

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 11262 of 2016

Radhashyam Das
Versus
Board of Trustees for the Port
of Kolkata & Ors.

For the petitioner	:	Mr. Debojyoti Basu Mr. Bijoy Kumar
For the respondent Nos. 1 to 6	:	Mr. Kallol Basu Ms. Sujata Mukherjee
Heard on	:	5 th March, 2024
Judgment on	:	5th March, 2024.

Raja Basu Chowdhury, J:

1. By way of the present writ petition, the petitioner, *inter alia*, prays for a direction upon the respondents to alter and/or correct his date of birth from 17th December, 1955 to 3rd October, 1957.
2. The petitioner had participated in a selection process and on being successful in the interview for the post of Security Guard under Haldia Dock Complex, he was advised to appear before the Port Hospital for his medical examination for the appointment to the said post.

3. Upon verification of the petitioner's personal records, the petitioner was inducted and/or appointed in service on 12th January, 1981.

4. The petitioner contends that in the year 1990, the petitioner was issued a family declaration sheet wherein his date of birth was recorded as 17th December, 1955. According to petitioner, since the same constituted a wrong recording of his date of birth, he had immediately thereafter made a representation on 28th August, 1990, enclosing therewith the following documents: -

- i) *A certificate of enrolment under West Bengal National Volunteer Force issued sometime in 1977, wherein the date of birth of the petitioner is showing as 03.10.1957.*
- ii) *Vehicle License submitted by the petitioner, showing his date of birth as 03.10.1957.*
- iii) *School Transfer Certificate dated 31.12.1993 issued by the Basantia High School wherein the date of birth of the petitioner shows as 03.10.1957. He has also submitted one further School Certificate on 22.12.2015 in this regard.*
- iv) *Certificate issued on 07.04.1992 by the Contai Model Institution, showing that he passed the Madhyamik Examination in the year 1985 as an external candidate through the said school and as per the registration of the West Bengal Board of Secondary Education, his date of birth is 03.10.1957.*

- v) *Admit Card and the Certificate of West Bengal Board of Secondary Education shows that the petitioner was successful in the examination held in the year 1985, wherein his date of birth has been recorded as 03.10.1957.*

5. Since, the respondents did not act on the basis of the said representation, the petitioner had from time to time made further representations and ultimately the present writ petition has been filed.

6. Mr. Debojyoti Basu, learned advocate representing the petitioner, submits that at the time of entry into service although, the petitioner was called for medical examination, no medical examination was held. The petitioner was also not made aware with regard to the recording of his date of birth in the service records. The factum of wrong recording of his date of birth in the service records came to the light only in the year 1990 from the Haldia Dock Complex Employees' Family Declaration Sheet, whereupon the petitioner had immediately made representation enclosing therewith several documents which are indicated hereinabove. The authorities did not take into consideration such documents. According to Mr. Debojyoti Basu, such documents also included the documents such as school leaving certificate, admit card, transfer certificate, driving license and the certificate of enrolment issued under West Bengal National Volunteer Force in the year 1977. Such documents are contemporaneous documents and the respondents ought not to have ignored the same. By drawing attention of this Court to page 53 of the writ petition, it is submitted that in case

of a similarly circumstanced person although, the respondents had proceeded to correct the date of birth by carrying out such correction at the fag end of his service career, in the petitioner's case the same was denied. It is submitted that the aforesaid tantamount to discrimination and this Hon'ble Court should direct the respondents to correct the petitioner's date of birth.

7. *Per contra*, Mr. Kallol Basu, learned advocate representing the respondents, has taken me through the statements made in the affidavit in opposition, *inter alia*, including the medical examination report which is appended to the affidavit. By drawing attention of this Court to the medical report and the Left Thumb Impression (LTI) of the petitioner appearing thereon it is submitted that the petitioner had duly accepted the determination of his age, made by the medical officer as is reflected from the medical certificate. The said examination was conducted on 17th December, 1980 and as on that date the petitioner's age was determined to be 25 years. It is on the basis of the said determination of the date of birth of the petitioner that the service book of the petitioner was prepared and the service records were maintained. The petitioner belatedly after more than five years from the date of his appointment had applied for alteration of his date of birth. By relying on statements made in the affidavit in opposition, he submits that Kolkata Port Trust has adopted the provisions of Fundamental Rules in 1921 and the provisions of Supplementary Rules in the year 1939, and again adopted the above said Rules in 1954 when the same were

