

District: Paschim Medinipur

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

W.P. No. 1786(W) of 2011

In the matter of:

Sankar Chandra Maiti

... Petitioner

-Versus-

The State of West Bengal & Ors.

... Respondents

Brief note of written argument for and on behalf of the Petitioner.

1. That the petitioner whose date of birth was correctly recorded as on 25-01-1952 in his Service Book marked as Annexure P-6 (page 37) of the original writ petition at the time of entry in service and that entry of date of birth being supported with Admission Register of the school concerned marked as Annexure P-1 (page 31) and Birth Register marked as Annexure P-3 (page 33) had challenged the impugned order of forced retirement from service on 31-01-2010 i.e, before attaining the age of 60 years scheduled to be held on 31-01-2012 vide impugned letter dated 08-01-2011 marked as Annexure P-12 (page-49) in the original writ petition issued by the headmaster of Tukuriapat High School

(Resp. No. 8) on the basis of the disputed letter dated 29-12-2010 marked as Annexure P-10 (page 46) in the original writ petition issued by Deputy Secretary (Records Verification) of West Bengal Board of Secondary Education (Resp. No. 6) which is not a conclusive evidence for the purpose of determining the date of birth of the petitioner and on the basis of the letter dated 06-01-2011 marked as Annexure P-11 (page-48) in the original writ petition issued by the District Inspector of Schools(S.E), Paschim Medinipur (Resp. no. 3) on the ground that the respondents no. 3 and 8 acted illegally and maliciously and without jurisdiction and without application of their mind to the facts and law in respect of correction of date of birth recorded in the Service Book.

1A. That the petitioner also filed a Supplementary Application on 04-12-2012 with the leave of the Hon'ble Court.

2. That the respondents no. 1, 2 and 3 contested the writ petition and filed an Affidavit-in-Opposition on 19-04-2013 denying the petitioner's allegations therein. In the said Affidavit-in-Opposition, respondent no 1, 2 and 3 brought some malicious and false allegations against the petitioner stating inter-alia that the petitioner's date of birth recorded in the Admit Card of the

School Final Examination as on 25-01-1950 and petitioner practicing fraud by incorporating the word “TWO” after the words “NINETEEN HUNDRED FIFTY” and accordingly petitioner may be asked to submit his original Admit Card and School Final Certificate before this Hon’ble Court to prove his actual date of birth.

3. That it is also alleged by the respondent no 1, 2 and 3 that a secret enquiry behind the back of the petitioner was conducted by 2 officers for verification of date of birth so recorded in the school certificate and that enquiry report had been submitted before the Hon’ble Court by the respondents.

4. That the West Bengal Board of Secondary Education also filed Affidavit-in-Opposition on 04-05-2017 on behalf of the respondents no. 2, 5 and 6 where they did not dispute the conditions prescribed in the application form for correction of the date of birth recorded in the record of board of West Bengal Board of Secondary Education (The prescribed application form for correction of date of birth is at page-40 of the original writ petition).

5. Now the question is:-

I. Whether it is permissible on the part of the respondent no. 3 and 8 to correct the date of birth so recorded in the Service

- Book as on 25-01-1952 which was made at the time of entry in the service only on the basis of the disputed letter dated 29-12-2010 marked as Annexure P-10 (page-46) of the original writ petition issued by the Deputy Secretary of West Bengal Board of Secondary Education which could not be treated as conclusive evidence for the purpose of correction of date of birth on the eve of his superannuation or at the fag end of career of the petitioner which is scheduled to held on 31-01-2012?
- II. It is not in dispute that the Headmaster of Tukuriapat High School (Resp. no. 8) issued notice of retirement of the petitioner dated 25-08-2009 where date of superannuation as per Service Book was shown to be on and from 31-01-2012 afternoon.
- III. It is also not in dispute that the Service Book marked as Annexure P-6 (page-37) also shows that date of birth of the petitioner was recorded as on 25-01-1952.
- IV. It is also not in dispute that the Headmaster of Tukuriapat High School (Resp. no. 8) submitted the pension papers of the petitioner on 02-11-2010 after proper verification vide his letter dated 02-11-2010 at page 47 of the original writ petition.

V. It is also not disputed fact that the petitioner filed application in prescribed form of West Bengal Board of Secondary Education for correction of date of birth so recorded in the School Final Certificate as on 25-01-1950 in place of 25-01-1952 and that application was supported with copy of the Admission Register of the school duly attested by the Headmaster of the school concerned and countersigned by the District Inspector of Schools (P.E.), Paschim Medinipur and copy of the Birth Registration Certificate recorded within 1 year from date of birth and duly attested by Gazetted Officer and that prescribed application form for correction of date birth issued by the West Bengal Board of Secondary Education so that the date of birth if any wrongly recorded in the records of the board may be revised/corrected on submissions of Birth Registration Certificate and Admission Register of school duly attested by Gazetted officers or other competent authorities. So, the date of birth as on 25-01-1950 in place of 25-01-1952 recorded by the board and intimated to the District Inspector of Schools (S.E.), Paschim Medinipur vide his letter dated 29-12-2010 does not attach any finality and conclusive at all for determining the actual date of birth of

the petitioner and for correction of date of birth for the purpose of retirement. In such a situation, the respondents no. 2, 3 and 8 ought to have accepted the date of birth of the petitioner as on 25-01-1952 in place of 25-01-1950 so recorded in the records of board for the purpose of retirement of the petitioner on attaining the age of 60 years which is scheduled to be held on 31-01-2012 not on 31-01-2010.

- VI. That the alleged enquiry report being conducted by the 2 officers namely R. K. Das, S.I/S (S.E.), Sadar Sub-Division and U. K. Tripathy, A.I/S (S.E.), Sadar Sub-Division, Paschim Medinipur also supports the petitioner's case because the said report shows that the date of birth was recorded in the Admit Card of the School Final Examination, 1968 as on 25-01-1952. Besides that enquiry was conducted by the aforesaid 2 officers behind the back of the petitioner and that fact of enquiry had never been disclosed by the respondents' no. 3 and 8 in their letter dated 06-01-2011 and letter dated 08-01-2011. So, the said report has become quite irrelevant for the purpose of determination of the date of birth of the petitioner as well as

for correction of date of birth so recorded in the Service Book at the time of entry into service.

VII. It is found that the said aforesaid letter dated 06-01-2011 (Annexure P-11) issued by the District Inspector of Schools (S.E.), Paschim Medinipur (resp. no. 3) and the letter dated 08-01-2011 (Annexure P-12) issued by the Headmaster of Tukuriapat High School (Resp. no. 8) was issued/written without having any approval of any Competent Authority of the Education Department, Govt. of West Bengal. So, the Headmaster of Tukuriapat High School (Resp. no. 8) acted without jurisdiction or authority in issuing the letter dated 08-01-2011 retiring the petitioner on and from 31-01-2010 in place of 31-01-2012 i.e, before attaining the age of 60 years on 31-01-2012 as per date of birth so recorded in the Service Book.

VIII. That it is also found that during pendency of the writ petition before the Hon'ble High Court, the respondents authority had recognized the petitioner as a retired teacher of 2011-12 for the purpose of issuing 'Abhigyan Patra' on the eve of Teacher's Day of 2012 vide letter dated 31-08-2012 marked as Annexure P-20 (page-68) in the Supplementary Affidavit.

- IX. That it is settled position of law as per decisions of the Supreme Court reported in **2011(6) Supreme 259, State of M.P. & Ors. versus Premlal Shrivass** where it was held that *“the date of birth recorded in the Service Book at the time of entry into service is conclusive and binding on the Government servant.”*
- X. That it is found that the declaration of age made at the time of entry into service for the purpose of entry into the Service Book was on 25-01-1952 not on 25-01-1950. So, such date of birth as on 25-01-1952 so recorded in the Service Book ought to have been treated by the respondents no. 3 and 8 as conclusive evidence for retiring the petitioner from service on attaining the age of superannuation of 60 years which is scheduled to be on 31-01-2012 not on 31-01-2010.
- XI. That in para-8 and para-9 of the aforesaid judgement **(2011(6) Supreme 259, State of M.P. & Ors. vs. Premlal Shrivass)** Hon’ble Supreme Court held that *“It needs to be emphasized that it is matter of involving correction of date of birth of a Government Servant, particularly on the eve of his superannuation or at the fag end of his career, the court or tribunal has to be circumspect, cautious and careful while*

