

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

SWP no. 1696/2013
CMP no.2713/2013

Date of order: 30.06.2014

Ghulam Fatima

v.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Appearing counsel:

For Petitioner: Mr. T. H. Khawja, Advocate;

For Respondents: Mr. J. A. Kawoosa, Sr. AAG for no.4;
Mr. S. A. Naik, AAG, for 1 to 3.

1. The petitioner has filed this petition seeking quashment of communication dated 12.03.2010 whereby she had requested the respondents to rectify the entry of her date of birth in her service records, and further sought a direction to direct the respondents to record her date of birth as per the revised Matriculation Certificate issued by the Board of Secondary Education.

2. Sheering the details, the facts as narrated in the petition are that petitioner passed her Matriculation Examination in the year 1981. The State Board of School Education (for short, the Board) issued the Matriculation Examination Certificate in her favour under serial no. 8268 showing her date of birth as 05.08.1958. She was appointed as Junior Assistant in the office of State Advocate General in 1985. On the basis of her aforesaid Matriculation Examination Certificate, her date of birth in the service records was recorded as 05.08.1958. Thereafter, the petitioner seems to have approached the Board for correction of her date of birth in the Board records as well as in her Matriculation Examination Certificate on the plea that her actual date of

birth was 05.08.1959 and not 05.08.1958. The Board issued a fresh Matriculation Examination Certificate under serial no. 18290 in her favour showing her date of birth as 05.08.1959. A photocopy of this certificate has been placed on record as annexure PA. Thereafter, on 04.08.1995, the petitioner made an application to the Advocate General requesting that her date of birth in the service records be entered as 05.08.1959 as reflected in the certificate issued by the Board. The matter appears to have been taken up by the office of the Advocate General initially with the Board to ascertain the veracity of the claim made by the petitioner and, after verification of the claim, with the Government in the Law Department for appropriate orders. In response thereto, the Under Secretary to Government, Law Department, in terms of communication no.LD(A)2001/166 dated 5.8.2000 informed the Advocate General that the case was not covered under rule, i.e., under clause (d) of SRO 310 dated 29.11.1995.

3. Thereafter, the petitioner vide representation dated 16.10.2002 reiterated her request, stating therein that she had made her representation much earlier to the date of issuance of SRO 310 and, therefore, her request could not be treated as not covered under the relevant rule. This representation was again processed and ultimately by communication no.LD(A)2001/166 dated 12.03.2010 her request was again rejected on the ground that since her date of birth was recorded in the service records on the basis of the Matriculation Examination Certificate produced by her at the time of appointment, her claim does not seem to be justified at this stage and also not being covered by the relevant rules governing the subject.

4. The respondents in their objections have contested the claim of the petitioner, *inter alia*, on the ground that since the petitioner had voluntarily produced her date of birth certificate showing her date of birth as 05.08.1958 at the time of her appointment and herself declared the date of birth, which was agreed to by the department and entered in the records, the petitioner is

estopped from taking altogether a different stand and claim for alteration of her date of birth in the service records.

5. I have heard learned counsel for the parties, perused the record on the file and considered the matter.

6. Learned counsel for the parties have restricted their arguments to their respective pleadings, besides relying on the relevant provision of SRO 310. Learned counsel for the respondents has also cited and relied on the judgment of the Supreme Court in ***Burn Standard Co. Ltd. v. Dinabandhu Majumdar***, AIR 1995 SC 1499 and another judgment of the Coordinate Bench of this Court in ***Mohd. Rashid Shaheen v State of J&K***, 2005 (1) JKJ 319 [HC].

7. At the very outset I deem it appropriate to say that the two judgments cited and relied upon by the learned counsel for the respondents have no relevance to the present case, inasmuch as the same are axiomatically distinguishable on facts in that in ***Burn Standard Co. Ltd. v. Dinabandhu Majumdar*** (supra) the correction of date of birth was sought at the fag end of the service with objective of continuing in service; whereas in ***Mohd. Rashid Shaheen v State of J&K*** (supra), the Board had declined to alter the date of birth of the petitioner therein. In the instant case, the application for correct of date of birth in the service record has been made within ten years of the date of appointment and, of course, was pending when SRO 310 was issued; and the Board itself has corrected the date of birth of the petitioner and issued a fresh Matriculation Examination Certificate in her favour.

