

FMA 4593 of 2015

Ct-08

**Md. Abdul Halim alias Munsii @ Md. Abdul Halim
Vs.
The State of West Bengal & Ors.**

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1. The parties are not represented nor any accommodation is prayed for on behalf of the parties.

2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6.10.2023. The appeal was appeared on 6.10.2023 and is again listed today. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.

3. The appeal was filed on 5.10.2015. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellants are not interested to proceed with the appeal.

4. The writ petitioner approached this Court with a grievance that the authorities refused to change the date of birth of the petitioner from 3rd February, 1931 to 27th December, 1936 in the record of the West Bengal Board of Secondary

Education in accordance with law read with original birth Register Certificate and the affidavit shown by the appellant. The chronology of the petitioner's case was meticulously recorded in the impugned order.

5. The petitioner alleged that the petitioner came to know about alteration of date of birth in the service book when he collected the duplicate copy of the service book after receiving notice dated 11.9.1987 from his employer for his superannuation on and from 28.2.1989.

6. The petitioner contended that the petitioner was apprised by the letter no. 2538/G dated 16.01.1989 of the Secretary, West Bengal Board of Secondary Education to this effect that after due consideration by the President it has been decided that the case has no merit and relief cannot be granted.

7. The petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Sarjoo Prasad Vs. General Manager & Anr.**, reported in **(1981)3 SCC 544** wherein the Hon'ble Apex Court by relying its judgment in the **State of Orissa Vs. Dr.(Miss) Binapani Dei**, reported in **AIR 1967 SC 1269** held that the date of birth without notice and without giving opportunity to

the appellant cannot be altered to the disadvantage and prejudice of an employee because an administrative order which involves civil consequences must be made in conformity with the rules of natural justice which at its lowest minimum requires notice and opportunity to the person affected thereby.

8. The reasonable opportunity was given to the petitioner. The date of birth was recorded in the service book on the declaration of the petitioner himself. So the petitioner is estopped from pleading further on this count.

9. The petitioner relied upon another decision in the case of ***H. Subba Rao Vs. The Life Insurance Corporation of India and Anr.***, reported in ***AIR 1976 Karnataka 231*** wherein it has been observed that it is an accepted principle that an entry in the Register of Birth is not conclusive evidence in the disputed date of birth and accordingly the entry made pursuant to the direction of the Magistrate, under Section 13(3) of the Registration of Births and Deaths Act, 1969. Moreover, such entry is made after the case of occurrence. The order of the Magistrate binds only the Registrar and not others. The entry made by the Registrar,

pursuant to an order of the Magistrate, cannot carry higher probative value and its proof must necessarily depend upon the facts and circumstances of each case.

10. Learned counsel for the petitioner before the learned Single Judge relied upon Rule 9 of the West Bengal Service Rules which provides duties and functions of appointing authorities.

Rule 9(1) provides as under-

“Every applicant for Government service shall at the time of and for the purpose of, entry into Government service submit to the appointing authority a declaration in the form set out in Note 1 below stating the year, month and date of his birth or where the date of birth is not known or both the month and the date of birth are not known, the year and the month, or only the year of birth, as the case may be. The declaration so made shall be binding on the applicant and he shall have no right to revise it subsequently for any reason whatsoever.”

11. The respondent authorities before the learned Single Judge relied upon the judgment dated 28.9.2001 passed by the learned Tribunal wherein it has been observed that the petitioner

himself disclosed and entered his date of birth as on 03.02.1931. His service book was opened in the year 1961 and the dealing assistance initially recorded the date of birth wrongly, that such entry later on was corrected as per Rule 9 of the W.B.S.R, Part-I, and his date of birth was recorded as per the School Final Certificate. The applicant did not raise any objection at that point of time when his date of birth was published in the gradation list as on 03.02.1931. Learned Tribunal held that the applicant himself declared his date of birth while he was called upon to fill up the forms. Moreover, a Gradation List was published by the office where his date of birth was duly mentioned, the applicant did not raise any objection at any point of time during his service career till he was served with a notice of retirement.

12. Learned Tribunal dismissed his application on the ground that *“the case of the petitioner regarding his actual date of birth is not supported by any proper evidence as has been pointed out by the learned Tribunal. We, therefore, see no reason to interfere with the order of the learned Tribunal, but we direct the authorities to arrange for early release of the*

petitioner's retiral benefits. The writ petition is accordingly dismissed. There will be no order as to costs."

13. Learned Single Judge in deciding the matter has relied upon the decision of the Hon'ble Supreme Court in the case of **Secretary and Commissioner, Home Department Vs. R. Kirubakaran**, reported in **1993 AIR 2647, 1994 SCC Supl. (1) 155**. Learned Single Judge relied upon paragraph 7 of the said judgment and the same is given below:-

"7. An application for correction of the date of birth should not be dealt with by the tribunalhe would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

14. On the basis of the aforesaid factual aspect of the matter the learned Single Judge dismissed the writ petition. We agree with the findings of the learned Single Judge. We do not find any reason to take a different view on the aforesaid facts.

15. In view of the above, the appeal is accordingly dismissed.

(Uday Kumar,J.)

(Soumen Sen, J.)

