

GAHC010187862014



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

Case No. : WP(C)/6483/2014

THANU GOGOI
S/O- LT. BOLAKA GOGOI, R/O VILL.- CHANDRAPUR, WARD NO. 2,
BOKAJAN, P.O.- BOKAJAN CEMENT FACTORY, DIST.- KARBI ANGLONG,
ASSAM, PIN- 782490.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, HEAVY INDUSTRIES AND
PUBLIC ENTERPRISES DEPTT., NEW DELHI.

2:THE CEMENT CORPORATION OF INDIA LTD.
CORE- V SCOPE COMPLEX
7
LODHI ROAD
NEW DELHI
REP. BY ITS CHAIRMAN-CUM- MANAGING DIRECTOR.

3:THE GENERAL MANAGER
CEMENT CORPORATION OF INDIA
BOKAJAN UNIT
P.O.- BOKAJAN
DIST.- KARBI ANGLONG
ASSAM.

4:HOD P and A
CEMENT CORPORATION OF INDIA
BOKAJAN CEMENT FACTORY
DIST.- KARBI ANGLONG
ASSAM
PIN- 782490

Advocate for the Petitioner : MR.H DAS

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 12.06.2024

Heard Ms. V Khaklary, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC for the respondent No.1. None has entered appearance for the respondents No.2 to 4.

2. The present writ petition has been instituted by the petitioner prayer for a direction upon the respondents No. 2 to 4 for rectification of his date of birth as recorded in his service record as '01.06.1954' in lieu of '01.04.1954'.

3. As projected in the writ petition, the petitioner in the year 1975 pursuant to an advertisement issued by the respondent No.2 i.e.The Cement Corporation of India Limited had submitted his application for the post of Helper in the Electrical/Mechanical department of the said corporation. The petitioner thereafter was recruited on being selected in the said selection process and joined the services of the respondent Corporation on 17.07.1975. It is the submission of the petitioner that the requisite qualification for the post of Electrical (fitter) was HSLC passed with ITI certificate.

4. The above being the minimum qualification prescribed and the date of birth of the petitioner having been recorded in his HSLC certificate which was produced by him before the respondent authority and therein the age of the petitioner being recorded as 16 years 9 months 0 days as on 01.03.1971, his date of birth would work out as "01.06.1954". The respondent authority however, in the records had proceeded to record his date of birth as "01.04.1954", which according to the petitioner was on account of wrong calculation made while determining the date of birth of the petitioner in terms of the particulars provided in the HSLC certificate as issued by the Board of Secondary Education, Assam. It is submitted by the learned counsel for the petitioner that in terms of the date of birth as recorded in his service records, the petitioner stood superannuated from his service on 31.03.2012.

5. It is the contention of the petitioner that the Govt. of India had permitted the respondent No.2 Corporation to increase the age of superannuation of all Board and below Board level employees of the Corporation from 58 to 60 years. However, the petitioner having been already retired from service on 31.03.2012 on the basis of the date of birth as recorded in the service record, he was denied the said extension of service and accordingly, a prejudice was caused to him and thereafter a representation was

submitted by the petitioner, but the same having not been responded to by the respondent authority, the present proceeding has been instituted by the petitioner praying for rectification of his date of birth as recorded in the service records from “01.04.1954” to “01.06.1954” and thereafter to allow him to continue in service till the age of 60 years with release of salary due to him for the above period.

6. Learned counsel for the petitioner has submitted that the date of birth as recorded in his service records being wrong and the said error being able to be rectified basing on the HSLC certificate records, this Court would be pleased to direct the respondent No.2 Corporation to rectify the date of birth of the petitioner and also as a consequence thereof, the petitioner is to be deemed to have continued in his service till the age of 60 years with all consequential benefits.

7. It is seen that the contention of the petitioner although attractive, but on examination, it is found that the Corporation in the affidavit filed by it in the matter had contended that the date of birth of the petitioner as recorded in the service records as “01.04.1954” was so recorded at the time of his initial entry into service and the same was to the knowledge of the petitioner right from 17.10.1975 when he joined in service of the Corporation. It is contended that thereafter also the petitioner had submitted his Employees Provident Fund Form on 24.09.1979 as well as on 02.11.1996 wherein the date of birth of the petitioner was declared by himself to be “01.04.1954”. It is further contended that the petitioner on 03.01.2005 attested his date of birth in the EPFO NSSF Form as “01.04.1954” and accordingly it is contended that the date of birth as recorded in the service record of the petitioner as “01.04.1954” was so done with the consent of the petitioner and the same being to his knowledge till the date of his superannuation and at no point of time he had disputed the said position accordingly the relief as sought for by the petitioner in the present proceedings cannot be granted to him.

8. It was contended by the Corporation that on account of the said position the petitioner must be deemed to have waived any error that may have existed in his service records pertaining to the recording of his date of birth. It was further contended that there was a definite procedure for rectification of the date of birth if wrongly recorded in the service record of an employee, employed under the respondent No.2 Corporation and such request for rectification was required to be made within a period of five years from the date of his joining in the Corporation. It is contended that the petitioner had approached the corporation after about 35 years of his joining in the service of the Corporation for rectification of the date of birth as recorded in his service records.

9. In the above premises in the affidavit it was contended that the writ petition does not merit consideration by this Court and the prayer made therein is to be rejected.

10. I have heard the learned counsel for the petitioner and also perused the materials available on record, including the affidavit filed by the respondent No.2.

11. It is a fact that the date of birth of the petitioner was recorded in his service record as “01.04.1954”. The said position was attested to by the petitioner in his service book and also from time to time when such date of birth was required to be recorded in various forms including the Employees Provident Fund Form. The respondent Corporation had made a categorical statement in the affidavit to the effect that the petitioner had all long in all his service record as well as in the forms pertaining to the enrollment/transactions in the EPFO NSSF account opened in his name, recorded his date of birth as “01.04.1954” and at no point of time, disputed the said position. The said aspect of the matter is also obtained from the documents as annexed to the said affidavit, wherein the petitioner in connection with the said EPFO NSSF account on his own, declared his date of birth as “01.04.1954”. The contention made in the said affidavit by the respondent No.2 was not disputed to by the petitioner herein by way of filing any rejoinder. It is also seen that the petitioner after the decision of the Govt. of India to enhance the date of retirement of Board level as well as below Board level employees of the respondent No.2 Corporation from 58 years to 60 years had made representation before the authorities of the respondent Corporation for the rectification of his date of birth. Such representation of the petitioner was rejected by the competent authority vide communication dated 06.09.2012. It is seen that after the rejection of the said prayer on 06.09.2012, he had not immediately moved before this Court and he had instituted the present proceeding only on 05.12.2014 i.e. after a lapse of two years, and there is no explanation put forth for the delay so occasioning in instituting the present proceeding.

12. In view of the above and the categorical contentions as made by the respondent No.2 in its affidavit with regard to the declaration of date of birth of the petitioner as “01.04.1954” and the acceptance of the same by the petitioner during the tenure of his service till the submission of the representation on 15.05.2012 i.e. after the date of his superannuation from service and the said position not having been disputed by the petitioner herein, this Court is not in a position at this stage to accept the prayers made by the petitioner in the present proceeding to direct the respondent authority to rectify the date of birth of the petitioner herein from “01.04.1954” to “01.06.1954”. Consequently, the writ petition is held to be devoid of merit and accordingly the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant