

State of Assam and Another

Vs

Daksha Prasad Deka and Others

Civil Appeal No. 2265 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

23.10.1970

JUDGMENT

SHAH, J. -

1. Daksha Prasad - hereinafter called 'the respondent' - was appointed Assistant Sub-Inspector of Police with effect from January 17, 1929. On a representation made by the respondent the date of his birth was entered in the service record as July 1, 1910. Under F.R. 56(a), the respondent was liable to be compulsorily retired on July 1, 1965. In 1955 the respondent applied that the date of birth entered in this service record, be shown as on August 1, 1911. That application was rejected. The respondent again applied in 1963 for corrections of his date of birth. The application was rejected and by order, dated June 26, 1965, the respondent was informed that he will stand superannuated on June 30, 1965. His representation made to the Government of Assam against that order was unsuccessful.

2. The respondent then applied to the High Court of Assam praying for a writ in the nature of mandamus requiring the State of Assam to forbear from giving effect to the order, dated June 26, 1965. The High Court quashed the order, dated June 26, 1965 and directed the State of Assam to give an opportunity to the respondent to show cause against the order directing compulsory retirement and an opportunity to prove his true date of birth. Against that order, this appeal is preferred with special leave.

3. In the opinion of the High Court if the true date of birth of the respondent was August 1, 1911, the order compulsorily retiring the respondent on June 30, 1965, without giving him an opportunity to prove his true age, infringed the guarantee of Article 311(2) of the Constitution. In our judgment, the High Court was wrong in holding that there was any infringement of Article 311(2) of the Constitution.

4. In the service record of the respondent his date of birth was recorded as July 1, 1910 and under F.R. 56(a) the respondent was liable to be compulsorily retired on the date on which he attained the age of 55 years. The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of the birth entered in the service record.

5. It is true that the State authorities did not give to the respondent an opportunity to support his case that he was born on August 1, 1911 and that the service record was erroneous. But in view of S.R. 8 Note, which governed the employment of the respondent an application for correction of the service record could not be entertained if it was made within three years before the date of "actual superannuation". S.R. 8 Note provides :

"No alteration in the date of birth of a Government servant should be allowed except in very rare cases where a manifest mistake has been made. Such mistakes should be rectified at the earliest opportunity in the course of - (1) periodical re-attestation of the entries in the first page of service book and (2) preparation of the annual detailed statement of a permanent establishment (Financial Rule Form No. II), in which is noted the date of incumbent's birth. In no case the request for change in the date of birth of a Government servant made on a date within three years of the date of his actual superannuation should be entertained."

Validity of the Rule is not challenged by the respondent. We are unable to agree with the view of the High Court that the date of "actual superannuation" within the meaning of S.R. 8 Note is the date of superannuation computed with reference to the claim made by the public servant and not with reference to the date as entered in the service record. If such an interpretation be accepted, S.R. 8 Note would prove in a majority of cases of no practical utility. It is intended by S.R. 8 Note that any error in the service record shall be rectified at the earliest opportunity and in no case should an application for ratifications be entertained within three years of the "date of actual superannuation", i.e. the date of superannuation according to the service record.

6. Again, if the contention of the respondent were correct, on the date on which he entered service he was a minor. If on a representation that he had attained the age of majority on the date on which he entered service, it would not be open for him, after being admitted to the service, to contend that under the appropriate service rules he could not have been admitted to the service, but for the misrepresentation made by him.

7. Counsel for the respondent relied upon the judgment of this Court in *State of Orissa v. Dr. (Miss) Binapani Dei and Others*, ((1967) 2 SCR 626 : AIR 1967 SC 1269 : (1967) 2 SCJ 339) in support of the contention that a public servant must be given an opportunity to prove his true date of birth before he is superannuated, and any order passed without such opportunity is illegal. In our judgment *Dr. (Miss) Binapani's case* (supra), enunciates no such proposition. In that case in the service record of public servant, April 10, 1910, was entered as the date of her birth. An enquiry was held and the public servant was required to show cause why her date of birth should not be accepted as April 4, 1907. Thereafter the Government of Orissa determined her date of birth as April 16, 1907 and declared that she should be deemed to have been superannuated on April 16, 1962. This order was challenged by the public servant in a petition to the High Court of Orissa. The High Court held that the order of the State Government amounted to compulsory retirement before she attained the age of superannuation and was contrary to the rules governing her service conditions and amounted to removal within the meaning of Article 311 of the Constitution, and since she was not given a reasonable opportunity of showing cause against the action proposed to be taken in regard to her, the order was invalid. This Court confirmed the order passed by the High Court of Orissa. It was observed by this Court that even an administrative order which involved civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case of the State and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. The public servant,

according to the service record, could not be superannuated before April 10, 1965. But by an enquiry which was not held in a manner consistent with the rules of natural justice an order was made altering the date of birth as entered in the service record, and declaring that she was born in 1907. That was plainly an order passed to the prejudice of the public servant without giving an opportunity to meet the case of the State. In the present case, however, the State did not seek to modify the service records, it was the respondent who sought modification of the service record and claimed that he be declared superannuated only on the basis of the rectification prayed for by him. It is true that ordinarily when an application is made for rectification of age by a public servant, the state should give the applicant proper opportunity to prove his case and should give due consideration to the evidence brought before it. But in the present case, since the application for rectification was made within three years of the date of actual superannuation, according to S.R. 8 Note the application could not be entertained. The principle of Dr. (Miss) Binapani's case (supra), has no application to this case.

8. The appeal is allowed is allowed and the order passed by the High Court is set aside. The petition filed by the respondent shall stand dismissed. There will be no order as to costs throughout.

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