

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL  
BIKASH BHAVAN, SALT LAKE CITY  
K O L K A T A – 7 0 0 0 9 1**

Present :-

*Hon'ble Justice Ranjit Kumar Bag,*  
Chairman In-charge.

-AND-

*Hon'ble Dr. Subesh Kumar Das,*  
Administrative Member.

**J U D G M E N T**

-of-

**Case No. : O.A. 541 of 2014 : ARABINDA MAJHI.**

..... Applicant.

-Versus-

**State of West Bengal & Others.**

..... Respondents.

**For the Applicant :-**

**Mr. R.C. Guchhait,**  
Learned Advocate.

**For the State Respondents :-**

**Mr. Manujendra Narayan Roy,**  
Learned Advocate.

**For the A.G. (A & E) W.B. :-**

**Mr. B. Mitra,**  
Departmental Representative.

**Judgment delivered on : May 18, 2018.**

**The Judgment delivered by Dr. Subesh Kumar Das,  
Administrative Member.**

**JUDGEMENT**

1. The short question which arises for consideration in this application is whether the Respondents acted illegally in correcting the date of birth of the applicant vide order dated April 26, 2013 and by making the applicant to retire on April 30, 2014 by taking his date of birth as April 20, 1954 instead of September 10, 1960 as claimed by the applicant.

2. The applicant Shri Arabinda Majhi joined as Khalasi in River Research Institute, West Bengal on June 20, 1980 on the basis of Order no. 2009 dated June 05, 1980. In the Service Book of the applicant his date of birth was originally recorded as September 10, 1960 on the basis of recordings in his Horoscope. The applicant passed Madhyamik Pariksha under the West Bengal Board of Secondary Education in the year 1983 and in the said Madhyamik Certificate his date of birth was recorded as September 10, 1960. At the time of entry to Government service, Shri Majhi mentioned his date of birth as April 20, 1954 in the Police Verification Roll (P.V.R.) and the same date was in the school leaving certificate submitted by him. In the year 2007, the respondents noticed discrepancy between the date of birth noted in the service book and that mentioned in the Verification Roll and the school leaving certificate. Shri Majhi was asked to explain the discrepancy. In reply Shri Majhi submitted a letter dated November 03, 2008 where he confessed that his correct date of birth was April 20, 1954 as declared by him in his PVR. The discrepancy in the date of birth of Shri Majhi was referred to higher authority and finally the matter was resolved by I & W Department Order No. 1016-IE/1S-03/06 dated April 26, 2013 read with I&W Directorate letter no. 2147-CIE-IS-10/12 dated June 03, 2013. Accordingly, correction was made in his Service Book and his date of birth was recorded as April 20, 1954.

3. The original Service Book and other relevant documents were produced before this Bench on March 05, 2018, which were kept on record. We have examined the original Service Book and the other records.

4. Mr. R. C. Guchhait, Ld. Counsel representing the petitioner submitted that the date of birth as was originally recorded in the Service Book and as mentioned in his Madhyamik Certificate is the actual date of birth of the applicant and it cannot be discarded on the basis of school leaving certificate and the P.V.R. He also submitted that the letter dated November 03, 2008 declaring his date of birth as April 20, 1954 was taken

from him under threat by the concerned office and that this letter should not be taken into consideration while deciding this case. He further submitted that the Horoscope, Aadhar Card and PAN Card and other documents of the Government indicate that his date of birth is September 10, 1960 and, therefore, the applicant should be allowed to continue his service till his actual date of retirement as on September 30, 2020.

5. Mr. M. N. Roy, Ld. Counsel for the respondents submitted that after detecting discrepancy between the date of birth noted in the service book and the date of birth mentioned by the applicant in the Verification Roll and school leaving certificate, Shri Majhi was asked to explain the reasons for the discrepancy in his date of birth. In his reply in letter dated November 03, 2008 he admitted that his correct date of birth was April 20, 1954 as declared by him in his PVR and also begged for apology and this admission by Sri Majhi was not under any threat. He submitted that the action by the respondents in correcting the date of birth of the applicant is legal and justified and it has been done as per provisions of WBSR Part-I.

