

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 9 of 2019

Ganapati Dakua

....

Appellant

M/s. Debaraj Mohanty, Advocate & Associates

-versus-

State of Odisha and others

....

Respondents

Mr. M.K. Khuntia, Additional Government Advocate

Mr. Subrat Satpathy, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
10.11.2022**

Order No.

03. 1. The present writ appeal has been filed challenging an order dated 14th December, 2018 passed by the learned Single Judge disposing of W.P.(C) No.19214 of 2018 filed by the present Appellant, questioning an order dated 29th September, 2018 passed by the Aska Co-operative Sugar Industries Limited recalling an earlier order dated 9th August, 2018 whereby the Date of Birth of the Appellant was changed to 17th February, 1963 from 24th October, 1958. The learned Single Judge has in the impugned order observed that since there was a dispute as regards the Appellant's date of birth, it was open to the Appellant "to approach the Civil Court to establish his correct date of birth so as to get the benefit in accordance with law".

2. Learned counsel appearing for the Appellant submitted that it is only after verifying the School Register that Respondent No.2-Society issued the office order dated 9th August, 2018 which stated that for all purposes of service, as per the School Leaving Certificate (SLC) submitted by the Appellant, the date of birth stood changed to “17.02.1963”. Therefore, according to the Appellant, notwithstanding that he may not have produced the original SLC, with the Respondent No.2 having verified the School Register on the basis of the duplicate SLC and noting that the correct date of birth was 17.02.1963, there was no reason to withdraw that order and maintain the earlier date of birth of 24.10.1958.

3. Reliance is placed on the judgment in *Shankar Lal v. Hindustan Copper Ltd. (2022) 6 SCC 211* to urge that the principles of natural justice ought to be adhered to before effecting a change in date of birth and that the Appellant should have been given an opportunity of being heard prior to the impugned order dated 29th September, 2018 being passed.

4. In the present case, the Court finds that to begin with the Appellant did not produce the SLC on the basis of which he was claiming his date of birth to be 17.02.1963. A perusal of the office order dated 29th September, 2018 reveals that after repeated requests to the Appellant to produce the original SLC were not complied with, then it was construed that he had no valid SLC with him and it was decided to constitute a Medical Board for determining his age. The Appellant then went before the Medical

Board which determined his date of birth to be 24.10.1958. This happened some time in 2014. After waiting for more than a year thereafter, on 2nd November, 2015 the Appellant made a representation without making any reference to the determination by the Medical Board but relying on a duplicate copy of the SLC and some EPF slips which mentioned his date of birth to be 17.02.1963.

5. It is on these representations that initially an order was issued on 9th August, 2018 by the Respondent No.2 correcting his date of birth as 17.02.1963.

6. It appears that subsequently it was realized the above change had been effected on the basis of a duplicate SLC, which was contrary to the age determined by the Medical Board. It is in those circumstances that Respondent No.2 restored the earlier date of birth, i.e., 24.10.1958 and on that basis on 29th September, 2018 issued an office order that the Appellant had attained the age of superannuation on that date.

7. It is indeed well settled that issues concerning the date of birth, particularly, those raised closer to the time of retirement ought not to be settled without an authoritative pronouncement of a Civil Court. These are disputed questions, particularly, since the original of the SLC, which was perhaps the most reliable document, was not available to the Appellant. It may be noticed here that according to the Appellant, he misplaced the original SLC but was unable to

inform the Court when he misplaced it and whether he lodged an FIR regarding losing of the original SLC.

8. Be that as it may, since there is a dispute concerning the Appellant's date of birth, in the absence of the original SLC, the only proper course was for the dispute to be settled through the Civil Court. The facts in *Shankar Lal v. Hindustan Copper Ltd., (supra)* reveal that the dispute was raised there long before the claimed date of retirement of the Appellant. The facts therefore distinguishable. Here the Appellant had sufficient opportunity to demonstrate his actual date of birth. Since he failed to produce the original SLC, he went before the Medical Board which gave a determination of his date of birth to be 24.10.1958. In these circumstances, the Appellant cannot in the present case complain of such determination having been made behind the Appellant's back. He was always aware of the Medical Board's determination of his date of birth as 24.10.1958.

9. Consequently, the Court is unable to find any error having been committed by the learned Single Judge. There is no merit in the present writ appeal and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge