

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 4668 OF 2013

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

State of Orissa & Others Petitioners

-Versus-

Manmath Kumar Biswal Opp. Parties
and Another

For Petitioners : Mr. J.P. Pattnaik,
Government Advocate

For Opp. Parties : Mr. S.D. Routray,
S.K. Samal and S.C. Das,
Advocate
[O.P.No.1]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA**

Date of hearing and judgment : 13.07.2022

DR. B.R. SARANGI, J. The State of Odisha and its
functionaries, by means of this Writ Petition, have
sought for quashment of the Order dated 23.08.2012

passed in O.A. No. 216 of 2012 under Annexure-3, by which the Odisha Administrative Tribunal, Bhubaneswar, while quashing Annexures-4 and 8 to the Original Application, directed the Petitioners to reinstate Opposite Party No.1 in service with full pay, for the period he was forced to continue out of service, as Opposite Party No.1 was not responsible for such non-engagement and such interruption in service was caused due to irregular action of the Petitioners, as adequate opportunity was not allowed to Opposite Party No.1 before change of his date of birth, and such order was directed to be complied with within a period of three months.

2. The factual matrix of the case, in brief, is that Opposite Party No.1 entered into Work-charged Establishment as Mate on 13.03.1973 under Subarnarekha Bridge (R & B) Sub-Division. Thereafter, on transfer he joined, on 20.04.1973, at Balasore (R & B) Division. While working as such, he was brought

over to Regular Establishment, vide Order dated 31.12.1991. He was promoted to the post of Work Sarkar, vide Order dated 31.12.1999. Basing on the date of birth entered in the service record available in the Circle Office, (R &B) Balasore, as well from Incumbency Register, the S.E.E.C. (R &B), Balasore, vide letter dated 22.12.2011, intimated the Executive Engineer, Balasore (R &B) Division-Petitioner No.4 that Opposite Party No.1 is due to retire from Government service w.e.f. 30.04.2012. Accordingly, Petitioner No.4 verified the date of birth of Opposite Party No.1 from Service Book and issued retirement notice, vide letter dated 29.12.2011. The date of birth of Opposite Party No.1 in the Service Roll was entered as "16.03.1957", both in figure and words. But later the same was corrected by the then Assistant Engineer, Sri B.B. Kar of Balasore (R & B) Sub-Division as "20.04.1954", both in figure and words, under his signature with seal on 01.07.1981. Aggrieved by the letter dated 29.12.2011 of the

Executive Engineer-Petitioner No.4, Opposite Party No.1 made a representation before him to allow him to continue in Government service till 31.01.2015 on the basis of date of birth originally mentioned in the Service Book, as well as the date of birth reflected in his Matriculation Certificate as 16.03.1957. But Petitioner No.4 rejected the representation of Opposite Party No.1, vide Order dated 09.02.2012, against which Opposite Party No.1 filed O.A. No.216 of 2012 before the Tribunal contending that the change of date of birth in his Service Book was not done in compliance of the Principles of Natural Justice and, therefore, the Orders dated 29.12.2011 and 09.02.2012 be quashed and he be allowed to continue in service till 31.03.2015 with all service benefits. The Tribunal, after due adjudication, came to hold that change of date of birth was done without complying the principles of natural justice and by holding so, directed the Petitioners to reinstate Opposite Party No.1 with full pay for the period he was forced to

continue out of service as the Opposite Party No.1 was not responsible for such non-engagement and, as such, discontinuance of service was caused due to irregular action of the Petitioners. Hence, this Writ Petition.

3. Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-Petitioners contended that the correct date of birth of Opposite Party No.1 is 24.04.1954, as has been mentioned in his provident fund withdrawal application. It is contended that the date of birth mentioned in the Matriculation Certificate cannot be relied upon, as Opposite Party No.1 would be underage in case of appointment in 1973, if his date of birth is taken as 16.03.1957. Therefore, the Tribunal has committed gross error apparent on the face of the record, by allowing Opposite Party No.1 to continue in service till the age of superannuation, taking into consideration the date of Birth as

16.03.1957. Consequentially, he seeks for quashing of the order passed by the Tribunal.

4. Mr. S.D. Routray, learned Counsel appearing for Opposite Party No.1, vehemently contended that Opposite Party No.1 entered into service on the basis of Matriculation Certificate and, as such, his date of birth was entered in the Service Book as 16.03.1957. It is contended that at the fag end of his career, the Petitioners cannot change the date of birth of the Petitioner without giving opportunity of hearing to him. Therefore, change of date of birth in Service Book of the Opposite Party No.1 at the instance of the Petitioners cannot sustain in the eye of law, as the Principles of Natural Justice has not been followed.

To substantiate his contention, he has relied upon the judgments of the Apex Court in **State of Orissa v. Dr. (Miss) Binapani Dei**, AIR 1967 SC 1269; **Shankar Lal v. Hindustan Copper Ltd. and**

others, Civil Appeal No.2858 of 2022 (arising out of Special Leave to Appeal (Civil) No.16886 of 2019), decided on 20.04.2022, **Karnataka Rural Infrastructure Development Limited v. T.P. Nataraja and others**, Civil Appeal No.5720 of 2021 disposed of on 21.09.2021; and Single Bench judgments of this Court in **Bijay Shankar Sarangi v. Orissa State Road Transport Corporation**, 122 (2016) CLT 306 and **Prasana Kumar Chhotray v. Vice Chancellor, Orissa University of Agriculture and Technology**, 2017 (II) OLR 306.

5. This Court heard Mr. J.P. Pattnaik, learned Government Advocate appearing for the State-Petitioners and Mr. S.D. Routray, learned Counsel for Opposite Party No.1 by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties this Writ Petition is being disposed of finally at the stage of admission.

6. It is admitted fact that Opposite Party No.1 was engaged in Work-charged Establishment as Mate on 13.03.1973 under Subarnarekha Bridge (R & B) Sub-Division. Thereafter, on transfer he joined, on 20.04.1973, at Balasore (R & B) Division. Consequentially, he was brought over to the Regular Establishment, vide order dated 31.12.199. When he entered into service, his Service Book was opened taking into consideration the Matriculation Certificate produced by Opposite Party No.1. But the Petitioners, who are custodian of the Service Book of Opposite Party No.1, changed his date of birth indicating the same as 20.04.1954 with due endorsement of the then A.E., Balasore, on 01.07.1981. While changing the date of birth of Opposite Party No.1, opportunity of hearing was not given to him nor was it brought to his notice. Rather, notice of retirement was issued to him. Therefore, Opposite Party No.1 approached the Authority, by filing a representation, indicating therein that his date of birth is 16.03.1957 and

prayed that he should not have been retired on the basis of subsequent date of birth entered in his Service Book, i.e. 20.04.1954. As such, changing the date of birth was done unilaterally without giving any opportunity of hearing to Opposite Party No.1.

7. In ***Union of India v. Harnam Singh***, (1993) 2 SCC 162, the apex Court lucidly explained the relevance of date of birth in the context of superannuation and the basic principles relating to correction or rectification of the same.

8. In ***Mohd. Yunus Khan v. U.P. Power Corporation Ltd.***, (2009) 1 SCC 80, the apex Court held that correction of date of birth as recorded in service book should not be normally done on the verge of retirement, since any such correction might adversely affect the service conditions of the employee.

9. In ***State of M.P. v. Mohanlal Sharma***, (2002) 7 SCC 719, the apex Court held the date of

birth recorded in Matriculation Certificate carries more probative value than that contained in a retired headmaster's certificate or in a horoscope.

10. In view of the fact that the Service Book is opened taking into account the date of birth entered in Matriculation Certificate, that should not be lightly considered, rather that should have been accepted.

11. The ratio decided in **Dr. (Miss) Binapani Dei** (supra) is crystal clear that in case of dispute regarding date of birth in the Service Book, which is in custody of the Employer, a regular enquiry should be conducted by the Authority allowing a chance to Opposite Party No.1 to be heard. The same having not been complied with, there is gross violation of Principle of Natural Justice.