6. Mr. Guchhait, Ld. Counsel for the petitioner submitted that the date of birth originally entered in the service book should not have been changed by the respondents on the basis of school leaving certificate. In support of such contention, Mr. Guchhait, has referred to the observation of the Hon'ble High Court of Calcutta in "Md. Abdul Khaleque -Vs.- State of West Bengal and Others" reported in 1997 (1) CHN 387. In this reported case the petitioner, who joined as a Dafadar in the year 1965, submitted an application for change of his date of birth in 1989 on the basis of a school leaving certificate, which was refused by the respondents. He challenged the said refusal before the Single Bench of Hon'ble High Court, Calcutta which was rejected. He then approached the Hon'ble Division Bench and his prayer was rejected with the following observation in paragraph 10 of the judgement:

*"The only case of the petitioner for alteration of the date of birth was the certificate itself. If the aforementioned certificate was presumed to be incorrect, the question of taking recourse to sub-rule (5) of Rule 9 of the West Bengal Service Rules, Part-I would not arise. Moreover it is well-known that when an entry has been made in the service record, the same would be presumed to be correct."*

The main reason of refusal of the prayer of the petitioner in this reported case is that the certificate on the basis which the date of birth of the petitioner was sought to be corrected was not genuine and reliable document. The Hon`ble High Court has not laid down the law that the date of birth recorded in the Service Book cannot be altered or corrected by following the procedure laid down in Rule 9(5) of W.B.S.R. Part-I, when the respondents came to know about the discrepancies in the documents submitted by the petitioner and after giving him an opportunity to explain the discrepancies. Moreover, the facts and circumstances of the reported case are not identical with that of the present case and thus the ratio in the reported case will not be applicable in the different facts and circumstances of the present case.

7. Mr. Guchhait, Ld. Counsel appearing for the petitioner submitted that the date of birth as recorded in the Madhyamik Certificate carries a greater evidential value than the evidential value attached to a school leaving certificate as has been observed by the Apex Court in the case of “State of Madhya Pradesh Vs. Mohanlal Sharma” reported in (2002) 7 SCC 719. Ld. Counsel for the petitioner also referred to another judgement delivered by the Hon`ble High Court Calcutta in “Madhusudan Modak Vs. State of West Bengal” reported in 2010 (2) Cal LT 698 to support his argument. In “State of Madhya Pradesh Vs. Mohanlal Sharma” (supra), the date of birth of the government employee was recorded in the service book on the basis of the Matriculation Certificate submitted by him at the time of appointment. The government employee filed an original application before the Madhya Pradesh State Administrative Tribunal, alleging that his correct date of birth is February 30, 1937 and not April 19, 1935. In support of his case, the government employee furnished his Horoscope and a certificate from the retired headmaster of a School. The original application was allowed and a direction was issued to correct the date of birth in the service record on the basis of certificate issued by the headmaster of the school. The said judgement was challenged by the State of Madhya Pradesh by preferring an appeal before the Apex Court. The appeal was allowed and the judgement of the Hon`ble Tribunal was set aside. It is observed by the Apex Court that the initial entry of the government employee would have been below 18 years of age, had his date of birth been corrected on the basis of school leaving certificate issued by the retired headmaster of the school. In this

context the Apex Court has laid down that the date of birth recorded in the Matriculation Examination Certificate carries greater evidential value than the school leaving certificate.

