

Chanan Ram Aggarwal *v.* The Commissioner, Ambala Division,
Ambala, etc. (Tuli, J.)

Act and in view of the settled proposition of law of this Court, while imposing fine, the Gram Panchayat acts judicially and discharges criminal functions. A tax is imposed by virtue of the powers under section 82 of the Act while a fine is imposed by virtue of the powers under section 23 of the Act. Both these powers are independent. The Legislature, if it had so intended, could include the words 'fine and penalty' in the definition of the word 'tax'. Thus viewed from any angle, the only possible conclusion that can be arrived at is that a fine or penalty under section 23 of the Act, does not fall in the definition of tax. In this view of the matter, the nomination paper of respondent No. 3 was illegally rejected by the Returning Officer and the contrary finding of the Prescribed Authority cannot legally be sustained.

(13) No other point was urged.

(14) For the reasons recorded above, I allow this petition, quash the impugned order of the Prescribed Authority, dated 20th December, 1967 (copy Annexure 'A' to the petition), and hold that the nomination paper of respondent No. 3 was illegally rejected. Consequently the election of respondent No. 2 as Sarpanch, is set aside. In the circumstances of the case, the parties are left to bear their own costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

CHANAN RAM AGGARWAL,—*Petitioner*

versus

THE COMMISSIONER, AMBALA DIVISION, AMBALA
AND ANOTHER,—*Respondents*

Civil Writ No. 2873 of 1969.

February 24, 1970

Constitution of India (1950)—Article 311—District Office Manual—Para 2.10—Date of birth of a Government servant as mentioned in service record—Correction of—Whether can be done only within two years of his joining service—Executive instruction—Whether to be carried out as a whole.

Held, that there are no statutory rules for a Government servant to have the matter of the fixation of his date of birth as mentioned in his service

record reopened. The letter of the Punjab Government, dated July 4, 1928, on which para 2.10 of the District Office Manual is based, gives such a right to the Government servants but this can be exercised only within two years of their joining the service. If a Government servant depends on the letter of Government for reopening the matter, he must comply with all the requirements of that letter. That letter only amounts to an executive instruction and does not give any legal right to Government servant. The executive instructions have to be carried out as a whole and not in parts. (Para 5)

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, direction or order be issued quashing the impugned orders, dated 28th August, 1969, and 29th September, 1969 and directing the respondents to consider the date of birth of the petitioner as 25th October, 1912 and not 1st January, 1912 and restraining them from retiring the petitioner from service with effect from 31st December, 1969, on attaining the age of superannuation on that basis.

B. S. GUPTA AND M. R. AGNIHOTRI, ADVOCATES, for the Petitioner.
G. C. GARG, ADVOCATE, FOR ADVOCATE-GENERAL, HARYANA, for the Respondent.

ORDER

TULI, J.—By my order dated February 16, 1970, I had adjourned this case to today to enable the respondents to produce the record from the office of the Commissioner, Ambala Division. Adjournment was granted on the condition that the respondents would pay Rs. 50 on account of costs of that adjournment. The costs have been paid today.

(2) The petitioner passed his Matriculation examination from the University of the Punjab at Lahore in 1931 and his date of birth stated in the Matriculation certificate is January 1, 1912. The petitioner joined service as Assistant Patwari on May 26, 1939 and in the service book in Urdu called *Amalnama* then prepared, his date of birth was mentioned as Asuj Shudhi 14, 1969 Bk., which corresponds to October 25, 1912. Thereafter a service book was prepared in English in which his date of birth is recorded as January 1, 1912. The page, on which the date of birth is mentioned, is signed by the petitioner. It is to be noted that in the Matriculation certificate the name is given as 'Chandan Ram Aggarwal son of Gaja Nand' while in the first *Amalnama* prepared in Urdu, when the petitioner entered service as Assistant Patwari on May 26, 1939, his name is mentioned as 'Chandan

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Ram son of Gaja Nand Mahajan by caste. In the service book prepared in English his name is mentioned as 'Chandan Ram son of Gaja Nand'. The first entry in this book is dated September, 10, 1940. This service book was attested by the Tahsildar, Hissar, on June 10, 1944. His signatures appended on February 9, 1956, were re-attested by the Sub-Divisional Officer, Bhiwani on February 14, 1956. His date of birth was thus taken to be January 1, 1912, and he was due to retire on December 31, 1969, on attaining the age of superannuation. In December, 1966, the petitioner made an application to the Deputy Commissioner, Hissar for the correction of his date of birth and in that application he stated that this date of birth was Asuj Shudhi 14, 1969 Bk. according to the Register of births maintained in the office of the Chief Medical Officer, Hissar, which had been recorded on November 1, 1912. His horoscope had also been prepared by a priest which showed the same date of birth. The Deputy Commissioner forwarded his application to the Commissioner under para 2.10 of the District Office Manual for the correction of his date. This paragraph is based on paragraph 5 of the letter of the Punjab Government No. 20076 (H-Gaz.), dated July 4, 1928, and reads as under.

