

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

30.11.2022
Sl. No.4(DL)
srm

W.P.A. No. 2794 of 2022

Adhir Chandra Barman

Versus

The State of West Bengal & Ors.

Mr. Deborshi Dhar

...for the Petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose

...for the State-respondents.

The writ petitioner has challenged an order dated October 1, 2021 issued by the President, Adhoc Committee, West Bengal Board of Secondary Education (hereinafter referred to as the Board). By the said order, the prayer of the petitioner for correction of his date of birth was rejected. The ground for rejection was non-submission of the application in the prescribed form within five years from joining service. According to the authority, the order of the Hon'ble Apex Court passed in the matter of State of T.N. vs. T.V. Veuugopalan, reported in (1994)6 SCC 302 read with the Finance Department's Order No.707-F(P) dated January 24, 2012 would operate as a bar in the petitioner's case.

The circular relied upon by the authority reads as follows:

“In pursuance of the recent judgment of the Hon’ble Supreme Court in the case of State of Tamil Nadu – vs – T.V. Venugopalan and in some other similar cases, the Governor has now been pleased to decide that prayer for change in date of birth in respect of the Govt. employees, will not be entertained, if the said prayer is not made within the period of five years from the date of joining in the Government service.

This principle will also be applicable to the employees of Government Undertakings, Statutory Bodies, Autonomous Bodies, P.R. Bodies etc, MUTATIS MUTANDIS.”

The circular was issued on January 24, 2012. The petitioner admittedly applied in the prescribed format in 2013. The authority held that as the application for correction of date of birth was not made within five years from joining his service as an Assistant Teacher in 2004, the date of birth could not be corrected in the records maintained by the Board and the authorities.

The petitioner refers to the application form, which is annexure P-4 to the writ petition. It appears that sometime in 2001 such application for change of date of birth had been made. The endorsement of the Teacher-in-Charge of the school in which the petitioner studies is available on the document. The school authorities also reiterated the request

of the petitioner and asked for correction of date of birth in terms of the application filed by the petitioner again in 2003. Such prayer was pending.

The learned Advocate for the State-respondents submits that the application, which is annexure P-4, was not received by the authority.

However, there appears to be a reiteration from the Teacher-in-Charge of the concerned school where the petitioner studied, addressed to the President/Secretary of the Board for correction of date of birth of the petitioner. The school admitted that the date of birth was wrongly recorded and requested for necessary correction. It appears that such reiteration was made on November 13, 2003.

The petitioner moved this Court by filing a writ petition being WP No.14485 (W) of 2018. The said writ petition was disposed of on October 4, 2018 by a co-ordinate Bench of this Court. The fact that the letter of the school had reached the authority has been recorded in the order of His Lordship. The authorities did not raise any objection to such finding of His Lordship nor has any appeal been preferred therefrom. His Lordship directed the Board to take necessary steps upon perusal of the records of the school and pass a

reasoned order with regard to the application for correction of date of birth.

Even if the application of the petitioner made in 2001 and countersigned and endorsed by the Head of the Institution did not reach the Board, the letter of the school reiterating such request was with the Board as per the observations of His Lordship. Such observations and findings have become final between the parties.

Moreover, it appears that the Regional Officer, North Bengal, West Bengal Board of Secondary Education by an order dated December 5, 2018 had arrived at the conclusion that the petitioner had been working from January, 2004, but applied for correction of date of birth in the prescribed format on August 7, 2013. This finding of fact is on record as annexure P-8 to the writ petition. The authority had rejected the claim of the petitioner on this ground alone. Such order was set aside as the petitioner had claimed that the order of the Hon'ble Supreme Court referred to in the order dated December 5, 2018 and the circular referred to by the authority were not known to him. However, the factual finding that the petitioner applied for correction of date of birth in the prescribed format on August 7, 2013 is a matter

of record and such finding by the authority has not been set aside.

Now, the question arises whether the petitioner would be bound by the circular dated January 24, 2012. The application of a circular or an administrative order cannot be retrospective. On January 24, 2012, the circular was published by the Joint Secretary to the Government of West Bengal, Finance Department, Audit Branch which, *inter alia*, stated that a prayer for change of date of birth in respect of a government employee or an employee of government undertakings, statutory bodies, autonomous bodies, etc. would not be entertained unless such prayer was made within a period of five years from the date of joining the service. Admittedly, the petitioner joined service in 2004 when the circular was not in existence. No time limit had been prescribed either by rules or by the Finance Department within which the application for correction of date of birth should have been made at the relevant point of time. The order impugned records that the petitioner and his father approached the authorities on several occasions.

The law is well settled by the Hon'ble Apex Court through various judicial decisions that the prayer for

correction of date of birth cannot be made at the fag end of the career of the employee.

It appears that the petitioner applied in 2001. The same was endorsed by the school authority. Even assuming that the said application could not be traced in the records, another letter was issued by the Teacher-in-Charge in 2003. His Lordship found that the said letter was pending consideration before the authority. The petitioner applied in 2013 in the prescribed format after 9 years from joining the service, yet such application by no stretch of imagination would be termed to have been made at the fag end of the career of the petitioner. In 2013, the petitioner was around 46 years if the date of birth as per the petitioner is taken into account or 49 years if the date of birth as officially recorded is taken into account. In any event, the petitioner was due to retire at the age of 60 years, that is, more than 10 years after such application in the prescribed form had been made. The question of retrospective application of the circular in case of the petitioner does not arise.

In the matter of T.V. Venugopalan (supra), the Hon'ble Apex Court held that inordinate delay in making an application for correction of a date of birth would be a ground for rejection of such claim. Correction of date of birth

would not be permitted at the fag end of the service career. The Hon'ble Supreme Court deprecated the practice of the tribunals in showing over indulgence to such employees, who raised disputes with regard to their date of birth at the fag end of their career and managed to continue to remain in service after the official age of retirement. While deciding the matter, the Hon'ble Supreme Court discussed relevant rules which provided that application for correction of date of birth had to be made within five years from joining service.

The State-respondents have not been able to satisfy the Court whether any rules existed at all. The ground for rejection is a conjoint reading of the decision of the Hon'ble Apex Court, as discussed hereinabove, and the circular dated January 24, 2012. In the opinion of this Court, the decision of the Hon'ble Apex Court in the matter of T.V. Venugopalan (*supra*), would not apply in the facts of this case.

The circular dated January 24, 2012 cannot be given retrospective effect as the same was not in existence up to 2012. The same came into existence 8 years after the petitioner joined his service. The petitioner admittedly applied in the prescribed form on August 7, 2013, that is within one year, seven months from the issuance of the circular. The order impugned records that the petitioner and

his father had been agitating the issue since long. The petitioner was around 50 years when he first moved this Court. Even at that time he had a long tenure remaining. The order impugned is set aside and quashed.

The respective authorities and the President of the West Bengal Board of Secondary Education are directed to correct the date of birth of the petitioner as April 5, 1967. Once such correction is made, necessary corrections shall also be entered in all relevant records.

The entire exercise shall be completed within a period of six weeks from the date of communication of this order.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)