

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon.
&
The Hon'ble Justice Prasenjit Biswas.

WPST 188 of 2019

Shiv Shankar Thakur
Vs.
The State of West Bengal & Ors.

For the Petitioner : **Mr. Harishankar Chattopadhyay, Advocate**
Mr. Chittanranjan Panda, Advocate

For the State : **Mr. Tapan Kumar Mukherjee, Learned AGP**
Mr. Somnath Naskar, Advocate

Heard on : November 28, 2022

Judgment on : November 28, 2022.

The Court: - An interesting point is raised in the instant appeal pertaining to the modalities of computing the age of a person for the purpose of an employment. The recruitment process was initiated for filling up several posts in the Railway Directorate in the year 2006. It was clearly stipulated therein that the outer age limit is 37 years as on 01.01.2006.

The petitioner offered his candidature having born on January 1, 1969 and was permitted to undergo the selection process and according to the petitioner he was otherwise found suitable for appointment to the post for which he offered his candidature. Subsequently, the authorities denied the petitioner's appointment to the said post as he was over-aged. The petitioner challenged the decision of the authorities and by the impugned order the Tribunal did not accept the contention of the petitioner and held that he crossed the outer age limit fixed in the said recruitment process and, therefore, there is no infirmity in the decision of the authority in rejecting the candidature of the petitioner.

The seminal point involved in the instant writ-petition is whether the petitioner can be regarded as a person of 37 years as on 01.01.2006 or he completed the said age in the midnight of the preceding day and, therefore, to be treated to have completed the age of 37 years as on 01.01.2006.

Learned Advocate appearing for the petitioner relies upon a judgment of the Supreme Court rendered in case of ***Eerati Laxman Vs. State of Andhra Pradesh*** reported in **(2009) 3 SCC 337** in support of the contention that while computing the age of a person the safest course would be to calculate the age from the date of the birth to its anniversary. It is thus contented that since the petitioner was born on 01.01.1969, he would be regarded to have 37 years of age as on 01.01.2006 and, therefore, the contention of the authority that the petitioner is over-aged, is contrary to the spirit and the ratio of the judgment of the Supreme Court as

relied above. It is further contended that the date of birth should be taken as a whole day for the purpose of computation of the age as on the date of anniversary and, therefore, the contention of the authority is contrary to the provision of the method of computation envisaged under the Indian Majority Act, 1875. It is thus submitted that in view of the provisions contained in the said Act, the anniversary date should be included for the purpose of the computation of the age and, therefore, the authority cannot act contrary to the statute.

On the other hand, the learned Additional Government Pleader appearing for the State respondent, submits that the authority has applied the principles of the British Calendar for computing and ascertaining the age of the candidate which is permissible and, therefore, their action cannot be faulted with. He further relies upon the judgment of the Supreme Court rendered in the case of ***Prabhu Dayal Sesma Vs. State of Rajasthan & Anr.*** reported in ***(1986) 4 SCC 59*** in support of the contention that on the midnight of the preceding day a person shall be construed to have completed the age and not upon the expiration of the Anniversary date as contended by the learned Advocate for the petitioner. He further relies upon a decision of the Supreme Court rendered in the case of ***Salag Ram Sharma Vs. State of Rajasthan & Anr.*** reported in ***(2005) 10 SCC 77*** for the proposition that in order to ascertain the age of a person as to when the person would retire the day preceding the date of birth shall be taken and not the anniversary date.

On the conspectus of the aforesaid submissions made at the Bar, the pivotal issue involved in the instant petition relates to the computation of age as on 01.01.2006 and to find out whether the petitioner fulfils the outer age limit fixed therein. The Indian Majority Act, 1875 was promulgated in order to ascertain actual age of a person which received amendments from time to time even after independence of the country. Section 4 of the said Act provides the modalities of computation of the age of a person by virtue of an amendment made under Section 3 thereof. The majority would be construed when a person has completed the age of 18 years not before. Section 4 of the said Act is quoted as under: -

Section 4. Age of majority how computed - *In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.*

On a plain reading of the aforesaid provision, it is manifest that while computing the age of a person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. The question that arises on the mode of computation for the purpose of attaining majority under the Indian Majority Act, 1875 and attaining the age of superannuation i.e. for the purpose of retirement from service. Section 3 of the Indian Majority Act would throw light in this regard i.e. every person domiciled in

India shall attain the age of majority on his completing the age of eighteen years and not before. The word 'completed' has to be understood with a greater significance in order to compute the age of a person, may be for the purpose of attainment of majority.

