

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

W.P.(C).No.23793 of 2015 (Y)

PETITIONER(S):-

THOMAS M.S.,
MEKKATTUPARAMBIL HOUSE, MULAKUNNATHUKAVU P.O.,
TRICHUR - 680 581.

BY ADVS.SRI.JIMMY GEORGE
SRI.M.R.SURESH.

RESPONDENT(S):-

1. FOOD CORPORATION OF INDIA,
REPRESENTED BY ITS GENERAL MANAGER (K),
REGIONAL OFFICE, PATTOM PALACE P.O.,
TRIVANDRUM - 695 004.
2. THE AREA MANAGER
FOOD CORPORATION OF INDIA,
DISTRICT OFFICE, MULAKUNNATHUKAVUP.O., TRICHUR - 680 581.

R1 & R2 BY STANDING COUNSEL SRI.JOSE KURIAKOSE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- | | |
|----------------|---|
| EXHIBIT P1. | COPY OF THE BIO-DATA OF THE PETITIONER. |
| EXHIBIT P1(a). | COPY OF THE CERTIFICATE DATED 16.10.1996
ISSUED BY THE DOCTOR. |
| EXHIBIT P2. | COPY OF THE LETTER DATED 21.04.2015 ISSUED FROM
THE ORPHANAGE. |
| EXHIBIT P3. | COPY OF THE EXTRACT OF ADMISSION REGISTER OF
THE PETITIONER ISSUED FROM GOVERNMENT
HIGH SCHOOL. |
| EXHIBIT P4. | COPY OF THE LETTER DATED 07.05.2015 FORWARDED
BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT. |
| EXHIBIT P5. | COPY OF THE ORDER OF THE 1ST RESPONDENT
DATED 04.06.2015. |
| EXHIBIT P6. | COPY OF THE REPRESENTATION DATED 17.06.2015
SUBMITTED BEFORE THE 2ND RESPONDENT. |
| EXHIBIT P7. | COPY OF THE LETTER DATED 20.06.2015 FORWARDED
BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT. |
| EXHIBIT P8. | COPY OF THE COMMUNICATION OF THE 2ND
RESPONDENT DATED 14.07.2015 SENT TO THE
PETITIONER. |

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.23793 of 2015-Y

Dated this the 29th day of September, 2015

JUDGMENT

The petitioner is aggrieved with Exhibit P4, by which the change in date of birth of the petitioner sought for in the records of the respondent-Corporation was declined. The petitioner claims that only since he was brought up in an Orphanage, he did not have a clear picture of his date of birth.

2. The petitioner had been appointed on the direct appointment system as a loading and unloading worker in the respondent-Corporation on 01.12.1996. The petitioner had, at the time of appointment, submitted a Bio-data, in which the petitioner had declared his date of birth to be 01.11.1957, which made him 39 years of age as on the date of appointment. The petitioner had also produced a certificate from the Medical Officer-in-charge of the Primary Health Centre, Mulamkunnathukavu, in which the doctor certified that, on examination the petitioner would be approximately 39 years of age as he has declared before the Medical Officer and the respondent-Corporation. On this basis,

the petitioner continued in the employment. The petitioner is also liable to be retired in the year 2017 on his attaining the age of 60 years.

3. At this stage, the petitioner produced Exhibit P3 Admission Register from the school in which he was admitted in Standard III. The petitioner contends that his date of birth is 12.10.1961, as is revealed in the extract of the Admission Register. It is seen from Exhibit P3 that the guardian of the petitioner, being the Sister-in-charge of the Orphanage, had admitted the petitioner to the school and, in all probability, declaration of date of birth would have been made by her.

4. It is to be emphasised that the petitioner, sadly, is unable to specify a date of birth due to his unfortunate circumstance. However, when entering of date of birth in the service records, one has to make self-declaration, when one does not have any evidentiary material to assert the date of birth. The petitioner himself declared his date of birth to be 39 years, which was verified by a Medical Officer. The petitioner, at the fag end of his career, would seek to change his date of birth on the basis of the declaration made by a guardian before the school when he was admitted to Standard III. This Court is of the opinion that there can

be no reliance placed on Exhibit P3 to upset the declaration made by the petitioner and verified by a Medical Officer at the time of entry into service.

5. The petitioner would rely on a judgment of this Court in ***Achumma, T.V. v. State of Kerala* [ILR 2015 (3) Kerala 716]**. It is to be noticed that, therein the Court had specifically noticed that the employee had approached the authorities for correction of date of birth well within time; but the authorities made the petitioner therein run from pillar to post. Eventually though the date of birth was corrected in the S.S.L.C. Book, the Government rejected her claim to correct the date of birth in the service book, on the ground that the petitioner was to retire soon. The specific reliance is placed on paragraph 11, which is extracted hereunder:

“11. The same view has been consistently taken by the Supreme Court in subsequent years as well, as is evident from a reading of the judgments in *State of U.P. and others v. Gulaichi (Smt)* [2003] 6 SCC 483; *State of Punjab and others v. S.C.Chadha* [(2004) 3 SCC 394] and *State of Maharashtra and another v. Gorakhnath Sitaram Kamble and others* [(2010) 14 SCC 423]. The general principle that can be culled out from the said decisions is that ordinarily, an application for correction of date of birth in service records should not be entertained, if preferred by an employee at the fag end of his service. The said rule,

however, is not without exceptions, and in cases where there is clear, clinching and unimpeachable evidence to show that the date of birth of an employee has been wrongly entered in his service record, and a denial of permission to correct the said record would tantamount to a denial of justice to the employee, courts have permitted such correction of the service record [See: *State of U.P. And another v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49]; *State of Gujarat and others v. Vali Mohd. Dosabhai Sindhi* [(2006) 6 SCC 537]; *State of Madhya Pradesh and others v. Premlal Shrivastava* [(2011) 9 SCC 664] and *Bharat Coking Coal Limited and others Chhota Birsia Uranw* [(2014) 12 SCC 570]”.

6. Hence, the general principle is that no application for correction of date of birth in service records should be entertained at the far end of the service of an employee, except in circumstances where there is clear, clinching and unimpeachable evidence to show that the date of birth of the employee has been wrongly entered in the service records. This Court is unable to find from the records that there is such evidence to hold that the petitioner's date of birth is as shown in Exhibit P3. Exhibit P3, in all probability, as was earlier noticed, would have been made on the basis of the declaration made by the guardian. The petitioner himself made a declaration at Exhibit P1, which was verified by a

Medical Officer at the time of his entry into service. This Court does not find anything in Exhibit P3 which could upset the declaration made by the petitioner at the time of his entry into service. Further Exhibit P3 was available when the petitioner entered service and the petitioner would very well have relied on it without making a self-declaration. It is also submitted by the learned counsel for the respondent-Corporation that there is a bar as per the Standing Orders of the Corporation, for changing the date of birth of employees if once a declaration to that end is made.

7. The petitioner has another contention that the petitioner's declaration of date of birth is 01.11.1957 and the petitioner is sought to be retired on 01.07.2017, as is indicated in Exhibit P4. The learned counsel appearing for the respondent-Corporation, however, would submit that this is in accordance with the Standing Orders applicable to the Corporation specifying the date of retirement in July in case of employees who have no material to substantiate their date of birth.

The writ petition would stand dismissed. No costs.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]