

26.02.2021
Item No. 18
Ct. No. 04
PG

M.A.T. 259 of 2021
With
I.A. no. CAN 1 of 2021

Jebunnessa Munshi.
Vs.
The West Bengal Legislative Assembly Secretariat
& anr.

Mr. Bikash Ranjan Bhattacharyya, sr. adv.,
Mr. Kallol Bose
Mr. Suman Banerjee
.....for appellant

Mr. Raja Saha
Mr. Amit Kumar Ghosh for respondents

This intra-Court appeal is from interim order in the writ petition, where appellant had prayed for cancellation of letter dated 13th January, 2020 and memos dated 24th and 28th December, 2020. The prayers relate to her impending retirement. Appellant wanted age correction. Interim order was refused. Parties have appeared and they agree that the appeal itself can be taken up on the papers disclosed in the stay application.

Mr. Bhattacharyya, learned senior advocate appears on behalf of appellant /writ petitioner. He submits, exceptional circumstances can cause age correction as has been said by Supreme Court. The

document(s) must be unimpeachable for Court to rely on as the exceptional circumstance, in allowing the age correction, keeping in mind the other aspects of why it should not be allowed.

On query from Court, we have been shown paragraph 5 in the writ petition introducing the documents, which Mr. Bhattacharyya submits, are unimpeachable. Paragraph 5 is reproduced below:-

“Your petitioner states that as the service book of the petitioner was not traceable from 2007, the respondent authorities concerned decided to reconstruct the said service book of the petitioner on the basis of petitioner’s long persuasion. On 27.08.2013, following the direction of her superior authority and for the purpose of reconstruction of her service book, the petitioner duly submitted attested copies of her admit card, mark sheet and pass certificate of her High Madrasah Examination. In said documents, the date of birth of the petitioner is clearly mentioned as 23.02.1963. Photocopy of the said letter dated 27.08.2013 along with copies of the admit card, and pass certificate of High Madrasah Examination of the petitioner are annexed hereto and collectively marked as ‘Annexure P-1’.”

The originals have been produced before us. Mr. Saha, learned advocate appears on behalf of respondents and has inspected the documents.

Mr. Bhattacharya relies on judgments of Supreme Court in **State of T N v T.V. Venugopalan** reported in **(1994) 6 SCC 302**, paragraph 7. He submits, memo relied on by respondents is dated 24th January, 2012. Per declaration of law in **State of T N** (supra) his client has five years thereafter to apply for age correction. It is on expiry of this five years that she can be said to lose her right to make application for correction of date of birth. He next relies on **Umesh Chandra v. State of Rajasthan** reported in **(1982) 2 SCC 202**, paragraphs 14, 15 and 16 for it to be said that the unimpeachable documents were made *ante litem motem*, that is to say they were made at a time when declarant had no motive to distort the truth. Lastly he relies on **Sisu Ranjan Das v. Commissioner of Police** reported in **1979 (2) CLJ 428** for view of a learned single Judge of this Court that the document of appointment bearing signature and designation of the officer could not be taken to be a declaration under sub-rule (1) of rule 9 in West Bengal Service Rules, Part- I framed by the Governor under article 309 of the Constitution, came into force on 1st October, 1971. He submits, interference on urgent basis is necessary as in event her employer

causes her to retire, irreparable damage will be caused.

Mr. Saha, draws attention to pages 169 and 171 (disclosures in the affidavit-in-opposition used in the writ petition). Page 169 is application for enrolment by form A in West Bengal Health Scheme, made on 12th September, 2011 by appellant, under her signature. Relevant particulars in this document are that date of birth is 23rd February, 1961, date of entry into Government service is 16th March, 1981 and date of superannuation is 28th February, 2021. Page 171 is application form for part withdrawal from General Provident Fund (GPF). Here too appellant has, on 24th August, 2012, said, inter alia, her superannuation falls on February, 2021. Similar part withdrawal application was made earlier on 8th April, 2011 (page 165) giving same particulars. Mr. Bose assisting Mr. Bhattacharyya submits, explanation that subsequently correction of dates was made by the GPF authority at instance of his client, has been given in the supplementary affidavit. He opposes interference also relying on **State of T N** (supra), paragraphs 6 and 7.

We have examined the originals of the two documents relied upon in the writ petition, disclosed therein as collective annexure 'P/1'. Both the documents are duplicates. The documents, as

duplicates, were issued on 8th April, 2013. The pass certificate issued by West Bengal Board of Madrasah Education on High Madrasah Examination does not bear particulars of date of birth. The explanation at the Bar is, the writing was washed away. Attested copy of this document appears as part of the annexure. The endorsement of attestation is as on 27th August, 2013. It is clear that then the obliteration happened between 8th April, 2013 and 27th August, 2013. There is a further submission at the Bar, of the originals lost in travel undertaken by appellant in a taxi, that is why the duplicates were obtained.

In context of above facts, paragraph 5 reproduced above is to be seen again. There is no averment on discovery of the lost originals of these documents, at a date after 24th August, 2012, when lastly appellant declared her date of superannuation to be in February, 2021. It strikes us that there was also no attempt at explanation as to how 23rd February, 1961 was asserted by the parties, to be the date of birth prior to 24th August, 2012. Disclosure in the writ petition was attested copy of the certificate, bearing particulars of her date of birth, the attestation made a few months after the duplicate certificate was itself obtained, without explanation as on the date of filing the writ petition that on or prior

to that day and in between 8th April, 2013 and 27th August, 2013, the particulars of date of birth in the duplicate certificate stood obliterated. We do not find, prima facie, the two original duplicates to be unimpeachable documents. We do not therefore have reason to interfere with impugned order.

State of T N (supra) is not applicable because of our above finding on the documents. **Umesh Chandra** (supra) is also not applicable because we have not been shown the original documents, for us to find that they were made *ante litem motem*. View in **Sisu Ranjan Das** (supra) was taken on a document signed by the appointing officer. Such document was held as could not be a declaration of the appointee. The facts are different here.

The application and appeal are both dismissed. We reiterate that our this order is on prima facie findings. The first Court will independently deal with the writ petition for its final disposal. The documents handed up are handed back.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)

