

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 1786 of 2011

Sankar Chandra Maiti

Versus

The State of West Bengal and Others

For the Petitioner : Mr. Bidhayak Lahiri, Adv.
Ms. Bhaswati Lahiri, Adv.

For the WBBSE : Ms. Koyeli Bhattacharyya, Adv.
Mr. Bibek Dutta, Adv.

For the State : Mr. Jahar Lal De, Adv.
Mr. Somnath Banerjee, Adv.

Heard on : 26.02.2025

Judgment on : 05.03.2025

Ajay Kumar Gupta, J:

1. This instant writ petition has been filed by the petitioner challenging the impugned Memo dated December 29, 2010 issued by the respondent no. 6 (Annexure P-10), impugned Memo dated June 6, 2011 issued by respondent no. 3 (Annexure P-11) and impugned Memo dated January 8, 2011 issued by the respondent no. 8 (Annexure P-12) and prayed for passing order in the nature of mandamus restraining the respondents, their agents and servants from giving effect or further effect to the aforesaid impugned memos and further restraining the respondents, their agents and servants from interfering with the services of the petitioner in the post of Assistant Teacher in Tukuriapat High School and to allow the petitioner to continue his service in the post of Assistant Teacher in Tukuriapat High School till January 31, 2012.

2. The background facts, which led to filing of this writ petition, may be adumbrated as under: -

2a. The petitioner was appointed as Assistant Teacher in the school, namely, Tukuriapat High School, Paschim Medinipore on and from 21.05.1979 and he was working therein without any adverse report. The petitioner was supposed to retire from his service on and

from 31st January, 2012 in view of his date of birth as recorded in the service book, prepared at the time of appointment and his date of birth was recorded as 25th January, 1952 on the basis of testimonials submitted by the Petitioner.

2b. Prior to his retirement date, his pension papers were supposed to deposit in the office of District Inspector of Schools (SE) by the Headmaster of said school, where he was working on November 2, 2010. But, due to his school final certificate was not clearly legible in Xerox copy of the same submitted along with the pension papers, he was asked to submit the other documents as well.

2c. The petitioner prayed for one month's time to submit the duplicate copy of school final certificate after obtaining it from the West Bengal Board of Secondary Education because the petitioner had lost his original school final certificate on 4th November, 2010 at Chandrakona Bus stand.

2d. The Petitioner lodged a General Diary at Local Police Station being General Diary No. 222 dated November 6, 2010 and, subsequently, applied to the Board of Secondary Education

department for duplicate copy of the same with prescribed form with General Diary. The said application was forwarded by the Headmaster for obtaining duplicate copy of the certificate.

2e. Acting on such application, a duplicate final school certificate of the Board was supplied by the Board and in duplicate certificate the petitioner's date of birth was recorded as 25th January, 1950 though his actual date of birth was 25th January, 1952.

2f. Due to such incorporation of date of birth inadvertently in duplicate certificate, the petitioner made a representation to the respondent no. 5 for rectifying of his date of birth in the record of the petitioner.

2g. Due to wrong incorporation of date of birth of the petitioner in duplicate certificate and upon verification, the School Authority forcibly ousted the petitioner from his service without matured date and issued a memo dated December 29, 2010 as his date of birth found as January 25th, 1950.

2h. Drawing reference to the said memo, the respondent no. 3 vide memo dated January 6, 2011 directed the respondent no. 7 to immediately stop the petitioner's salary and to take steps to recover the money received by the petitioner on and from February 1, 2010 till his works.

2i. In response to the aforesaid memo dated January 6, 2011, the respondent no. 8 vide memo dated January 8, 2011 directed the petitioner to refund the amount as received under the head of salary for the period from February 1, 2010 till November 30, 2010. Although, his date of birth is recorded in the service book, Pan Card, LIC Certificate, Ration Card and Xerox Copy of Admit Card of the School Certificate appearing as 25th January, 1952 and without affording fair opportunity of hearing to the petitioner to support his contention of the actual date of birth is 25th January, 1952 and not 25th January, 1950.

2j. The supplementary affidavit was filed and averred therein by the petitioner that his date of birth was also recorded in Medinipore Collectorate at the time of his birth. In support of his contention, he has annexed all those documents including certified copy of extract of

register of birth of the writ petitioner issued by Medinipore Collectorate.