"Corrections in the dates of birth already reported in the annual establishment returns of previous years should not be made without the sanction of the Government in the case of Government servants holding gazetted appointment and of Commissioner of Division in case of ministerial and subordinate servants. Against every such correction a note should be made of the number and date of the order authorising it, and a copy of the order should be attached to the return. On receipt of an application, a special inquiry should be held to ascertain the age. Reference should be made to all available sources of information, such as certified copies of entries of the Municipal Birth Registers, University or school age certificates, Janam Patris or horoscopes. It is entirely discretionary on the part of the sanctioning authority to refuse or grant such applications and no alterations should be allowed unless it has satisfactorily been proved that the date of birth as originally given by the applicant was a *bona fide* mistake and that he has derived no unfair advantage therefrom. The result of every such enquiry

should, in the case of non-gazetted servants, be briefly stated in their service books and if a correction is sanctioned the fact should be reported to the Accountant-General, Punjab."

(3) Para 3 of that letter of the Punjab Government is also relevant and reads as under :—

"The Governor in Council and the Governor acting in Ministers is now pleased to direct that in regard to future Government servants a declaration of age made at the time of, or for the purpose of entry into Government service, shall be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however reserves the right to make a correction in the recorded age of a Government servant at any time against the interests of that Government servant when it is satisfied that the age recorded in his service book or in the History of Services of a gazetted officer is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom."

(4) When the matter reached the office of the Commissioner, Ambala Division, for decision, the Assistant in the office wrote out a detailed note giving all the particulars on August 13, 1969. He sent the case to the Superintendent, who also appended his note, reading as under :—

For policy Commissioner's attention is invited to Chief Secretary to Government, Punjab's letter dated the 4th July, 1928. The Commissioner can order correction of date provided an application for the purpose is made within two years from the date of his entry into Government service. In the instant case the D.C., Hissar, recommends that the date of birth of Shri Chandan Ram, a Clerk of his office, may be changed from 1st January, 1912 to 25th October, 1912 as applied by the Government employee on the basis of this Janam Patri and entry in the birth register of Thana Dabwali, district Hissar (copy enclosed). The D. C. has put forth the ground that no

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undue advantage will accrue to the employee because of this change of date as neither he will earn any increment during this period nor it will give him any benefit towards pension. The assertion made by the D. C. is correct but the entry in the service book is based on the entry of date of birth in his Matriculation certificate which is an authenticated record. Moreso the application has not been submitted within the time limit although the D.C. says that he could not submit the application within the time prescribed as he was not aware of his actual date of birth which came to his notice only now when he had consulted the old papers of his father. This plea to my mind is not plausible. A man generally knows his date of birth. He is an educated person and is in Government service for the last 30 years. As such the proposal is untenable and may be rejected."

This note is dated August 14, 1969, and with these notes the entire file was sent to the Commissioner. He agreed with the note of the Superintendent, which meant that the request of the petitioner to correct his date of birth was rejected. This rejection was communicated by the Commissioner, Ambala Division, to the Deputy Commissioner, Hissar, by letter dated August 21, 1969. The Deputy Commissioner forwarded a copy of that letter to the petitioner on August 28, 1969, alongwith his Matriculation certificate, horoscope and birth certificate. On receipt of that letter the petitioner made another representation to the Deputy Commissioner, Hissar, on September 15, 1969, which was rejected on September 29, 1969. The petitioner then filed the present writ petition in this Court on October 28, 1969.

(5) The petitioner has not been able to show any statutory rule entitling him to have the matter of the fixation of his date of birth reopened. The letter of the Punjab Government, dated July 4, 1928, gave such a right to the Government servants but this right could be exercised only within two years. This is the main reason given in the note of the Superintendent with which the Commissioner agreed. The reason why the petitioner could not get his date of birth corrected earlier than December 9, 1966, when he filed the application to the Deputy Commissioner, is stated to be that he did not know that the date in Bikrami era had been wrongly converted into the

Christian era, which is not easy to believe for the reason that in the Matriculation certificate his date of birth is stated in Christian era as January 1, 1912. It cannot, therefore, be said that he was under any misapprehension as to the date of his birth stated in Christian era. In the service book written in Urdu, when he started his career as Assistant Patwari on May 26, 1939, his date of birth in Bikrami era is given but it is neither in his hand nor attested by any officer. Thereafter a regular service book in English was prepared, which is signed by him and which is there since 1940. On the very first page his date of birth is mentioned as January 1, 1912, and there are numerous entries in the service book which he has signed. He, therefore, knew all along that his date of birth had been taken as January 1, 1912. Since the petitioner is depending on the letter of the Punjab Government, dated July 4, 1928, for re-opening the matter, he must comply with the other requirements of that letter. That letter only amounts to an executive instruction and does not give any legal right to the petitioner. The executive instructions had to be carried out at a whole and not in parts. I am, therefore, of the opinion that his request for re-opening the matter has been rightly rejected.

