

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.7207 of 2019

In the matter of a Petition under Article 226 of the Constitution of India.

Bidyadhar Jena

....

Petitioner

-versus-

State of Odisha and another

....

Opposite Parties

Advocates appeared in the case through Hybrid Mode:

For Petitioner

Mr. M. Agarwal, Advocate

-versus-

For Opposite Parties

***Mr. S.K. Samal, AGA
Mr. S. Mishra, Advocate***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :04.08.2022

DATE OF JUDGMENT: 04.08.2022

V. Narasingh, J.

1. The petitioner while working as Junior Grade Recorder in the Record room Division of Opposite Party No.2- Orissa State Housing Board (Board), was made to retire on the basis of the

date of birth in the service records maintained by the said Opposite Party No.2, Board vide Annexure-B/2.

2. The grievance of the petitioner is that his date of birth in the service on record has been wrongly reflected in as much as though his actual date of birth is 01.03.1964 the same has been wrongly recorded as 01.03.1961.
3. So, ventilating his grievance the petitioner filed a representation to the authorities and the same representation dated 15.12.2018 has been rejected by the order dated 25.02.2018 by the Housing Board (Annexure-4) which is subject matter of challenge in the present Writ Petition.
4. Learned counsel for the petitioner Mr. Agarwal submits that on the face of it, the rejection order is a non-speaking one in as much as no reason has been ascribed as to why the petitioner's grievance did not merit consideration.
5. Learned counsel appearing on behalf of the Board and relying on the counter affidavit submits that the date of birth as recorded in the service record was based on the transfer certificate given by the petitioner at the time of joining and earlier also the petitioner's representation was rejected in 2018 and the same has remained unchallenged and in view of the same it is not open to the petitioner to make a grievance against that his date of birth has been wrongly recorded.
6. Rejoinder affidavit has been filed by the petitioner controverting the allegations made; specifically stating therein that in the

meantime in his Aadhar Card and Pan Card correct date of birth “01.03.1964” has been reflected.

7. On perusal of the order of rejection at Annexure-4, it is seen that no reason whatsoever has been assigned. Such rejection order is quoted hereunder for convenience of ready reference;

x x x x x “After careful consideration of your representation dt.15.12.2018, the Secretary, OSHB has been pleased to reject it on the ground that your case does not possess any merit to be considered.” x x x x x

8. Law is no longer res integra that reasons are the Heart and soul of an order and without reasons, an order is like an “inscrutable face of sphinx”. In this context learned counsel for the petitioner relies on the judgment of the Apex Court in the Case of ***Kanti Associates vs. Masood Ahmed Khan*** reported in ***2010 (9) SCC 496***. In fact in the said case several judgments reiterating the principle of furnishing reasons have been succinctly stated in as much as the vanishing distinction between administrative and quasi judicial orders relating to giving reasons was also noticed referring to the celebrated judgment of the Apex Court in the case of ***Kraipak V. Union of India (1969) 2 SCC 262***.

9. The stand taken by the authorities in the counter affidavit cannot in any way cure the glaring defect of the impugned order suffering from lack of reasons and it is trite law that an order must speak for itself and it is not open for the authorities to improve upon it in counter affidavit as has been done in the case at hand. In this context reference can be made to the celebrated

Constitution Bench judgment of the Apex Court in the Case of ***Mahender Singh Gill vs. Chief Election Commissioner*** reported in ***AIR 1978 SC 851***, reiterating the timeless words of ***Bose J. in Gobardhandas Bhanji (AIR) 52 SC page 16***. The same is respectfully reproduced;

“8. x x x x x “Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”. Orders are not like old wine becoming better as they grow older.”x x x x x

10. On a conspectus of materials on record and taking into account the manner in which the rejection order at Annexure-4 was passed, this Court is persuaded to hold that the same suffers from the vice of gross non-application of mind and accordingly the same is set aside and in the peculiar facts of the present case it shall be open to the petitioner to file a fresh representation enclosing thereto relevant documents on which he relies. And, if such representation is made within a period of four weeks from today along with a copy of the order of this Court the authority

shall do well to consider the same within a period of three months from the date of receipt of such representation.

11. The Writ Petition thus stands disposed of.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 4th of August, 2022/Santoshi

