

27.11.2024
Item No.82
Court No.11
Avijit Mitra
ML

MAT 2559 of 2023

**Asis Kanjilal
- Versus -
State of West Bengal & ors.**

Mr. Sarwar Jahan,
Mr. Joy Chakraborty
....for the appellant
Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh
....for the respondent nos. 2 to 4

The present appeal has been preferred by the writ petitioner/appellant herein challenging an order dated 20th December, 2023 passed by the learned Single Judge in the writ petition being WPA 10441 of 2022 preferred by the appellant primarily praying for rectification of his date of birth as 26th December, 1966 in place and stead of 26th December, 1963 in the service records.

Mr. Jahan, learned advocate appearing for the appellant argues that for determining the age of a person, the best evidence is the date of birth as depicted in the Madhyamik admit card and without considering the same, the learned Single Judge erred in law in rejecting the appellant's claim towards correction of date of birth in the service records.

He submits that the appellant was appointed to the post of Heavy Vehicle Driver on 1st March, 1993. Subsequent thereto, he was issued an Identity Card and his name was placed in the gradation list recording his date of birth as 26th December, 1966 on the basis of his Madhyamik admit card which categorically incorporates his date of birth as 26th December, 1966. On the basis of said document, he was also promoted to the post of Starter-cum-Ticket Examiner by virtue of an order passed in MAT 62 of 2018. His date of birth was illegally altered thereafter in the gradation list as 26th December, 1963. Failing to appreciate such sequence of facts, the learned Single Judge dismissed the writ petition.

He strenuously argues that the appellant mistakenly could not be produce the Madhyamik admit card and mark sheet at the time of appointment. The date of birth as incorporated in the Madhyamik admit card would have also entitled him to appointment in the year 1993. No trick or device was resorted to by the appellant and as such he ought not to have been penalized. Such argument, as advanced, was glossed over by the learned Single Judge and no specific finding was returned on the same.

Per contra Mr. Banerjee, learned advocate appearing for the respondent nos. 2 to 4 denies and disputes the contention of Mr. Jahan and drawing our attention to the averments made in the affidavit-in-opposition to the writ petition, he submits that the objection pertaining to alleged erroneous recording of date of birth was considered by the

respondents and it was ascertained from the Transport Directorate that the driving licence was issued on 11th July, 1983. Had the appellant's date of birth been 26th December, 1966, he would have been age barred for the heavy vehicle driving licence.

He argues that it is the case of the appellant that he appeared in the Madhyamik examination in 1985, i.e., prior to the appointment. However, at the time of filling up his verification roll he himself declared his date of birth to be 26th December, 1963.

Drawing our attention to the class VIII certificate submitted by the appellant annexed to the stay application, Mr. Banerjee argues that the said document *ex-facie* reveals interpolations and as such the same was rightly discarded as a proof towards the appellant's actual date of birth.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It could not be satisfactorily explained by the appellant as to why he did not produce his Madhyamik admit card and mark sheet at the time of his initial appointment on 1st March, 1993. The argument of Mr. Jahan that such act was a mistake on the part of the appellant is not acceptable since the appellant himself consciously filled up the verification roll incorporating his date of birth as 26th December, 1963. In the class VIII pass certificate, the appellants date of birth was altered subsequently and as such the learned Single

Judge observed that same was a suspicious document and rightly refused to exercise discretion in his favour.

The learned Single Judge, upon dealing with all the factual issues, arrived at specific findings and we do not find any error of law in the same.

For the reasons discussed above, no interference is called for.

Accordingly, the present appeal is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Sen, J.) (Tapabrata Chakraborty, J.)