

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 1737 of 2015

State of Odisha and others

.....

Petitioners

Mr. S.N. Nayak, ASC

Vs.

Sindhu Behera and others

.....

Opposite parties

Mr. B. Pradhan, Adv. (O.P. No.1)

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

27.04.2022

Order No.

09.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-petitioners and Mr. B. Pradhan, learned counsel for opposite party no.1.

3. The State and its functionaries have filed this writ petition challenging the order dated 01.05.2014 passed in O.A. No. 2772 (C) of 2009 under Annexure-1, by which the Orissa Administrative Tribunal, Cuttack Bench, Cuttack has directed the petitioners to correct the date of birth of opposite party no.1 treating the same as “05.08.1962” in place of “05.08.1951” and reinstate him in service, and allow him to continue in service till he attains the age of superannuation, within a period of two months.

4. Mr. S. Nayak, learned Addl. Standing Counsel appearing for the State-petitioners contended that as per the school admission register, the date of birth of the petitioner is 05.08.1951 and his date of admission into class-VIII was 25.07.1966 and thereafter he was again re-admitted in class-C on 19.04.1971. It is further contended that the records of all the schools and also the gradation list indicate that the date of birth of the petitioner is 05.08.1951. Therefore, taking into consideration his date of birth as 05.08.1951, he was

retired from government service w.e.f. 31.08.2009. Therefore, no illegality or irregularity has been committed by the authority in superannuating the petitioner. But the petitioner has disputed such fact and contended that his date of birth is 05.08.1962. As such, the tribunal has come to an erroneous finding that his date of birth is 05.08.1951 and accordingly directed that the petitioner has to continue till he attains the age of superannuation, which itself amounts to arbitrary and unreasonable exercise of power. It is further contended that since there is dispute persisting between the petitioner and his employer, the same can only be resolved by approaching the appropriate forum seeking appropriate declaration. Instead of doing so, the tribunal has exceeded its jurisdiction in passing the order impugned.

5. Mr. B. Pradhan, learned counsel for opposite party no.1 contended that the date of birth of the petitioner has been entered in the service record as 05.08.1962 and, as such, either party could have challenged the date of birth within a period of five years from the date of entry into government service. But on the basis of the order passed by this Court in W.P.(C) No. 9539 of 2009, the correctness of the date of birth as entered into the service book of the petitioner was enquired into and on the basis of the letter dated 19.01.2009 of the Headmaster, Birabhadrapur, Bangurigaon, Puri, correction was made. But while making such correction, no opportunity of hearing was given to the petitioner and, as such, the enquiry was conducted behind his back. Thereby, the tribunal considering the date of birth of the petitioner as 05.08.1962, directed the State-authorities to reinstate him in service and allow him to continue in service till he attains the age of superannuation. Thereby, no illegality or irregularity has been committed by the tribunal in

passing the order impugned so as to warrant interference with the same.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that admittedly the opposite party is a government employee and when he entered into government service, his date of birth was entered in service book as 05.08.1962. As such, none has disputed such fact within five years from the date of entry into government service. But, so far as date of birth is concerned, pursuant to the order passed by this Court in W.P.(C) No. 9539 of 2009, the State-petitioners caused an enquiry and, as such, on the basis of the letter dated 19.01.2009 of the Headmaster, Birabhadrapur, Bangurigaon, Puri, wherein it was intimated that the date of birth of the petitioner is 05.08.1951 and erroneously the date of birth of the petitioner was entered as 05.08.1962, correction was carried out in the service book and accordingly he was allowed to superannuate on attaining the age of superannuation on 31.08.2009. It is contended that the petitioner has not been given any opportunity of hearing while causing such enquiry. But fact remains, since there is dispute with regard to date of birth of the petitioner, it is open to the petitioner to get appropriate declaration from the appropriate civil court to have the correct date of birth, in view of the judgments of the apex in the cases 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 and ***Jigya Yadav (Minor) (through Guardian/Father Hari Singh) vrs. Central Board of Secondary Education and Others***, (2021) 7 SCC 535.

7. In view of the ratio decided by the apex Court in ***Karnataka***

Rural Infrastructure Development Ltd., Bharat Coking Coal Limited and Jigya Yadav (Minor) (through Guardian/Father Hari Singh) (supra), the order dated 01.05.2014 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 2772 (C) of 2009 under Annexure-1 is set aside and the writ petition is accordingly allowed. However, liberty is granted to the opposite party to approach the appropriate forum for declaration of his correct date of birth.

8. With the aforesaid liberty, the writ petition stands disposed of.
Issue urgent certified copy as per rules.

Ashok/Sukanta



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE