

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)

AIZAWL BENCH

WP(C) No. 29 of 2013

PETITIONER:

Sh. Laltanpuia,
S/o Tlangbiakthanga (L)
R/o Ramhlun South, Aizawl.

By Advocate:

Mr. A.R. Malhotra.

RESPONDENTS:

1. State of Mizoram represented by the
Chief Secretary to the Govt. of Mizoram,
Aizawl.

2. Secretary to the Govt. of Mizoram,
DP&AR(GSW), Aizawl.

3. Secretary to the Govt. of Mizoram,
Agriculture Department, Aizawl.

4. Director, Agriculture Department,
Govt. of Mizoram, Aizawl.

5. District Agriculture Officer,
Govt. of Mizoram, Aizawl District,
Aizawl.

By Advocate:

Mr. A.K. Rokhum, Addl.A.G, Mizoram.

**BEFORE
HON'BLE MR. JUSTICE L.S. JAMIR**

Date of hearing : 20.08.2013.

Date of judgment and order : 20.08.2013.

JUDGMENT AND ORDER (ORAL)

Heard Mr. A.R. Malhotra, learned counsel appearing on behalf of the petitioner as well as Mr. A.K. Rokhum, learned Addl. Advocate General, Mizoram appearing on behalf of the respondents.

2. It is submitted by Mr. A.R. Malhotra, learned counsel for the petitioner that the petitioner was initially appointed on 2.3.1976 to the post of Gram Sewak. After further promotions, the petitioner is now presently serving as Agriculture Extension Officer. He submits that while entering into service, the date of birth of the petitioner was wrongly recorded as 15.03.1954 in his service book. Accordingly, the petitioner made complaint within 5 years of entering into service and basing on his High School Leaving Certificate, his date of birth was recorded as

1.3.1956 in his service book by the District Agriculture Officer.

Subsequently, the respondent No. 4 had certified on 19.10.1992 that the date of birth of the petitioner was attested as 1.3.1956 as per the certificate issued by the Principal, Government Higher Secondary & Multipurpose School, Aizawl. Suddenly, after serving for around 36 years of service, the petitioner was confronted by a communication dated 13.02.2013 whereby the Secretary, Agriculture Department was informed that the DP&AR(GSW) approved 15.03.1954 as the correct date of birth in respect of the petitioner. The Department was further requested to enter the approved correct date of birth i.e. 15.03.1954 in his service book. On the basis of the said communication dated 13.02.2013, the Under Secretary to the Govt. of Mizoram, Agriculture Department had written to the respondent No. 5 by a letter dated 25.02.2013 returning the service book and original birth certificate in respect of the petitioner with further information that the DP&AR(GSW) vide their I.D. dated 13.2.2013 has approved 15.3.1954 as the correct date of birth in respect of the petitioner.

The learned counsel for the petitioner submits that the exercise to change the date of birth of the petitioner in his service book as 15.3.1954 was done behind his back and, therefore, the principle of natural justice has been violated. He further submits that as the respondents had allowed the petitioner to correct the wrong entry of the date of birth in his service book as 1.3.1956 by the competent authority, the respondents at this stage cannot recorrect the said entry after the petitioner has served for nearly around 36 years. He, therefore submits that the impugned communications dated 13.02.2013 and 25.2.2013 be set aside and quashed and the respondents be directed to maintain the date of birth of the petitioner as 1.3.1956 for all purposes. In support of his case, the learned counsel has placed reliance on Hari Singh –vs- State of Bihar and Others reported in (2000) 10 SCC 284.

3. The State respondents has resisted the writ petition by filing counter affidavit. Mr. A.K. Rokhum, learned Addl. Advocate General submits that it is not clearly discernible as to who had corrected the date

of birth of the petitioner in his service book from 15.3.1954 to 1.3.1956 and the correction of the date of birth is doubtful. He also submits that the Director of Agriculture Department had not intimated the matter to the Government who is the sole authority for making such correction. He submits that the alteration/correction of the date of birth of the petitioner was done on 11.10.1992 whereas the petitioner had entered service on 2.3.1976. He, therefore, submits that the correction of the petitioner's date of birth in his service book was done after 16 years of his joining service and the same is not in consonance with the law laid for this purpose. He, therefore, submits that the impugned communications dated 13.2.2013 and 25.2.2013 may not be interfered with.

4. I have heard learned counsel for both the parties, the action of the respondents in re correcting the date of birth of the petitioner back to 15.3.1954 was initiated on the basis of the Office Memorandum dated 4.6.2013 issued by the Department of Personnel & Administrative Reforms (GSW). Pursuant to the said Memorandum dated 4.6.2013,

communications were exchanged in the department as well as in the Government level. The petitioner at no point of time was informed that his date of birth was to be corrected from 1.3.1956 to 15.3.1954. On perusal of the impugned communication dated 13.2.2013, the department of Personnel & Administrative Reforms (GSW) has not shown any basis for correcting the date of birth of the petitioner to 15.3.1954 from 1.3.1956. Further, it appears prima facie that the action of the respondents was done behind the back of the petitioner. This Court accepts the submission of learned counsel for the petitioner and also agrees that the present case in hand and is solely covered by the ratio laid down in the case of Hari Singh –vs- State of Bihar and Others (supra) the relevant portion is reproduced hereinbelow:-

“We are not however delving into an inquiry on this aspect inasmuch as, in our opinion, the impugned order of the Government cannot be sustained as concededly the Government never put the employee on notice to indicate that the date of birth as entered in the

service-book is incorrect though it could have done so. Since no notice has been given to the employee concerned for accepting a date of birth other than the one entered in the service-book, the impugned order of retirement cannot be sustained. We set aside the impugned order altering the date of birth of the appellant. The appellant must be deemed to be continuing in service until duly superannuated in accordance with law."

5. In the facts and circumstances of the case, the impugned communications dated 13.2.2013 and 25.2.2013 are accordingly set aside and quashed. The respondents are however giving liberty to conduct an inquiry for coming to a just and proper conclusion as regard the date of birth of the petitioner which shall be done only after hearing the petitioner in person or through his representative and, thereafter, pass a speaking order as regard the date of birth of the petitioner. This exercise shall be completed within a period of 2 (two) months from the date of receipt of the order of this Court.

Needless to say that the petitioner shall be at liberty to approach this Court if aggrieved by any further order passed by the respondents.

6. With the above observation and direction, this writ petition stands disposed of.

7. No cost.

JUDGE

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