

ORISSA HIGH COURT : CUTTACK

W. P.(C) NO. 3556 OF 2009

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Batakrishna Samal Petitioner
-Versus-
State of Orissa and another Opp. Parties

For Petitioner : M/s. Prakash Kumar Mishra &
A.Mahanty.

For Opp. Parties : Addl. Govt. Advocate
(For O. P. no.1)

M/s. B.Dash & P.K.Mohanty
(For O.P.No.2)

Decided on 02.09. 2009.

P R E S E N T :

**THE HONOURABLE SHRI JUSTICE B.P.DAS
AND
THE HONOURABLE SHRI JUSTICE M. M. DAS**

M.M. Das, J. Issuance of writ of certiorari is sought by the petitioner against the order dated 2.2.2009 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. No. 304 of 2002.

2. Brief facts leading to the present lis are that the petitioner entered into Government service in the year 1982 and after completion of the probation period, joined as Establishment Officer in the office of the Deputy Director, Agriculture, Balasore in the year 1983. In his service book, the date of birth of the petitioner has been

entered as 12.6.1952 which was on the basis of the certificate issued in favour of the petitioner on passing the High School Certificate Examination in the year 1970. The petitioner was, thereafter, promoted to the rank of Junior Class-I Officer and was posted as Commercial Tax Officer, Bhadrak in the year 1998. In September, 2001, the petitioner was promoted to Class – I Senior Branch and posted as Additional Assistant Commissioner, Commercial Tax, (Appellate Unit), Bhubaneswar and states to be presently working as Joint Secretary, Finance Department. It is the case of the petitioner that though his date of birth has been mentioned as 12.6.1952 in his service book, but his actual date of birth is 28.4.1954. On realizing such mistake, the petitioner repeatedly approached the Board of Secondary Education to correct the entry with regard to his date of birth in the certificate, but the Board of Secondary Education did not respond to such request. In the meanwhile, admittedly, the elder brother of the petitioner filed T.S. No. 174 of 1995 before the learned Civil Judge (Junior Division), Jajpur, inter alia, seeking the following reliefs:-

- “(a) Let it be declared that the plaintiff is the eldest son of his father.
- (b) Let it be declared that defendant No.1 is younger to plaintiff by one year and eleven months.
- (c) Let it be declared that the plaintiff has right, title, interest and possession over the suit land as his father’s eldest son.
- (d) Let the date of birth of defendant no.1 maintained in the High School Certificate

issued by the Board of Secondary Education be declared as wrong.

- (e) Let the defendant No.3 be directed to correct the date of birth of defendant No.1 according to the finding of the Court.
- (f) Let the cost of the suit be decreed.
- (g) Let such other relief or reliefs be granted for which the plaintiff is found entitled”.

3. The learned Civil Judge during pendency of the suit on an application filed by the plaintiff, impleaded the Board of Secondary Education as defendant no.3 in the suit. The suit was contested by the Board of Secondary Education. The learned Civil Judge framed the following issues in the suit:-

- (i) Whether the suit is maintainable ?
- (ii) Whether the suit is barred by limitation ?
- (iii) Whether the suit is properly valued ?
- (iv) Whether the plaintiff is the eldest son of his father ?
- (v) Whether defendant No.1 is younger to the plaintiff by one year and eleven months ?
- (vi) Whether the plaintiff has right, title, interest and possession over the suit land ?
- (vii) Whether the date of birth of defendant No.1 mentioned in the High School Certificate issued by the Board of Secondary Education is wrong ?
- (viii) Whether the defendant No. 3 can be directed to correct the date of birth of defendant No.1 ?
- (ix) What relief, if any, the plaintiff is entitled ?

4. On considering the evidence adduced in the suit, the learned Civil Judge came to the following findings of fact:-

- (i) A declaratory suit for correction of date of birth is maintainable before the Civil Court.

- (ii) The plaintiff who is the elder brother of the defendant no.1 (writ petitioner) is elder to the defendant no.1 by one year and eleven months.
- (iii) The plaintiff is in peaceful possession over the disputed properties. The date of birth of the defendant no.1(writ petitioner) mentioned in the High School Certificate issued by the Board of Secondary Education is wrong;
- (iv) The defendant no. 3 (Board of Secondary Education) cannot be directed to correct the date of birth of the defendant no.1 (writ petitioner) at the behest of the plaintiff, who is his elder brother.
- (v) The suit is not barred by law of limitation.

5. While arriving at such findings, the Civil Court has taken into consideration that the date of birth of the petitioner (defendant no.1 in the suit) is “28.12.1954” and not “12.6.1952”.