issuing direction of correction of date of birth". In view of the aforesaid facts and circumstances, it has become impermissible on the part of the respondents no. 3 and 8 of the writ petition to treat the petitioner's date of birth as on 25-01-1950 in place of 25-01-1952 by ignoring conclusive evidence such as Admission Register of the school and Birth Registration Certificate which remain undisputed on the face of the records in this case. Hence both impugned orders dated 06-01-2011 and 08-01-2011 of the respondents no. 3 and 8 respectively being arbitrary, illegal, malafide, unjustified are liable to set aside.

- XII. That this Hon'ble Court for interest of justice and fair play and in order to protection of the right of superannuation on attaining the age of 60 years should declare that the petitioner was due to be retired on superannuation on and from 31-01-2012 in place of 31-01-2010 and petitioner should be granted all dues including pension, gratuity, provident fund (P.F) and salaries with applicable allowances admissible to him with effect from 01-02-2010 till his due date of superannuation on 31-01-2012 when he already worked for the period from 01-02-2010 to 30-11-2010 in view of the judgement of the Supreme Court reported in

(2004) I Supreme Court Cases 43 (Union of India versus Madhusudan Prasad).

XIII. That the pension, gratuity and 14 months' salary with applicable allowances for the period from 01-12-2010 to 31-01-2012 and Provident Fund (P.F.) amount for the period from 01-02-2010 to 30-11-2010 are pending. P.P.O is also required to be corrected for the purpose of payment of all retirement benefits treating petitioner's date of birth as on 25-01-1952. The claim of salaries for the period from 01-12-2010 to 31-01-2012 admissible to the petitioner and claim of retirement benefits admissible to the petitioner with effect from 31-01-2012 are mentioned below:-

Sl. No.	Subject	Due Date	Due Amount (Rs.)
1.	Salary (Rs. 38,907/- p.m)	01-12-2010 to 31-01-2012	Rs. 5,44,698/-
2.	Interest of Salary (12% p.a)	01-12-2010 to 31-01-2021	Rs. 6,64,532/-
3.	Provident Fund (P.F.)	01-02-2010 to 30-11-2010	Rs. 85,607/-
4.	Interest of P.F. (12% p.a)	01-02-2010 to 31-01-2021 (including interest due of Rs. 44,444/- dated 17-06-2013)	Rs. 1,56,589/-
5.	Total Due		Rs. 14,51,426/-

Advocates on record of the petitioner

(Jiban Hari Mallick)

Advocate

(2004) I Supreme Court Cases 43 (Union of India versus Madhusudan Prasad).

XIII. That the pension, gratuity and 14 months' salary with applicable allowances for the period from 01-12-2010 to 31-01-2012 and Provident Fund (P.F.) amount for the period from 01-02-2010 to 30-11-2010 are pending. P.P.O is also required to be corrected for the purpose of payment of all retirement benefits treating petitioner's date of birth as on 25-01-1952. The claim of salaries for the period from 01-12-2010 to 31-01-2012 admissible to the petitioner and claim of retirement benefits admissible to the petitioner with effect from 31-01-2012 are mentioned below:-

Sl. No.	Subject	Due Date	Due Amount (Rs.)
1.	Salary (Rs. 38,907/- p.m)	01-12-2010 to 31-01-2012	Rs. 5,44,698/-
2.	Interest of Salary (9% p.a)	01-12-2010 to 31-01-2021	Rs. 4,98,398/-
3.	Provident Fund (P.F.)	01-02-2010 to 30-11-2010	Rs. 85,607/-
4.	Interest of P.F. (9% p.a)	01-02-2010 to 31-01-2021 (including interest due of Rs. 44,444/- dated 17-06-2013)	Rs. 1,28,553/-
5.	Total Due		Rs. 12,57,256/-

Advocates on record of the petitioner

(Jiban Hari Mallick)

Advocate