12. In **Shankar Lal** (supra), the apex Court held that the action of the Employer lacking in authority of law on two counts. First, it fails for not adhering to the Principles of Natural Justice and the

decision not to follow the Service Book recordal was taken without giving an opportunity of hearing to the Appellant. The opportunity of hearing of the Appellant also accrued because the Employer themselves had proceeded on the basis that the later date i.e., 21st September, 1949, was the birth date of the Appellant and this was a long established position. Moreover, since in the own records of the Employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake crept in. The process would have had to involve participation of the Appellant, which would have been compatible with the principles of natural justice. There are several authorities in which the apex Court deprecated the practice on the part of the employees at the fag-end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service.

13. A similar question had come up before the Single Bench of this Court for consideration in **Prasana Kumar Chhotaray** (supra), which was decided by one of us (Dr. Justice B.R. Sarangi). In the said case, in Paragraphs 9, 10 and 11 of the judgment, it was held as follows:

“9. In D.K. Yadav v. J.M.A. Industries Ltd. MANU/SC/0529/1993 : (1993) 3 SCC 259 the Apex Court held that the order of termination of the service of an employee visits him with civil consequences of jeopardizing not only livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.

10. This question no more remains as res integra in view of the judgment of the Apex Court in State of Orissa v. Dr.(Miss) Binapani Dei, MANU/SC/ 0332/1967 : AIR 1967 SC 1269, where similar question of correction of date of birth has already been considered by the Apex Court.

11. In view of the law laid down by the Apex Court, as discussed above, this Court has no hesitation to hold that correction of date of birth from 09.09.1944 to 09.09.1941 has been done without following the principles of natural justice. Thereby, the order dated 12.06.2002 in

Annexure-1 is liable to be quashed, accordingly, the same is hereby quashed. The matter is remitted back to the opposite parties to take steps for necessary correction of date of birth of the petitioner by affording him opportunity of hearing and in due compliance of the principles of natural justice, as expeditiously as possible.”

Similar view was also taken by the Single Bench of this Court presided over by one of us (Dr. Justice B.R. Sarangi) in the case of **Bijay Shankar Sarangi** (supra), referring to the case of **Dr. (Miss) Binapani Dei** (supra).

14. So far as the case of **Karnataka Rural Infrastructure Development Limited** (supra) is concerned, the said case is factually distinguishable from the case of **Shankar Lal** (supra) to the extent that in that case the employee himself disputed his date of birth at the fag end of his service career and in that case this Court held that it is open to the parties to approach the appropriate civil court to resolve the dispute with regard to the date of birth.

15. In view of such position, this Court is of the considered view that in the instant case since the Employer is the custodian of the Service Book, any change thereof, without affording opportunity of hearing to the Petitioner, with regard to his date of birth, cannot be sustained in the eye of law. In other words, if any change of date of birth is made at the level of the Employer, it has to be done in compliance of the Principles of Natural Justice. The same having not complied with, the corrected date of birth, i.e., 20.04.1954, as mentioned by the Employer, cannot be sustained. In any case, the Tribunal, while adjudicating the matter, observed that for non-compliance of Principle of Natural Justice by giving adequate opportunity of hearing to the Petitioner or without causing any fair and open inquiry, the action taken by the Authorities cannot be sustained, and such finding of the Tribunal was in consonance with the observations made by the apex Court in the case of

Rabindra Kumar Barik v. State of Orissa, AIR 1988
SC 269.

16. For all the above reasons, this Court does not find any illegality or irregularity committed by the Tribunal by passing the impugned order at Annexure-3 so as to cause interference by this Court.

17. In the result, the Writ Petition merits no consideration and the same is accordingly dismissed. However, there shall be no order as to costs.

S.K. MISHRA, J.

I agree.

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DR. B.R. SARANGI,
JUDGE

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S.K. MISHRA,
JUDGE

Orissa High Court, Cuttack
The 13th July, 2022, Ashok/Padma/GDS