border Roads)

Age: 0

Occupation :

Address: Ministry of Defense (BR Wing) Govt of India (Formerly designated as Secretary

BRDB) Sena Bhawan

B Wing

New Delhi 110011

Advocate for : Idak Bam

Advocate for : Marto Kato appearing for The Union of India and Anr: Advocate ,
appearing for 2, respectively.

:: B E F O R E ::
HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of Hearing : 21.10.2024

Date of judgment & order : 29.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. I. Bam, learned counsel for the petitioner along with Mr. M. Kato, learned DySGI for the respondents.

2. The petitioner has filed the instant writ petition, praying for a direction to make the necessary correction in the service record, rectifying his date of birth, which was wrongly recorded as 31.08.1964, while his correct date of birth is 31.08.1966.

3. The case of the petitioner is that in accordance with the notification dated 30.11.1979 issued by the Government of India, Ministry of Home Affairs, DP&AR, which was reiterated in the Office Memorandum dated 01.05.1993 and 16.12.2014 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, the petitioner had made a representation for correction in his service record on the wrong date of birth, within 2 (two) years from his joining of service, by submitting his Birth Certificate, issued on 04.02.1992 by the Executive Officer, Nagar Palika, Lakhimpur Kheri, Uttar Pradesh, wherein his correct Date of Birth was recorded as 31.08.1966. The petitioner filed his first representation on 30.04.1992, which was rejected mechanically by the respondent authority on 14.12.1992, without giving any reasons, but this was never communicated to the petitioner till December 1994.

The petitioner had therefore made fresh representation dated 10.12.1994, which was rejected and communicated to the petitioner only on 28.07.2018. Thereafter, the petitioner again filed a representation dated 10.09.2018, through proper channel and despite the recommendations for consideration of his representation, no final decision was taken by the appropriate authority. The petitioner then submitted another representation dated 04.10.2019. However, on still receiving no response from the concerned authority, he filed the instant writ petition.

During the pendency of the writ petition, the representations of the petitioner was disposed of and rejected by the respondents vide their letter dated 05.04.2023, wherein the petitioner had filed I.A.(C) No. 102(AP)/2024 bringing this fact to the notice of the Court and prayed for setting aside the said letter dated 05.04.2023.

4. Mr. I. Bam, learned counsel for the petitioner submitted that as per the notification dated 30.11.1979, issued by the Ministry of Home Affairs, Government of India, the petitioner had applied for the alteration of his date of birth to the appropriate authority within five years of his entry into Government service. That the wrong entry was due to a genuine bona fide mistake made in his School Leaving Certificate and that the date of birth so altered from 31.08.1964 to 31.08.1966 would not make him ineligible to appear for the matriculation examination or the Union Public Service 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.

5. The learned counsel submitted that as per the correct date of birth, the

petitioner would have been 13 (thirteen) years of age when he passed his matriculation, but this would not debar him from sitting for his examination. In support of his point, the learned counsel for the petitioner has relied on the judgment in ***High School & Ors. Vs. Gopal Narain Singh***, reported in ***AIR 1973 ALL 345***, wherein, the Court had set aside the directive of the State Government prescribing a minimum age for a student to receive Higher Secondary Education.

He further submitted that when the petitioner was issued his appointment letter on 05.03.1990 he was 24 years of age and was thus eligible to appear in the UPSC examination.

6. The learned counsel for the petitioner also submitted that the parents of the petitioner were uneducated and had not taken the necessary steps for correction of his date of birth wrongly recorded in his School Leaving Certificate since they did not have the resources to approach the Court for making such necessary corrections or for obtaining his Birth Certificate. The petitioner had taken belated steps in obtaining his Birth Certificate to rectify his Date of Birth wrongly recorded in his School Leaving Certificate by obtaining his Birth Certificate as per the provisions under Section 15 of the Registration of Birth & Death Act, 1969. Wherein his Birth Certificate was then issued on 11.02.1992, after due verification by the concerned authorities following the due process of law

7. The learned counsel for the petitioner has also relied on the judgment in ***Secretary & Commissioner, Home Department Vs. R. Kirubakaran***, reported in ***1994 (1) SCC (Supp.) 155***, wherein, the Apex Court held that unless it is a clear case and on the basis of the materials produced, for

the correction of the birth certificate, the Court or the Tribunal should not issue a direction for the correction of the Birth Certificate. The learned counsel for the petitioner submits that in the instant case, on the production of the Birth Certificate by the petitioner, it is a clear case which is to be considered favourably being submitted within the stipulated period of 5(five) years. The learned counsel further submits that the petitioner had now retired on 30.08.2024 during the pendency of the instant writ petition, on the basis of his wrong Date of Birth and submitted that he may be reinstated into service on the correction of his Date of Birth.

8. Mr. M. Kato, learned DySGI for the respondents submitted that the correction in the service record of the petitioner with regards to his Birth Certificate was rejected under the provisions of Note-5, Clause(C) of the notification dated 30.11.1979 issued by the Ministry of Home Affairs, Government of India. The learned DySGI submits that if the Date of Birth of the petitioner is taken as 30.08.1966, as alleged by the petitioner, then the petitioner would not be eligible to appear in the School Leaving Examination, since he would be aged only 13 years at that time, while he is required to attain the age of 15 years to appear in the School Leaving Examination.

9. The learned DySGI further submitted that there has been no correction in his Degree Certificate, where his date of birth is recorded as 31.08.1964. He submitted that the petitioner had joined service at the age of about 26 (twenty-six) years on 02.12.1990. Thus, if his Date of Birth was recorded as on 31.08.1966, he may be ineligible to appear in the Union Public Service Commission (UPSC) examination. The instant petitioner was selected by the UPSC after all due verification and therefore, there are no grounds for altering

the Date of Birth from 31.08.1964 to 31.08.1966 at this belated stage. The learned DySGI also submits that the petitioner has applied for the correction of his Date of Birth at a belated stage, and at present he had retired from service on superannuation on 31.08.2024 and, as such, the application of the petitioner should not be considered at such a belated stage.