8. In “Madhusudan Modak Vs. State of West Bengal” (supra), the petitioner joined the service on the basis of the date of birth recorded in the Higher Secondary Certificate and only few months before retirement he got the date of birth recorded in the Higher Secondary Certificate changed on the basis of school leaving certificate issued by the headmaster. The petitioner then approached West Bengal Administrative Tribunal for necessary direction for correction of his date of birth in the service records. Hon`ble Tribunal dismissed the application on merit. The petitioner then challenged this order before the Hon`ble High Court. Hon`ble High Court, Calcutta dismissed the petition. The Hon`ble Division Bench of the High Court held that the date of birth of the government employee recorded in the Service Book on the basis of Higher Secondary certificate cannot be altered at the instance of the government employee on the basis of the subsequent High Secondary certificate containing another date of birth after long lapse of 34 years. In the instant case, the original date of birth was corrected by the respondents under Rule 9(5) of the West Bengal Service Rules, Part -1, on the basis of contemporaneous documents which were available at the time of joining of the applicant. In view of the above, we are of the opinion that the judgments of the two referred cases have no application to the present case.

9. In dealing with this case, it is necessary to extract the relevant provisions of Rule 9 of W.B.S.R., Part-I . “*Declaration of age: Duties and functions of appointing authorities*”.

*(1) 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 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.*

.....

*(5) The appointing authority or, where the final order fixing the year, month and date of birth or a Government servant, the Government, may at any time for sufficient reasons review the order fixing the year, month and date of birth and modify the same, provided that the year, month and date of birth shall not be modified to the disadvantage of the Government servant unless he has been given an opportunity of making any representation which he may wish to make against the proposed action”.*

Rule 9(1) indicates that every applicant for Government service shall at the time of entry into Government service, submit a declaration in respect of date of birth of the applicant and it shall be binding on the employee. In terms of this, the date of birth declared by an applicant at the time of entry into the government service and the documents submitted in support of such declaration are extremely important. It appears from the records that Shri Majhi was directed to submit the verification roll vide letter No. 372 dated February 18, 1980 and he submitted the same vide letter dated February 25, 1980. In the verification roll, the date of birth is clearly mentioned as April 20, 1954 and in the said document he also mentioned that his age was 25 years 08 months and 15 days on the date of signing the verification roll on February 25, 1980. In the verification roll he also submitted that he studied in Kalindi Union High School, Midnapore from January 01, 1970 to April 18, 1977 and passed Class X examination. The certificate issued by the Headmaster, Kalindi Union High School indicates that his date of birth is April 20, 1954. Under Rule 9(1), this declaration is binding on the applicant about his date of birth.

10. On scrutiny of records, it appears that the date of birth of the applicant originally recorded in the Service book was on the basis of Horoscope. It is not clear why it was recorded on the basis of Horoscope while the school leaving certificate was available at that point of time. The educational qualification of the petitioner was entered as Class X pass in the service book, which must have been done on the basis of the school leaving certificate. At that point of time no effort was made to reconcile the discrepancy in the so called Horoscope and the school leaving certificate. The recording of date of birth in the service book of the applicant should have been done on the basis of the school leaving certificate as Horoscope is always considered as a very weak piece of material to prove age of a person.

In the case of “State of Punjab –Vs- Mahinder Singh” reported in (2005) 3 SCC 702, the Hon`ble Apex Court had occasion to deal with evidentiary value of Horoscope as proof of date of birth. It was held by the Hon`ble Apex Court that Horoscope is a very weak piece of material to prove the age of a person. On the contrary the statement contained in the admission register of the school as to be age of an individual is more authentic evidence, unless it is established by unimpeachable contrary material to show that it is inherently improbable. Therefore, the school records and hence school leaving certificate have more probative value than Horoscope.

