

S/L 30.06.2022
129

C.R.R. 2943 of 2018

In re: An application under Section 482 of the Code of Criminal Procedure, 1973.

sb

In the matter of: Juthika Tokdar

Mr. Debabrata Acharyya
Mr. Sital Samanta
Mr. Bibekananda Sinha Ray

..for the petitioner.

Mr. Sudip Ghosh
Ms. Debjani Sahu

...for the State.

Mr. Sudip Ghosh, learned advocate has been requested to appear with Mr. Debjani Sahu in this matter on behalf of the State.

A copy of the application has been made over to him. Let his appointment be regularised.

The petitioner was an Assistant Teacher in Pakuahat Ananda Niketan Mahabir High School (H.S). The then Secretary of the School on May 18, 2010, lodged a complaint against the petitioner which was registered by the Police under Section 420 of the Indian Penal Code, 1860.

It was alleged, inter alia, in the said complaint that in the service book of the petitioner, her date of birth was recorded as January 14, 1951. Accordingly, the petitioner was due to retire on 31st January 2011. At the time of preparation of papers related to the retiral dues of the petitioner, it was found that in the Higher Secondary certificate the date of birth of the petitioner was mentioned as January 14, 1948. Upon noticing such discrepancies in the service book and the Higher Secondary certificate of the petitioner, the managing committee

of the school decided to request the relevant school to ascertain the date of birth of the petitioner. The said school accordingly confirmed that the date of birth of the petitioner was January 14, 1948. As per said date of birth, the petitioner was due to retire on January 31, 2008, but in fact, the petitioner served in the school till March 18, 2010. The petitioner, therefore, served in the school even after her age of superannuation and also illegally drew her salary for the said period.

The petitioner was asked on April 22, 2010, to return the salary received by her for serving extra 25 months even after her date of retirement. Petitioner did not comply with the said direction. The concerned District Inspector of school had issued a direction upon the school to lodge an F.I.R. against the petitioner. Accordingly, the said F.I.R. was lodged.

The F.I.R.-maker admitted in his complaint that it was a mistake of the school in not recording the correct date of birth of the petitioner. It was, however, alleged that it was the obligation of the petitioner to inform the school as to her correct date of birth. The petitioner even at the time of preparation of her pension papers did not make any application before the school for correction of her date of birth.

It has not been alleged in the F.I.R. that the petitioner produced any forged document on the basis of which in the service book her date of birth was recorded as January 4, 1951. The certificate provided by the petitioner before the school authority for the preparation of her service book clearly mentioned the date of birth of the petitioner as January 14,

1948. The school in the F.I.R. admitted that it was the mistake on the part of the school in recording the wrong date of birth (January 14, 1951).

The petitioner was allowed to serve as an Assistant Teacher in the school by all concerned. Her service was utilised without any objection whatsoever. It is not in dispute that the petitioner has received the money on account of her salary against the service rendered by her.

I am not posed with the question whether the petitioner is liable to refund the salary drawn for the said period between February 1, 2008, to March 18, 2010, but for sure it can be said that there was no criminality in drawing the salary for the service rendered during the said period.

The ingredients of Section 420 of the Indian Penal Code are conspicuously absent in this case. The plain reading of the FIR does not disclose any cognizable offence against the petitioner. Accordingly, Bamongola Police Station Case No. 56 of 2010 dated May 18, 2010, presently pending before the learned Judicial Magistrate, 2nd Court, Malda under Section 420 of the Indian Penal Code is quashed.

The revisional application being **C.R.R. No. 2943 of 2018** is allowed.

Let urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Kausik Chanda, J.)