2k. It is relevant to mention that during pendency of the case, the petitioner had asked to retire on February 1, 2010 though his actual date of superannuation was fixed on February 1, 2012. In pursuance of this Court's Order dated 19.09.2023, he was paid his retiral benefits though a dispute between the petitioner and the respondents regarding the date of birth and his date of retirement and consequential benefits remains pending for disposal.

3. Both the parties have filed their affidavit-in-opposition and affidavit-in-reply and same was exchanged between the parties as such, case has been heard in presence of the parties. During hearing, this Court also directs the respondent no. 4, the West Bengal Board of Secondary Education to bring original record of the petitioner to verify his date of birth.

4. Upon verification of the original record of the petitioner, which was submitted by the petitioner himself before the Board for appearing in the Madhyamik examination in the year 1968, this

Court finds the date of birth of the petitioner was recorded as 25th January, 1950. Whereas, the claim of the petitioner is that his actual date of birth is 25th January, 1952.

5. Upon meticulously perusal of the original record as well as attested copy of the petitioner's record brought by the respondent no. 4, it reveals though the form had been filled up by the petitioner himself but the date of birth recorded thereon appears to be written by someone else with different ink/pen.

6. At the same time, upon perusal of the writ petition, this Court finds from the certified copy of the extract of the register of birth certificate issued by the Medinipore Collectorate on 21.07.1979 and other documents reflected his date of birth as 25.01.1952.

7. The State respondent has stated that the petitioner had manipulated his documents while preparing the pension papers and when doubt creates, the authority verified his document from the Board (Respondent No. 4) and after confirming his date of birth found as 25.01.1950. He was issued aforesaid memos asking him to return the salary which was drawn by him for excess of his service and he

was supposed to retire from his service on and from February 1, 2010 but he continued till November 30, 2010. Therefore, he is not entitled to get any benefits whatsoever.

8. Considering the facts available on the record, it appears that certified copy of the extract of the register of birth and the record of the West Bengal Board of Secondary Education reflects two different dates of birth and the claim of the petitioner is that he was not given any opportunity prior to taking decision by the respondents to submit his case along with relevant documents.

9. He has already made prayer before the Board for correction of his date of birth on the basis of other documents including the extract of birth register and same is still pending. There are two Government documents showing two different dates of birth of the writ petitioner.

10. Therefore, there is no justifiable or cogent reason in keeping this writ petition pending before this Court, when there are two Government documents contradictory to each other. A fresh enquiry is required to be conducted by the concerned respondents to

ascertain the actual fact of his date of birth upon affording opportunity to the petitioner as well as other concerned authorities.

11. Consequently, the respondent no. 3 is directed to consider and decide the case of the petitioner as made out in the writ petition thereof upon affording an opportunity of hearing to the writ petitioner and all other concerned authorities and shall decide the issue with a reasoned order strictly in accordance with law.

12. The entire exercise, as directed above, shall be carried out and completed by the respondent no 3, D.I. of Schools (Secondary Education), Paschim Medinipore positively within a period of eight weeks from the date of communication of this order along with copy of writ petition and supplementary affidavits.

13. While considering the issue, the respondent no. 3 shall consider all documents annexed with the writ petition and their applicability in the case.

14. It is made clear that this Court has not entered into the merits of the claim of the petitioner in any manner and the petitioner

will be at liberty to urge whatever points he wishes to urge by relying upon whatever records and documents he wishes to rely upon before the respondent no. 3

15. It is further made clear that the respondent no. 3 shall pass its reasoned decision in accordance with law independently without being influenced by any observations, whatsoever, made herein above.

16. After the reasoned decision is arrived at by the respondent no. 3, shall communicate the same to the petitioner and the respondent no. 8, the Headmaster, Tukuriapat High School, Paschim Medinipore, positively within a period of one week from the date of the said reasoned decision and the respondent no. 8 then, in turn, shall act accordingly.

17. On the above terms and direction, this writ petition being **WPA 1786 of 2011** stands disposed of, without any order as to costs.

18. Interim order, if any, stands vacated.

19. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

20. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A./Shreen