In the backdrop of the aforesaid perspective, Section 4 should be read which provides the manner of computation in order to ascertain whether a person has completed 18 years of age. It is no doubt true that on a day when a person is born, the computation must reckon from the said date otherwise the expression "day on which he was born has to be included" shall have no meaning and render otiose. The day on which a person is born must be taken into calculation for the purpose of computing the age and the aforesaid Section further throws light on the day when such age shall be treated to have been completed by using the expression "on the beginning of 18th anniversary on that date".

It is no longer *res integra* that the age is computed on a year-wise basis. The 'year' is defined in Section 3(66) of the General Clauses Act, 1897 to mean a year reckoned according to the British calendar. It is beyond cavil of doubt that the British calendar starts with 1st day of January and ends 31st day of December of which the whole period construed as year. It is also not in dispute that the date of the British Calendar changes at the midnight and, therefore, one has to understand the significance of the duration of the day and ending of such day after the clock hit 12 midnight.

The support can be lent to the observations of the Supreme Court in ***Prabhu Dayal Sesma (supra)***. the aforesaid case relates to Rajasthan State and Subordinate Services through a competitive examination and the maximum age was fixed at 28 years as on January 1, 1984. The petitioner therein was born on January 2, and the question arose as to whether he attained the age of 28 years as on January 1, 1984.

In the backdrop of the above, the Apex Court held that a distinction has to be kept in mind between how a person's age is legally construed and how it is understood in common parlance. The Apex Court looked into the provisions contained under Section 4 of the Indian Majority Act providing for computation of the age and held that a legal day commences at 12 o'clock in the midnight and continues until the same hour the following night. It was thus held that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. It is further held that on the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years. The relevant observations of the Hon'ble Apex Court rendered in ***Prabhu Dayal Sesma (supra)*** is quoted hereinbelow:-

14. It is in recognition of the difference between how a person's age is legally construed how it is understood in common parlance. The Legislature has expressly provided in s. 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:

"4. Age of majority how computed- In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of s. 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second A paragraph of s. 3, at the beginning of the 18th anniversary of that day."

The Section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. On January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decisions in G. Vatsala Rani's case, (supra).

In **Salag Ram Sharma (supra)**, the Apex Court was considering the case pertaining to the date of retirement on attaining the date of superannuation and the construction of the languages used in the circulars issued by the Government in this regard. In the said report, the petitioner therein was born on 01.09.1929 after 03.00 p.m. and claimed that his date of birth should be considered as 02.09.1929. The Apex Court taking into consideration the ratio laid down in **Prabhu Dayal Sesma (supra)** held that

the person who is born on the 1st day of the month completes the age of superannuation the day before he was born in the following words:

12. In that view of the matter, the distinction is not between the person born on 1st of any month and on any of the other days of that month but relates to the question when the person attains the age of superannuation. A person who is born on the 1st of a month completes the age of superannuation the day before he was born. He is in a different class from those who complete the age of superannuation during the next succeeding month by reason of their birth on any day from the 2nd of that month onward.

