

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21047 of 2015

State of Orissa & Ors.

.....

Petitioners

*Mr.S. Jena, Standing Counsel (S&
ME.Deptt.)*

Vs.

Rabinarayan Mahapatra & Anr.

.....

Opposite parties

Mr. N.Biswal, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

21.07.2022

Order No.

07

This matter is taken up through hybrid mode.

2. Heard Mr. S. Jena, learned Standing Counsel for School and Mass Education Department appearing for the State-Petitioners and Mr. N. Biswal, learned Counsel appearing for Opposite Party No.1.

3. The State and its functionaries have filed this Writ Petition challenging the Order dated 13.05.2015 passed in O.A. No.4093(C) of 2010, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, has allowed the said O.A. and directed the State-Petitioners to treat the date of birth of Opposite Party No.1 as 02.03.1958 and by effecting necessary correction in all other service records extend all service benefit.

4. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department, appearing for the State-Petitioners, contended that the Tribunal has no jurisdiction to make a declaration of date of birth of an employee and, as such, the Order dated 13.05.2015 passed by the Tribunal in O.A. No.4093(C) of 2010 cannot sustain in the eye of law. Therefore, the said Order

has to be quashed. To substantiate his contention, he has relied upon the decisions of the apex Court rendered in the case of ***Karnataka Rural Infrastructure Development Ltd. vrs. T.P. Nataraja and Others***, 2021 SCC Online SC 767; ***Bharat Coking Coal Limited and Others vrs. Shyam Kishore Singh***, (2020) 3 SCC 411; ***Jigyasa Yadav (Minor) (through Guardian/Father Hari Singh) vrs. Central Board of Secondary Education and Others***, (2021) 7 SCC 535 and the Order dated 20.04.2022 passed by this Court in ***State of Odisha v. Gandharba Kandi*** (W.P.(C). No.1948 of 2014 disposed of on 20.04.2022).

5. Mr. N. Biswal, learned Counsel appearing for Opposite Party No.1, vehemently contended that though the initial entry of the date of birth of Opposite Party No.1 was made in the service book as “02.03.1953”, the same was corrected in accordance with the matriculation certificate as “02.03.1958”. Once correction is carried out relying upon the gradation list, the State-Petitioners should not have taken into consideration the date of birth of Opposite Party No.1 as “02.03.1953”. Therefore, the Tribunal is well justified in passing the Order dated 13.05.2015, in O.A. No.4093(C) of 2010, which does not warrant interference of this Court.

6. Having heard learned Counsel for the parties and after going through the records, it appears that present Opp. Party No.1 was initially appointed as a Peon in R.C.High School, Khandapada, on 19.3.1976 vide order dtd. 09.03.1976 of the Inspector of Schools, Puri. After his appointment, Service Book was opened by Christian era wherein required entries, as per Rules, were made and against the column meant for date of birth, it was entered in numerical as

“2.3.1953” and in word as “2nd March 1953”. Opposite Party No.1, having acknowledged the date of birth, put his signature on the bottom of the first page of the Service Book. Therefore, he was fully aware of his date of birth recorded as “02.03.1953” and he had never objected immediately that the date of birth was wrongly recorded in his Service Book. But subsequently, he passed HSC Examination and in the certificate, his date of birth has been mentioned as “02.03.1958”. Basing on the said certificate, the Headmaster of the School made correction in the Service Book. While Opp. Party no.1 was continuing as such in R.C.High School, Khandapada, was relieved from his duties on 22.7.1976 to join as such in B.C.High School, Ranpur, vide order dtd. 17.07.1976 of the Inspector of Schools, Puri and accordingly, he joined on 30.7.1976 in the said School.

7. While he was so continuing at B.C.High School, Ranpur, he was relived from duties on 21.2.1977 and joined in the Office of the Junior Director of Public Instruction (Schools), Odisha, on 01.03.1977. After joining in the said office, he continued to work as such and while working as such, on the verge of his retirement, he approached the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 4093(c) of 2010 seeking direction to the State-Petitioners to treat his date of birth as “02.03.1958” instead of “02.03.1953” as recorded in his H.S.C Certificate and correct the date of birth in all service records as “02.03.1958”, instead of “02.03.1953”.

8. From the prayer of the O.A., it is very much clear that Opposite Party No.1 wanted to treat his date of birth as 2.3.1958, instead of 2.3.1953. Therefore, at the fag end of his career, Opposite Party No.1 could not have approached for necessary correction of his date of birth, after the date of birth was corrected earlier on the basis of matriculation certificate. Thereby, there is dispute with regard to date of birth of Opposite Party No.1. Since it is a disputed question of fact, the

Tribunal ought not have passed the order dated 13.05.2015 declaring his date of birth as 02.03.1958, as the same cannot be sustained, in view of Judgment passed by the apex Court in ***Karnataka Rural Infrastructure Development Ltd, Bharat Coking Coal Limited*** (Supra).

9. In that view of the matter, the Order dated 13.05.2015 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No.4093(C) of 2010 cannot sustain in the eye of law and the same is liable to be quashed and is accordingly quashed. However, liberty is granted to Opposite Party No.1 to approach the appropriate forum for correction of his date of birth.

10. Writ Petition is allowed.

Alok/Ananta