(6) The learned counsel for the petitioner has relied upon the judgment of Tek Chand, J., in *Shri Sohan Singh Bawa v. State of Haryana and another* (1), wherein Shri Bawa claimed that his date of birth was in fact February 4, 1916, whereas it had been entered in the service record as February 4, 1910. At the time his date of birth was recorded in the service record his case for correction of age in the Matriculation certificate was pending. The age in the Matriculation certificate was corrected by the Punjab University, Lahore, in 1955, and thereafter he applied for the correction of his age. That request was rejected under rule 7.3 of the Punjab Financial Rules on the ground that the application had not been made within two years of joining service. On these facts the learned Judge held as under:—

“It is absolutely clear from these impugned orders that no decision was taken on the merits or on the basis of the material furnished by the petitioner and/or available on the records of the Government. The decision is cryptic and contains no reason whatsoever for interfering with a very valuable civil right of the petitioner. Neither of these orders can be said to be speaking orders which in view of

(1) 1967 S.L.R. 934.

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the observations of their Lordships of the Supreme Court in *Bhagat Raja v. The Union of India and others* (2), cannot stand. In arriving at a decision for or against a party, it was obligatory upon the authority to give reasons. The purpose is not served by merely communicating the fact that the representation has been rejected or dismissed. An important legal right of the petitioner should not have been brushed aside on the basis of administrative instructions contained in annexure 'B' to Chapter VII of the Punjab Financial Rules, Volume 1. An argument was advanced on behalf of the State that the petition of writ was premature, as the petitioner had not yet been retired. This contention is devoid of merit. The State has decided to retire him in 1968. When according to the petitioner's contention he should be retired in 1974. The decision arrived at by the State is final and will be put into effect in 1968. If such a decision violates the constitutional rights of the petitioner, it cannot be maintained on the ground that the petitioner should seek remedy on retirement even when it is premature.

In view of what has been stated above, the petitioner was entitled to be given an opportunity to prove the fact of his real age before his representation was rejected. The principles of natural justice require that an opportunity to prove the correct age ought to have been given, the omission to do so has been violative of the petitioner's right under Article 311 of the Constitution. I allow the petition, quash the impugned orders as reproduced in annexures 'D' and 'G' and direct the opposite parties to give an opportunity to the petitioner to show cause against his retirement on 4th of February, 1968, and to prove his real age, as contended by him."

(7) The facts of the case before Tek Chand, J., were different from the facts of the instant case. There while recording his date of birth in the service record at the time Shri Bawa joined service, it was stated that his age recorded in the Matriculation certificate was wrong

(2) C.A. Nos. 2596 and 2597 of 1966 decided on 29th March, 1967.

and the proceedings for correction of that age in the Matriculation certificate were pending. The plea there was that instead of 1916, 1910 had been entered in the Matriculation certificate. Thus, the age stated in the service record was subject to the correction of his age in the Matriculation certificate. Under the circumstances, Shri Bawa could not apply for correction of his age in the service record within two years of his joining service. He had to make the application only after the age in the Matriculation certificate was corrected. His application, therefore, could not be rejected on the ground that it had not been made within two years of his joining service. In the instant case the petitioner himself gave his date of birth as January 1, 1912, and that age continued to be accepted till he made the application for its correction on December 9, 1966. The learned Commissioner was, therefore, right in exercising his discretion against the petitioner on the ground that he had made the application after the lapse of too long a time and that the age recorded in the service record was in accordance with his Matriculation certificate, which had not been disputed all these years. The petitioner cannot, therefore, derive any help from the decision of Tek Chand, J. Moreover, the order of the learned Commissioner is a speaking one as detailed reasons have been given in the note of the Superintendent of the office with which the learned Commissioner agreed.

(8) For the reasons given above, I find no merit in this writ petition, which is dismissed with costs, counsel's fee being Rs. 100.

R. N. M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU & KASHMIR
AND HIMACHAL PRADESH, PATIALA,—*Petitioner.*

versus

M/s. RAM LAL-MANSUKH RAI, REWARI,—*Respondent.*

Income Tax Reference No. 30 of 1966.

February 25, 1970.

Income-tax Act (XI of 1922)—Sections 25(3), 25(4) and 30—Order of Income-tax Officer under section 25(3) or 25(4)—Appeal against such order under section 30—Whether maintainable.