

16
20.12.2023
Court No. 35
I.Tudu
(p.a)

WPA 10441 of 2022

Asis Kanjilal
Vs.
State of West Bengal & Ors.

Mr. Joy Chakraborty,
Mr. sandip Dinda.

... for the petitioner

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.

... for the SBSTC

Mr. Asish Kumar Guha,
Mr. Anirban Datta.

... For the State

The writ petitioner has been an employee of the South Bengal State Transport Corporation who is aggrieved due to service of notice of superannuation to him by the said authority, indicating his superannuation to be affected from December 31, 2023.

The writ petitioner is aggrieved that the respondent authority has erroneously taken into consideration his date of birth to be December 26, 1963, and has faulted in calculating his date of superannuation.

The writ petitioner has moved the present case alleging error, arbitrariness, unreasonable and whimsical act of the respondent authority, in not considering his date of birth as on December 26, 1966. The writ petitioner is specifically aggrieved with the letter dated June

14, 2019, issued by the Divisional Manager, rejecting his objection on gradation list vide a letter dated May 31, 2019. Learned advocate Mr. Chakraborty appearing for the petitioner has submitted firstly that at the time of induction in service, the petitioner had disclosed a 'school leaving certificate', as his age proof, which showed his date of birth as December 26, 1963. According to him, subsequently the writ petitioner upgraded his qualification and submitted before the authorities his 'Madhyamik Admit Card' and 'Madhyamik Certificate' as proof of his upgraded qualification as well as proof of his age. Mr. Chakraborty has pointed out that in those documents the date of birth of the writ petitioner is stated to be December 26, 1966. Mr. Chakraborty has also relied on the photocopy of the identity card, said to have been issued to the petitioner by the respondent authority, which contains his date of birth of the year 1966. Two other documents are also relied on by the petitioner as annexed with the writ petition and supplementary affidavit which are said to be part of the gradation list published by the authority in the year 2005, which also has shown petitioner's date of birth to be in the year 1966. According to Mr. Chakraborty the respondent authority now cannot lawfully retract from whatever stand they have taken as regards the writ petitioner, concerning his age. According to him, it is only arbitrary and illegal for the respondent authority to propose the retirement date of the writ petitioner on December 31, 2023. He has sought for grant of necessary order to set aside the offer of superannuation to the writ petitioner as well as

recording his actual date of birth as December 26, 1966. Mr. Chakraborty has also relied on the eligibility criteria for appointment as “starter-cum-ticket examiner”, i.e, madhyamik or equivalent and said that unless the petitioner was duly qualified, he would not have been promoted, by the authority, in the said post.

Mr. Chakraborty has relied on the following two judgments in his argument. By referring those he has submitted that ‘Madhyamik Certificate’ or ‘Madhyamik Admit Card’ would be the relevant document for consideration regarding date of birth of a person. The judgments are (i) **1990 SCC OnLine Cal 66 (Debidus Banerjee vs. The Chairman & Managing Director, Bank of India & Ors.)** and (ii) **(2018) 0 Supreme (Cal) 526 (Eastern Coalfields Ltd. vs. Sudhamoy Gorai & Ors.)**

Mr. Banerjee being assisted by Ms. Debasree Dhamali is however opposing to such contentions and prayer of the petitioner. At the outset the respondent has denied about genuinity of the identity card relied on by the writ petitioner and the gradation list relied on by him. Secondly, it has been submitted that at the instance of the respondent, the writ petitioner has deposited driving license with the respondent. That, from the same, one can find the date of birth of the writ petitioner to have been mentioned as December 26, 1963. Respondents have further relied on the noting in the service book and verification role of the petitioner, where the writ petitioner’s date of birth has been mentioned as in the year 1963.

The respondents have sought that the writ petitioner may be dismissed.

Admittedly, the writ petitioner's school leaving certificate contains the date of birth of the writ petitioner to be December 26, 1963. According to the writ petitioner the same is erroneous and later on with submission of 'Madhyamik Admit Card' and 'Madhyamik Certificate' with the respondent authority, the said date of birth should have been rectified. However, from the documents shown, this Court is unable to find any conclusive of those to facilitate an idea that the writ petitioner has actually at any point of time after his induction, submitted the 'Madhyamik Admit Card' and 'Madhyamik Certificate' with the respondent authority. The writ petitioner has also stressed upon the fact that his appointment as the "starter-cum-ticket examiner" itself is the proof of recognition by the respondent of his Madhyamik or equivalent qualification. And that, therefore it may be construed, that the 'Madhyamik Certificate' or 'Madhyamik Admit Card' was furnished with the respondent corporation. Unfortunately petitioner's appointment to the post of starter-cum-ticket collector was pursuant to an order of this Court dated December 19, 2019, and not on the basis of a selection process in which his Madhyamik Certificate might have been considered. This Court curiously notes that the copy of school leaving certificate annexed with the writ petition is penned through, in so far as the date of birth of the writ petitioner mentioned therein as '26/12/63' has been struck over and number

'66' has been inserted over there. The following initial appears to be of the Head Master of the Dum Dum Airport High School, where as the same document as relied on by the respondent, in its affidavit, did not carry any such striking out of date of birth. Also interestingly, the date of the certificate, though over written, is shown similarly in both the documents.

It is also evident that promotion of the writ petitioner to the post of "starter-cum-ticket collector", was not through any selection process but by dint of an order of this Court. Hence the very basis of the petitioner's claim, that his promotion is the self explanatory fact, as regards due submission of admit card and certificate, is only unfounded.

Instead those two documents, as relied on by the writ petitioner, appear to be suspicious pieces of documents. Those cannot be made the foundation of any relief to the petitioner. In view of that, the said two judgments shall have no manner of application, in this case.

On the discussion as above this Court finds no impropriety in the action of the respondent authorities in calculating the date of superannuation of the writ petitioner to be December 31, 2023, taking into consideration his date of birth as December 26, 1963, in accordance with their own record and same may not warrant any interference by this Court.

Hence, the writ petition being WPA 10441 of 2022 is dismissed. No order as to cost.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(Rai Chattopadhyay, J.)