8. Coming to the provisions of SRO 310 dated 29.11.1995, the SRO was issued by the Government in exercise of powers conferred by the proviso to Section 124 of the Constitution of Jammu and Kashmir to amend Article 35-A of the Jammu and Kashmir Civil Service Regulations, 1956. Consequently, Note 2 below Article 35-A was deleted and after Note 1 certain provisions

relating to determination of date of birth, as contained therein, were inserted as Article 35-AA. Article 35-AA, insofar as relevant herein, is extracted below:

“35-AA. Determination of Date of Birth.— Notwithstanding anything contained in rules 6.4 and 6.5 of the Jammu and Kashmir Financial Code Volume I, the following provisions shall apply for determination of Date of Birth recording thereof in reference to the Government servants.”

Clause (a)(i) thereof under the caption, “Determination of age”, says that “in the case of Government employee, where prescribed qualification is matriculation or above, matriculation or equivalent certificate issued by the Jammu and Kashmir Board of School Education or any recognized Board / University wherefrom the employee has passed such examination”. Thus, there is no ambiguity in the provision of law that date of birth of a Government servant appointed against a post requiring qualification of matriculation or above, matriculation or equivalent certificate issued by the concerned Board or any recognized Board / University would be the only document taken into consideration. Clause (b) of the SRO says that on production of date of birth certificate by the concerned Government employee in the manner prescribed in clause (a) above, the concerned Head of office / drawing and disbursing Officer under whose signatures the monthly pay bill of the establishment is paid from the treasury, shall record his/her date of birth in the service book or any other record that may be kept in respect of such Government servant with reference to relevant confirmatory documentary evidence.

9. Clause (c) of the SRO provides for alteration of Date of Birth and provides as under:

“The date of birth so declared by the Government servant and accepted and once recorded by the appropriate authority [as specified in clause (b) above] in the service book or any other

record of service of the Government servant, as the case may be, shall not be subject to any alteration, except in the case of a clerical error without the orders of the Government. No alteration of date of birth of a Government servant shall be made by the Government (Administrative Department) unless a request in this regard is made by the concerned Government servant within a period of five years of his / her entry into Government service and it is clearly established that a genuine / bona fide mistake has occurred.

Provided that in case of Government servant in service on the date of issue of this Notification, a request for alteration of his / her date of birth may be considered by the Government for reasons to be recorded in writing if an application to this effect is made within a period of six months from the date of issue of this Notification.”

10. Clause (c) of the SRO, though creates a bar to alteration of the date of birth once declared by a Government servant which is accepted and recorded in the service book or any other record of service of the government servant by the appropriate authority, except in the case of a clerical error, that too, unless a request in that regard is made by the concerned government servant within five years of his / her entry into service, yet in respect of the Government servants, who as on date of issue of the aforesaid SRO were in service, the proviso has created an exception that they could make such request for alteration of date of birth within six months from the date of issue of the SRO and thus the condition of five years provided by the main Clause (c) would not be attracted in their case. However, one thing is clear: such alterations in the date of birth, whether within five years of entry into service, or within six months from the date of issue of the notification, can be sought for only where there is a clerical error committed while recording the date of birth of the concerned employee in the service records.

11. In the instant case, admittedly, it is not a clerical error committed by any office bearer of respondent no.2 in recording the date of birth so declared by the petitioner. The simple case of the petitioner is that the Board

had committed a mistake in mentioning her date of birth in the Matriculation Examination Certificate and that the Board having realized the mistake has corrected its records, cancelled the earlier Matriculation Certificate and issued a fresh certificate in her favour under a different serial number. Therefore, the case of the petitioner does not fall under clause (c) of SRO 310. It also does not fall within the purview of cases contemplated by clause (d) of the SRO, which deals with situations where the Government is satisfied that the date of birth recorded in the service book of an employee has been incorrectly recorded with the object that the said government servant may derive some unfair advantage therefrom.

12. Now, the question is whether the respondents can refuse to entertain the Matriculation Examination Certificate issued by the Board and insist on relying on the certificate which stands cancelled and, therefore, has been rendered non-est in the eyes of law. It is not the case of the respondents that the Board is not competent to do so, nor is it their case that the Matriculation Examination Certificate now issued in favour of the petitioner is false, fake or ingenuine.

13. It be seen that the main purpose of recording the date of birth of a government servant in his service record is to determine his / her date of superannuation. In this connection, reference may be made to clause (a) of SRO 310 which states that the date on which a Government servant attains the age of superannuation shall be determined with reference to the date of birth declared by him at the time of appointment and accepted by the appointing authority on production, as far as possible, of confirmatory documentary evidence. As already mentioned, in terms of sub-clause (i) of Clause (a) of the SRO, in case of a Government employee, where prescribed qualification is matriculation or above, matriculation or equivalent certificate issued by the Board or any recognized Board / University wherefrom the employee has passed such examination has been provided to the relevant

document. In other words, such certificate would constitute the confirmatory document to evidence the date of birth thus declared by a Government servant. Sub-clause (iii) of Clause (b) of the SRO, provides that an authenticated copy of the confirmatory documentary evidence substantiating the recording of date of birth shall be attached with the service book / record of service to form an inseparable part of the same.

14. Now, the question is: once the confirmatory documentary evidence itself is withdrawn by its issuing authority in terms of the power vested in it, whether the Government can insist upon still relying on the same and refuse to accept the fresh documentary evidence issued by the competent authority. The answer has to be in negative. This is so simply because the documentary evidence in confirmation of the date of birth entry in the service records of the petitioner relied upon by the respondents is non-est in fact and in law, i.e., it is to be treated to be non-existent *ab initio*. Therefore, it cannot be relied upon for any purpose, whatsoever. The fact that the respondents neither dispute the power and authority of the Board to correct its records, nor dispute the cancellation of the earlier certificate issued in favour of the petitioner and the issuance of fresh matriculation certificate in her favour, makes it axiomatic that the veracity and authenticity of the fresh certificate is not itself disputed by the respondents. In fact, the fresh matriculation certificate issued by the Board is now the only *de jure* and *de facto* documentary evidence depicting the date of birth of the petitioner. Once it is so, the respondents have no justifiable reason or cause to refuse to accept the fresh matriculation certificate, reflecting the date of birth of the petitioner as 05.08.1959, as the confirmatory documentary evidence in support of her date of birth in terms of clause (a)(i) and sub clause (iii) of clause (b) of SRO 310 of 1995 for the purposes of determining her age of superannuation as envisaged by clause (a) of the said SRO. It needs to be borne in mind that sub-clause (iii) of Clause (b) of SRO 310 mandates that an authenticated

copy of the confirmatory documentary evidence substantiating the recording of date of birth shall be attached with the service book / record of service to form an inseparable part of the same. The respondents cannot attach with the service book / record of service of the petitioner, as an inseparable part thereof, the Matriculation Examination Certificate which, in law and in fact, is non-existent *ab initio*.

15. To put the nut into the shell refusal of the respondents to entertain the request of the petitioner, in terms of the impugned communication, being unreasonable, is held to be arbitrary and consequently deserves to be quashed. Resultantly, the petitioner is also held to be entitled to the direction as prayed for by her.

16. For all what has been discussed above, this petition is allowed. The impugned communication dated 12.03.2010 is quashed. Respondents are directed to entertain the matriculation examination certificate issued by the Board in favour of the petitioner under serial no. 18290 and accord due consideration to recording of her date of birth in the service records as mentioned by the Board in the aforesaid certificate.

17. This also disposes of the connected CMP.

18. Parties to bear their respective costs.

(Ali Mohammad Magrey)
Judge

Srinagar,
.06.2014
Syed Ayaz, Secretary