

Central Administrative Tribunal: Principal Bench
....

O.A. No. 1919/94

(10)

New Delhi, this the 7th day of June, 1996

Hon'ble Shri R.K.Ahooja, Member (A)

Usha Khare w/o Late Shri G.D.Khare,
Hindi Assistant Grade-I
Northern Railway Headquarters Office,
Baroda House,
New Delhi.
(By Shri M.L.Sharma, Advocate)

...Applicant

Versus

1. General Manager,
Northern Railway,
Headquarters Office, Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway Headquarters Office,
Baroda House,
New Delhi.

...Respondents.

(By Shri H.K.Gangwani, Advocate)

O R D E R (.....)

By Shri R.K.Ahooja, Member (A)

The brief facts leading to the controversy are that the applicant Smt. Usha Khare joined the office of the respondent i.e. General Manager, Northern Railway, as a Hindi Assistant Gr.I in 1985. Her appointment was on compassionate basis on account of untimely demise of her husband. Her date of birth recorded in the service book is 17.9.1936 on the basis of her matriculation certificate. The applicant, however, challenged the date of birth in/civil suit instituted in the court of Additional Munsif, Lucknow wherein she impleaded the Principal, Mahila Vidyalaya, Lucknow; Secretary, Board of High School and Intermediate Education, Allahabad and the General Manager, Northern Railway, New Delhi who is the respondent in the present case.

One

.... 2p/-

The Additional Munsif, Lucknow in his order dated 31.1.1992 decided her correct date of birth as 17.9.1937 instead of 17.9.1936 and directed the respondents to make necessary corrections. The General Manager, Northern Railway was directed to record the date of birth of the applicant as 17.9.1937 and accordingly to allow her to work till 16.9.1995. The Railway authorities did not contest the case in the Munsif Court nor they file an appeal against the order of that court. However, the U.P. Board of Education went in appeal in the District Court but the same was rejected vide order dated 23.8.1994. An O.A. No. 583/94 was, however, filed by the General Manager Northern Railway before the Lucknow Bench of this Tribunal but the same was dismissed as barred by limitation. The respondents, however, did not change the date of birth of the applicant in pursuance to the Munsif's court order and accordingly decided to retire the applicant w.e.f. 16.9.1994. This led to the filing of the present application by the applicant.

Shri M.L.Sharma, counsel for the applicant submitted in his arguments that the civil court has jurisdiction in the matter of declaration of date of birth as has been held by the High Courts and Supreme Court in a number of judgements. He cited the case of State of Karnataka and another Vs. T.Srinivas reported in AIR 1988 Karnataka Page 67 in which it was held that a suit for declaration of the correct date of birth is maintainable in civil court and a decree could be passed rectifying the date of birth. Similarly in the case of Mohd. Jalil Khan vs. G.K.W. Ltd. and Mrs. reported in AIR 1988 Calcutta Page 257 it was held that declaratory suit under Specific Relief Act, Section 34, was maintainable for rectification of date of birth. Finally, he relied on the case

.....3p/-

Du

(2)

of S.K.Vardarajan vs. Union of India and Ors. reported in 1992 (20 A.T.C. Page 848(II) in which it was held that civil court is the competent authority to decide the status of a person including his age. The learned counsel for the applicant relying on these judgements submitted that civil court was competent to pass a declaratory decree as to the legal character of the applicant and under Section 34 of the Specific Relief Act the declaratory decree made was binding on the parties to the suit. Thus, the respondents being a party to the suit before the court of Additional Munsif, the decree regarding the date of birth of the applicant was also binding on them. The learned counsel also pointed out that the respondents had approached the Lucknow Bench of this Tribunal by way of an appeal against the order of the Munsif Court but the same had been dismissed as mentioned above. Further more, it was claimed on behalf of the applicant that the U.P. Board had also issued a revised matriculation certificate wherein the date of birth of the applicant had been corrected to 17.9.1937 instead of 17.9.1936.