10. The learned DySGI has relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Union of India Vs. Harnam Singh*** in Civil Appeal No. 502 of 1993.

11. I have considered the submissions made by the learned counsels for the parties and I have also perused the documents brought on record.

12. It is seen that the notification dated 31.11.1979 issued by the Government of India, Ministry of Home Affairs, DP&AR and letter reiterated in the Office Memorandum issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms and in the Office Memorandum dated 01.05.1993 and 16.12.2014, wherein it is clearly provided that

“Note 5-..... 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 & Audit and Accounts Department, Or an administrator of an Union Territory under which the Government servant is serving, if-(a) A request in this regard is made within five years of his entry into Government service; (b) It is clearly established that a genuine bonafide 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 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."

13. In the instant case, it is seen that the petitioner was appointed as Assistant Executive Engineer (Civil) in General Reserved Engineer Force in Border Roads Engineering Service under Border Roads Development Board, Ministry of Service Transport in a letter dated 05.03.1990, wherein, on his joining of service, his Date of Birth was recorded as 31.08.1964 as per the date of birth shown in his School Leaving Certificate. Thereafter, he had applied for the correction of his Date of Birth on 14.12.1992, soon after his joining the service, for the from 31.08.1964 to 31.08.1966 by producing the Birth Certificate, which was well within the stipulated time of 5 years as per the notification issued by the Government of India, Ministry of Home Affairs dated 30.11.1979. It is seen that the respondent authority had rejected the said application dated 14.12.1992 without assigning any reasons but simply mentioned that the Rules do not allow the alteration of date of birth, which was communicated to him belatedly in 1994, whereby, he had made a fresh representation dated 10.12.1994, which was rejected by referring to the rejection of his application dated 14.12.1992. This was communicated to him only on 28.07.2018 by furnishing the copies of the rejection orders. The petitioner thus again made a fresh representation dated 10.09.2018 on the grounds that his previous representations were rejected, not in accordance with the Office Memorandums issued by the Government of India. Thereafter, on receiving no response from the appropriate authority, he filed another representation dated 04.10.2019 and on receiving no response, he filed the writ petition.

From the above sequence of facts, this Court finds that there was no delay on the part of the petitioner in making an application for altering the Date of Birth, by producing his Date of Birth Certificate, which showed that his correct Date of Birth is 31.08.1966. It is apparent that the delay was caused due to the late response of the respondent authorities, who had finally disposed of the applications/representations on 05.04.2023, during the pendency of the writ petition on the ground that the petitioner had not corrected his school leaving certificate.

14. This Court finds that if the corrected Date of Birth is taken as 31.08.1966, then the petitioner would have been 13 years of age at the time when he appeared for his School Leaving Examination, for which this Court is in consonance with the decision of the Allahabad High Court in ***High School & Ors. Vs. Gopal Narain Singh (Supra)*** and ***Union of India Vs. Harnam Singh (Supra)***, wherein it was reasoned and held as under:

“14. It was urged that the experts have unanimously found that several changes take place at the ages of 5, 10 and 13 years. It is one of the reasons for making the classification at the age of 14. If this was the reason, then surely the classification would have taken some other form. The Heads of Institutions could have been authorised to see that the boys below the age of 14 years, who are mentally immature or physically frail, be barred. It was also stressed by learned Advocate-General that the State Government wanted to achieve the objective, that only students, who have capacity to receive the higher secondary education, should be promoted to reach the higher classes. That is why it prescribed the minimum age for admission to class VI at 9 years. The supplementary counter-affidavit does not furnish any material to sustain the case that students below the age of 9 are not fit to receive higher Secondary

education. This classification again seems to have been based upon the critical considerations rather than an objective analysis based upon factual data.

15. In our opinion, the directive of the State Government dated 23rd December, 1965, as well as Regulation 33 suffered from the vice of discrimination in violation of [Article 14](#) of the Constitution.”

15. It is also seen that if the Date of Birth of the petitioner is corrected and taken as on 31.08.1966, he would still be eligible to appear for the Union Public Service Commission Examination, since he would be above 21 years of age, at the time when he gave his examination, considering that he had received his appointment letter on 5th March, 1990, wherein at the time of receiving his appointment letter he would then be aged 24 years.

16. On perusal of the Birth Certificate produced by the petitioner, which was duly issued on 11.02.1992 under Section 12/17 of the Registration of Births & Death Act, 1969, this Court is satisfied with the explanation given by the petitioner for the belated application for his Birth Certificate, which is annexed in the writ petition as Annexure-5, and also finds that the Birth Certificate was issued after following the due process of law.

17. In view of the above, considering the facts and circumstances of the case, this Court finds it fit to allow the instant writ petition, wherein the Date of Birth of the petitioner is to be corrected in his service record, from 31.08.1964 to 31.08.1966 on his production of his Birth Certificate, exhibited as Exhibit-5 in the writ petition and subsequently, also find it fit to set aside the Order dated 05.04.2023, being satisfied that there was a genuine mistake in the date of birth recorded in his School Leaving Certificate.

18. Accordingly, the State respondents will take steps for reinstatement of the petitioner on his retirement on superannuation due to the wrong record of his Date of Birth as 31.08.1964.

19. Writ Petition No. 77(AP)/2022 stands allowed and disposed of, and resultantly the connected I.A.(C) No. 102(AP)/2024 also stands disposed of as above.

JUDGE

Comparing Assistant