modified. The nature of adoption, in 1954 provides that any modification in the Fundamental Rules (FR) and the Supplementary Rules (SR) by the Government of India would automatically be adopted by the Kolkata Port Trust provided it is in the interest of the employees and is not in contradiction to the provisions of the Major Port Trusts Act, 1963. By placing reliance on Rule 56 of the Fundamental Rules, it is submitted that ordinarily, the date of birth of an employee cannot be altered except only in exceptional circumstances as provided for in the Fundamental Rules. The same is permissible with a fetter, though not absolute, of seeking correction within five years of entry into service. It is submitted that only if it is established that a genuine bona fide mistake has occurred that the date of birth can be altered. It is still further submitted that the petitioner is otherwise estopped from challenging his date of birth. The decision of the respondents in rejecting the petitioner's case was taken way back in the year 1990. The petitioner was duly aware with regard to the same. Such fact would corroborate from note appearing on the representation made by the petitioner dated 28th August, 1990 which the petitioner has annexed in his affidavit in reply. It is submitted that this Court in exercise of extraordinary writ jurisdiction, at this stage, should not interfere.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case, by a communication in writing dated 8th December, 1980, the respondents had called upon the petitioner to visit their office on 17th December,

1980 for medical examination. The petitioner was also called upon to carry his Employment Exchange Registration Card and his School Certificate carrying the School Index Number in support of his age. The records reveal that since, the petitioner did not produce any documentary evidence in support of his age, his age was determined by the medical officer in-Charge as 25 years on that date. The petitioner had put his LTI as a token of acknowledgement his age as 25 years, and pursuant to the aforesaid, started working with Haldia Dock Complex. It is true that the Haldia Dock Complex Employees' Family Declaration Sheet was issued in the year 1990 wherein his date of birth was recorded as 17th December, 1955. The petitioner claims that the cause of action for seeking correction of his date of birth had arisen in the year 1990 when the aforesaid document came to the light. Following the aforesaid, the petitioner had made a representation and had relied on several documents which have been identified by the respondents in their affidavit in opposition and appears to be *prima facie* contemporaneous documents. In this context, I may note that from the available records, it does not appear that the petitioner had disclosed any of the aforesaid documents at the time of his entry into service. Admittedly, the admit card issued by the West Bengal Board of Secondary Education was issued in the year 1985. The same cannot be considered to be a contemporaneous document. Insofar as the certificate issued by the West Bengal National Volunteer Force in the year 1977, school Transfer Certificate dated 31st December, 1993, the

certificate issued by the Contai Model Institution dated 7th April, 1992 and Vehicle License are concerned, the same were never disclosed by the petitioner at the time of his entry in service. At the time of entry in service, the petitioner had accepted his age as 25 years as on 17th December, 1985. Having thus, accepted his age as 25 years at the time of entry in service, in my view, is estopped from challenging the same. This apart, the petitioner's claim for correction had long been rejected by the respondents as would appear from the noting made by the Personnel Manager on the petitioner's representation dated 28th August, 1990. To morefully appreciate the same, the relevant portion of the noting on the said representation is extracted hereinbelow: -

“Since you have appeared in the Secondary Exam after your appointment at C.P.T, the admit card to Secondary Exam cannot be accepted as a valid document of your age as per Secretary, CPT's circular 1535/A/Genl dt 3/11/58. Hence, your date of birth as medically assessed i.e. 17/12/55, is to be treated as final.”

9. Since, the respondents had refused to correct the petitioner's date of birth on the basis of his representation made in the year 1990 itself, the cause of action, if any, for the petitioner to move the Hon'ble Court had arisen in the year 1990 itself. The writ petition appears to have been filed in the year 2016 that too after the petitioner was superannuated.

10. In so far as the document at page 53 of the writ petition is concerned, although the petitioner claims that in his case the benefit of

age correction as afforded to one Sukumar Dinda was not extended to him, from the documents disclosed and from the case as made out, it does not appear that both the cases are identical. The only other case argued by Mr. Debjyoti Basu that no medical examination took place to determine the age of the petitioner is not supported by any averment in the petition and the representation made by the petitioner in the year 1990. The aforesaid argument appears to have been made in desperation.

11. Having regard to the aforesaid, I am of the view that the petitioner cannot be entitled to any relief as regards correction of his date of birth. Since the petitioner has pressed this as the only prayer, the writ petition fails and is accordingly dismissed.

12. There shall be no order as to costs.

13. The respondents are directed to ensure that terminal dues of the petitioner, if any, are disbursed at the earliest.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)