Shri W.K.Gangwani, counsel for the respondents on the other hand submitted that after coming into force of the Administrative Tribunal Act, 1985, the jurisdiction of all courts except the Supreme court in service matters had been ousted and thus the civil court had no jurisdiction to decide the matter which affected the service right. He submitted that no effect could be given to the order of the Munsif court since an order passed without jurisdiction was non-existent in the eyes of law, as had been re-confirmed by the Hon'ble Supreme Court in a recent judgement

Drw

titled as Gauri Shanker & Ors. versus Joshi Amba

Shanker Family Trust & Others reported in JT 1996(2) P.560.

As regards the case which had been filed before the Lucknow Bench of the Tribunal and which had been dismissed, learned counsel for the respondents stated that the same had been dismissed on the question of limitation and the Lucknow Bench had noted that nothing in that order would be construed as an expression on the merit of the grounds raised in the present O.A. before the Principal Bench.

I have given careful consideration to the arguments advanced by the learned counsel on either side. To summarise, the basic facts are that the applicant's date of birth was entered as 17.9.1936 on the basis of her matriculation certificate. She went to the civil court for a declaratory suit that the date of birth had been wrongly entered in the matriculation certificate as 17.9.1936 instead of 17.9.1937. While the General Manager, Northern Railway was made a party in the suit before the Munsif Court, for whatever reasons, the suit could not be contested and an ex parte decree was granted. On the basis of that decree, the U.P. Board of Education has also now corrected the matriculation certificate. Hence, it may be accepted that the correct date of birth of the applicant is 17.9.1937. The question, however, is whether the respondents are bound to carry out the corrections in the service records and to determine the date of superannuation of the applicant on that basis. Hon'ble Supreme Court has held in State of Tamil Nadu vs. T.V. Venugopalan (1994) 6 SCC 302 that changes in date of birth should not be done by the courts and Tribunals at the fag end of the service of the Govt. servant. The applicant joined her service in 1985 and obtained the decree from the civil court in 1992 though she filed the case apparently in 1988. But more to the point, what the applicant seeks is the execution of the decree passed by the Civil Court. The Hon'ble Supreme Court has held in Kesar Singh & Ors.

JKW

(V)

vs. Sadhu reported in JT 1996(2) SC Page 334 that when the matter goes to the root of the jurisdiction, it is settled law that it can be raised even in execution proceedings also. Thus, when the issue is the execution of the decree of the civil court by way of amendment of the relevant entries in the service book of the applicant then the question of jurisdiction can still be raised. The declaration about the legal status including the date of birth is undoubtedly a matter to be adjudicated upon by the civil court but when the relief sought is related to the service conditions of the plaintiff/applicant then any such declaration cannot be deemed to be binding since strictly the jurisdiction as regards the service matter is barred, in so far as the civil court is concerned by Section 28 of the A.T. Act, 1985. In this view of the matter, the court of the Munsif had no jurisdiction to issue a direction to the respondents to effect a change in the date of birth in the service record of the applicant. The respondents have to take a decision on the basis of rules and regulations pertaining to change of date of birth of an employee in the service record. For the same reason, the direction of the civil court as well as the declaratory suit passed by it cannot by itself form the basis of an order of this Tribunal in favour of the applicant.

Learned counsel for the applicant submitted before me that a Division Bench of this Tribunal had already held in S.K. Vardarajan Vs. UOI(Supra) that the date of birth in service record for all purposes should be the real one and if it is declared authoritatively that the actual date of birth is not the one which is entered in the service record then that must be accepted. The Tribunal in that order had also held that the civil court is a competent authority to decide the status of the person including his date of birth and when the applicant had obtained a declaration from the civil court then that must be given effect to. However,

On

in view of the decision given by the Hon'ble Supreme Court in State of Tamil Nadu vs. T.V. Venugopalan(supra) and UOI Vs. Hamam Singh(1993) 25CC 162, the legal position has since been changed with the Hon'ble Supreme Court laying down the broad principles for such changes and the scope of interference by the Tribunal and Courts in such matters.

In the facts and circumstances of the case, I therefore, conclude that a change in the date of birth based on an ex parte decision of the civil court is not a binding decision on the respondents to effect the change of date of birth which had been recorded on the basis of the matriculation certificate.

In the conspectus and circumstances of the case and in the light of the discussion above, the application is held to be without merit and is dismissed. There is no order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

Na.