The aforesaid two decisions were taken into consideration in a subsequent Bench decision rendered in case of ***Eerati Laxman Vs. State of Andhra Pradesh*** reported in ***(2009) 3 SCC 337***. The question which fell for consideration before the Bench was as to whether the appellant should be tried as a juvenile having committed an offence a day before his 16th date of birth. It appears therefrom that the appellant therein was born on May 10, 1978 and the offence was alleged to have been committed on May 9, 1994. The Bench held that the appellant shall not be regarded to have attained the age of 16 years i.e. 09.05.1994 having born on 10.05.1978 and, therefore, should be tried as a juvenile before the Juvenile Justice Board in the following:-

14. The appellant, therefore, having been born on 10.5.1978, the said day was to be counted as a whole day and, thus, he had not attained the age of 16 years before 12 o'clock in the midnight of the previous day, i.e. 9.5.1978. This aspect of the matter

has recently been considered in Achhaibar Maurya vs. State of Uttar Pradesh & ors. [(2008) 2 SCC 639], wherein it was held:

"14. It is interesting to note, however, that the common law rule stated in Shurey, Re, Savory, LR (1918) 1 Ch 263, in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1-1-1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. (See Halsbury's Laws of England, 4th Edn., Reissue, p. 209.) We do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle."

In ***Eerati Laxman (supra)*** the Bench considered the earlier judgment of the Coordinate Bench in case of ***Achaibar Maurya Vs. State of Uttar Pradesh*** reported in ***(2008) 2 SCC 639***. It was a case relating to the determination of age of superannuation of the appellant who was born on July 1, 1943 and the relevant Rules concerning the age of superannuation was a centre of debate. The said Rules provided that every teacher will retire from service in the afternoon of the last day of the month in which he attains the age of 60 years and the proviso inserted thereto permits such teachers who retires during the academic session (July 1 to June 30) shall continue to work till the end of the academic session, that is, June 30 and such period of service will be deemed as extended period of employment. The appellant therein was born on July 1, 1943 and he was supposed to retire on June 30, 2003. Taking a benefit of the aforesaid proviso, a claim was made that he should be permitted to continue to work till the end of academic session starting from July 1, 2003.

In the light of the aforesaid fact, the Bench held that he completed the age of 60 as on the date preceding the 60th year of birth and cannot be said to have retired on 1st July to avail the benefit under the aforesaid proviso in the following: -

12. It was urged that the appellant was entitled to a hearing as the matter relating to retirement from service depended upon the statutory provisions. A person retires automatically on the day when he completes the age of superannuation. Principles of natural justice, therefore, cannot be said to have any application in a case of this nature. A person attains a specified age on the day next before the anniversary of his birthday or in other words on the day preceding that anniversary. [See Re Shurey Savory v. Shurey (L.R. (1918) 1 Ch.263) and Rex v. Scoffin (L.R. (1930) 1 KB 741)].

13. This Court in Prabhu Dayal Sesma v. State of Rajasthan & Anr. [AIR 1986 SC 1948] held:

“9.....In calculating a person’s age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding the anniversary of his birthday.”

14. It is interesting to note, however, that the common law rule stated in Re Shurey Savory (supra) in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1 January, 1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth. [See Halsburys Laws, 4th Edition Reissue, Page 209]. We do not have such statute. We have, therefore, to determine the cases on the touchstone of statute operating in the field and in absence thereof by common law principle.

The law which emerged from the above-noted reports that in order to ascertain the age the computation would be done from the date on which a person is born to be taken as a whole day and deemed to have completed a particular age on the midnight of the preceding day of his date of birth. On an anniversary the person shall be regarded to have completed a particular year and would be one day more of such year. Even Sections 3 & 4 of the Indian Majority Act does not suggest such interpretation to be given by the petitioner that the age should be computed on an anniversary basis rather the said provision suggests that a person would be regarded to have completed 18 years of age at the beginning of the day of his anniversary and such day begins after 12 o'clock midnight of the preceding day. Even in ***Salag Ram Sharma (supra)*** the Apex Court in unequivocal terms held that if a person is born on the 2nd day of a month, he would be regarded to have completed such year for the purpose of computation of age.

Such being the ratio of the decisions emanates from the aforesaid reports, the petitioner cannot be regarded to have not completed the age 37 years as on January 1, 2006 but would be deemed to have crossed one day more than 37 years from his date of birth and, therefore, we do not find any infirmity and/or illegality in the order of the Tribunal in rejecting the claim of the petitioner.

We thus do not find any ground to interfere with the impugned order.

The writ-petition being **WPST 188 of 2019** is **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)