11. The question that we consider now is whether the Respondents followed the prescribed procedure in modifying the date of birth of the applicant as recorded in the service book. In Rule 9(5) of W.B.S.R. Part-I, it may be found that the review by the Government is permissible. In the case of “State of West Bengal and others –Vs- Sisir Kumar Paria” reported in (1997) ILLJ 1085 Cal, His Lordship has held that, ***“although the review is permissible, but the review can be done only on the material which is based on contemporaneous record namely, any evidence or material which was in existence at that time of joining the service”***. In the present case, we find that the modification of date of birth was done based on records, which were available at the time of joining the service. The records are the school leaving certificate and copy of the PVR. It is also necessary to point out that the applicant appeared in the School Final Examination three years after joining the service and it is not permissible to rely upon such entries in the certificate, which came into existence after joining the service.

12. Sri Majhi appeared in the School Final Examination after joining the service and this he could not have done by attending the school regularly as a regular student and, therefore, he should be considered more as a private candidate than a regular candidate. In the case of “Saroj Kumar Bhattacharya –Vs- Bengal Immunity” reported in 1994(I) CJL 79, the Division Bench of Hon`ble High Court, Calcutta held that the date of birth recorded in the Board certificate of a private candidate cannot be relied upon as the candidate has the opportunity to declare his age suppressing the real age and there is no system in place to check his real age. Accordingly, the Matriculation Certificate in the instant case, which Sri Majhi received after three years of joining the service, cannot be relied upon.

13. On scrutiny of Service Book of Sri Majhi and the related contemporary materials, we find more evidence about his date of birth. His order of appointment bearing order no. 2009 dated June 05, 1980 indicates that he was not a fresh recruit. He worked as a casual worker in the same establishment prior to his absorption in the regular post in terms of circular issued by the Government of West Bengal, Labour Department No. 1700-EMP dated August 03, 1979/ August 16, 1979. The 1700-EMP circular provides that “Casual and such other categories of workers who have been engaged in perennial type of work for continuous period of more than three years may be absorbed in regular establishment ....” This means that he must have worked in the establishment for more than three years as casual worker prior to the decision of his absorption to the regular post of Khalasi. As he was asked to submit the Verification Roll for his absorption in the post of Khalasi vide letter no. 372 dated February 18, 1980, the decision for his absorption in regular post must have been taken before that date. This apart, the petitioner mentioned in the Verification Roll that he worked as a daily paid worker from May 27, 1976 to February 25, 1980. This means, if the date of birth as claimed by the petitioners is accepted to be correct, then he was a minor aged below 16 years of age (precisely 15 years 8 months 17 days) at the time he joined as a daily rated worker in the establishment. If we accept the date of birth of the applicant initially recorded in the Service Book or the date of birth mentioned in the Madhyamik Certificate obtained by him after three years of joining service, we have to accept the absurd fact that he was employed as casual or daily rated worker in an establishment like the River Research Institute, West Bengal under the Irrigation and Waterways Department, Government of West Bengal while he was below 16 years of age. It is well-nigh impossible for us to accept the date of birth recorded in the Service Book of the applicant by ignoring the contemporaneous records and declaration of the applicant in Police Verification Roll for entry into the service and his subsequent admission in response to the show cause notice of the respondents under Rule 9(5) of WBSR, Part-I. Our view gets fortified from the ratio of the judgement of the Apex Court in “State of M.P. –Vs- Mohonlal Sharma” reported in (2002) 7SCC 719 discussed herein above.

14. Thus, after considering the submissions of the Ld. Counsels of the parties and careful examination of all the materials on record and having due



regard to the settled position of law as laid down by the Hon`ble Supreme Court and Hon`ble High Court, Calcutta on the various points involved in the instant case, we hold that there is no merit in the Application which calls for review of the action of the respondents in correcting the date of birth of the applicant and in retiring him from the service on the basis of corrected date of birth.

15. The application is accordingly dismissed. The original service book and other relevant documents kept on record are returned to authorised representative of the department.

16. The urgent Xerox certified copy of the judgment and order may be supplied to the parties, if applied for, subject to compliance of necessary formalities.

( Dr. Subesh Kumar Das )  
MEMBER(A)

(Ranjit Kumar Bag )  
MEMBER (J).