6. With the above findings, the suit was decreed declaring that the plaintiff is the eldest son of his father and the defendant no.1 (writ petitioner) is the younger brother of the plaintiff and the plaintiff has right, title and interest over the suit land and the date of birth of the defendant no.1 (writ petitioner) mentioned in the

High School Certificate issued by the Board of Secondary Education, Orissa is not correct.

7. Pursuant to the above decree, the petitioner approached the opp. Party no. 1 to make necessary correction in his service book by filing representation on 5.9.1999. Even prior to the said representation, the petitioner on 3.12.1994 also had approached the opp. Party no. 1 for correction of his date of birth. The opp. Party no. 1 rejected the representations on the ground that such representations cannot be considered in view of Rule 65 of O.G.F.R. Vol. - I read with Finance Department O.M. No. 4215/F. dated 28.8.1992. The petitioner states to have also approached the Board of Secondary Education for correction of his date of birth in his matriculation certificate. The Board also did not entertain the said representation. Being aggrieved, the petitioner preferred the Original Application, being O.A. No. 304 of 2002 praying therein to quash the letters of rejection of his representations by the opp. Party no. 1 and to correct his date of birth in his service book as well as to issue a direction to the Board of Secondary Education to correct his date of birth in his High School Certificate.

8. Counter affidavits and rejoinder affidavit were filed before the Tribunal in the aforesaid Original Application. The Tribunal after hearing the parties observed that the sole ground on which the petitioner sought for change of his date of birth in the service book is

the decree passed in the suit. It further observed that the said suit was not filed by the petitioner himself for correcting his date of birth. The Tribunal also observed that the suit filed before the Civil Court was a collusive one. On the above findings, the Tribunal has passed the impugned order dated 2.2.2009.

9. On perusal of the impugned order, it appears that the Tribunal has been swayed away by the fact that the opp. Party no. 1 (respondent no.1), i.e., the State was not a party in the suit and the prayer of the plaintiff in the suit to issue a direction to the Board of Secondary Education, Orissa to correct the date of birth of the applicant (writ petitioner) has been refused. The Tribunal has further observed that the applicant (writ petitioner) has not filed any suit for declaration that his date of birth is 28.12.1954 and, accordingly, concluded that the judgment of the Civil Court is of no help to the applicant (writ petitioner).

10. There is no quarrel over the proposition that the Civil Court has jurisdiction to declare the correct date of birth of a party before it. It is also an admitted case that the Board of Secondary Education, Orissa was a contesting defendant in the Civil Suit, where the court has held that the date of birth of the petitioner recorded in the matriculation certificate is incorrect, while observing that the correct date of birth of the petitioner is "28.12.1954" and not "12.6.1952", he being one year and eleven months younger to his

eldest brother (plaintiff in the suit). It is no doubt true that Rule 65 of the O.G.F.R. prescribes that the date of birth of a person entering into Government service shall be recorded on the basis of declaration supported by documents in shape of matriculation certificate, Municipal Birth Certificate or otherwise.

11. It is clear from the above discussions that the Tribunal has gone wrong in holding that the suit not having been filed by the petitioner, inasmuch as, the State Government being not a party in the suit, no direction can be issued to correct the date of birth of the petitioner in his service book. Thus, there is an apparent error on the face of the impugned order/judgment. It has also acted on the basis of surmises in observing that the suit was collusive in nature though it was not the case of any of the parties before the Tribunal nor there is any material in support of such observation. The judgment and decree of the learned Civil Judge has become final as it has not been challenged by the Board of Secondary Education, which is bound by the said judgment.

12. On the above premises, we quash the impugned order dated 2.2.2009 passed by the Tribunal in O.A. No. 304 of 2002 vide Annexure-8 and allow the writ petition directing the Board of Secondary Education, Orissa – opp. Party no. 2 to correct the date of birth in the matriculation/High School Certificate of the petitioner as “28.12.1954” in place of “12.6.1952” and issue a corrected certificate

to the petitioner within a period of three weeks from the date of communication of this order. We further direct that on production of the corrected High School Certificate/matriculation certificate by the petitioner before the opp. Party no. 1, the opp. Party no. 1 shall correct the date of birth of the petitioner in his service book as "28.12.1954" in place of "12.6.1952" within a period of one month from the date of production of the said certificate along with a certified copy of this judgment.

The writ petition is accordingly allowed, but in the circumstances without cost.

Requisites for issue of writ to the opp. party no.2-Board of Secondary Education, Orissa shall be filed within a week.

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M. M. Das, J.

B.P. Das, J.

I agree.

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B.P. Das, J.

Orissa High Court, Cuttack.
September 2nd, 2009/Biswal.
