

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

WP(C).No. 28185 of 2015 (W)

PETITIONER:

SUDHAKARAN B.B., AGED 56 YEARS,
S/O.BHASKARAN(LATE), BRANCH MANAGER/
SUPERINTENDENT, HEAD OFFICE,
DISTRICT CO-OP BANK, KOLLAM RESIDING AT
KOIPURATH AISWARYA, MUNDAKKAL EAST,
KOLLAM-691 001.

BY ADVS.SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
STATUE JN., THIRUVANANTHAPURAM-695 001.
3. THE GENERAL MANAGER, HEAD OFFICE,
DISTRICT CO-OPERATIVE BANK, KOLLAM,
CHINNAKADA, KOLLAM-691 001.

ADDL. RESPONDENTS 4 & 5 IMPLEADED

4. DISTRICT CO-OPERATIVE BANK, KOLLAM, HEAD OFFICE,
CHINNAKADA, KOLLAM - 691 001 REPRESENTED BY ITS
GENERAL MANAGER.
5. THE BOARD OF DIRECTORS, DISTRICT CO-OPERATIVE BANK,
KOLLAM, HEAD OFFICE, CHINNAKADA, KOLLAM - 691 001
REPRESENTED BY ITS PRESIDENT.

IMPLEADED AS PER ORDER DATED 19.11.2015 IN IA 16766/15.

ADDL. RESPONDENTS 6 TO 9 IMPLEADED

6. ANIMON, S/O ELIYAS MARIAN, AGED 42 YEARS,
ST.ANTONYS BHAVAN, VAADI, DMRA-49, KAIKULANGARA,
KOLLAM, WORKING AS SENIOR ACCOUNTANT,
KOLLAM DISTRICT CO-OPERATIVE BANK,
KAVANAD BRANCH, KOLLAM.

7. IVAN JOHNSON, S/O ELIYAS MARIAN, AGED 44 YEARS,
NALANDA NAGAR-107, THIRUMULLAAVARAM,
KOLLAM-12, WORKING AS SENIOR ACCOUNTANT,
KOLLAM DISTRICT CO-OPERATIVE BANK,
KANNANALLOR BRANCH, KOLLAM.
8. BINDU LAL, S/O KARTHIKEYAN, AGED 44 YEARS,
THEKKE PUTHEN VEEDU, MAYYANADU P.O., KOLLAM,
WORKING AS SENIOR ACCOUNTANT, KDCB,
HEAD OFFICE, KOLLAM.
9. VINU KUMAR.V.S., AGED 38, S/O VASUDEVAN,
THUSHARA, THAZHUTHALA, KOTTIYAM P.O., KOLLAM,
WORKING AS BRANCH MANAGER, H.O., KOLLAM.

IMPLEADED AS PER ORDER DATED 23.11.2015 IN IA 16873/2015.

R3 BY ADV. SRI.T.R.HARIKUMAR
R6 TO R9 BY ADVS. SRI.C.UNNIKRISHNAN (KOLLAM)
SRI.R.KISHORE (KALLUMTHAZHAM)
R1 & R2 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 28185 of 2015 (W)

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE BIRTH CERTIFICATE OF THE PETITIONER

EXT. P2 TRUE COPY OF THE RELEVANT PAGE OF THE SSLC BOOK OF THE PETITIONER

EXT. P3 TRUE COPY OF THE COMMUNICAITON DATED 22-12-2009 OF THE 1ST RESPONDENT

EXT. P3(a) ENGLISH TRANSLATION OF EXT.P-3

EXT. P4 TRUE COPY OF THE COMMUNICATION DATED 3-1-2012 OF THE 1ST RESPONDENT

EXT. P4(a) ENGLISH TRANSLATION OF EXT.P-4

EXT. P5 TRUE COPY OF THE COVERING LETTER DATED 1-2-2012 SUBMITTED BY THE PETITIONER

EXT. P5(a) ENGLISH TRANSLATION OF EXT.P-5

EXT. P6 TRUE COPY OF THE COMMUNICATION DATED 17-3-2014 OF THE 1ST RESPONDENT

EXT. P6(a) ENGLISH TRANSLATION OF EXT.P-6

EXT. P7 TRUE COPY OF THE COMMUNICATION DATED 14-1-2015 ISSUED BY THE 2ND RESPONDENT

EXT. P7(a) ENGLISH TRANSLATION OF EXT.P-7

EXT. P8 TRUE COPY OF THE JUDGMENT DATED 9-4-2015 IN WP(C)11677/2015 OF THIS HON'BLE COURT

EXT. P9 TRUE COPY OF THE ORDER,G.O.DATED 16-6-2015 ISSUED BY THE 1ST RESPONDENT

EXT. P9(a) ENGLISH TRANSLATION OF EXT.P9

EXT. P10 TRUE COPY OF THE ORDER DATED 3-8-2015 ISSUED BY THE JOINT COMMISSIONER FOR GOVERNMENT EXAMINATIONS

EXT. P11 TRUE COPY OF THE RELEVANT PAGE OF THE SSLC BOOK,WHEREIN THE DATE OF BIRTH OF THE PETITIONER IS CORRECTED AS 21-11-1958

EXT. P12 TRUE COPY OF THE REPRESENTATION DATED 12-8-2015 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT. P13 TRUE COPY OF THE COMMUNICATION DATED 9-10-2015 ISSUED BY THE BANK

EXT. P13(a) ENGLISH TRANSLATION OF EXT. P13

EXT. P14 TRUE COPY OF THE REPRESENTATION DATED 1.1.2007
SUBMITTED BY THE PETITIONER

EXT. P14(a) ENGLISH TRANSLATION OF EXT.P14

EXT. P15 TRUE COPY OF THE APPLICATION DATED 5.11.2015 SUBMITTED BY
THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT

EXT. P15(a) ENGLISH TRANSLATION OF EXT.P15

EXT. P16 TRUE COPY OF THE REPRESENTATION DATED 20.1.2007
SUBMITTED BY THE EPTITIONER BEFORE THE FIRST RESPONDENT

EXT. P16(a) ENGLISH TRANSLATION OF EXT.P16

EXT. P17 TRUE COPY OF THE COMMUNICATION DATED 20.1.2007 ISSUED BY
THE GOVERNMENT TO PETITIONER

EXT. P17(a) ENGLISH TRNALSATION OF EXT. P17

RESPONDENT'S EXHIBITS:

EXT. R3(a) A TRUE COPY OF THE RELEVANT PAGES OF THE SERVICE BOOK
OF THE PETITIONER

EXT. R3(b) A TRUE COPY OF THE G.O.(P)NO.45/91/P&ARD DATED 30.12.1991

EXT. R3(c) A TRUE COPY OF THE BOARD RESOLUTION NO.1777 DATED
04.05.2015

EXT. R3(d) A TRUE COPY OF THE BOARD RESOLUTION NO.1997 DATED
23.09.2015

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.28185 of 2015 W

Dated this the 25th day of November, 2015

JUDGMENT

Facts:

The petitioner is a Branch Manager in the third respondent Bank. While joining the service on 09.04.1991, he mentioned his date of birth as 30.11.1957: It was based on the date reflected in his SSLC book.

2. In 2006, the petitioner intended to apply for a passport. In compliance with the statutory requirement for obtaining a passport, he secured a date of birth certificate from the Kollam Municipal Corporation, within the territorial limits of which the petitioner was born. On his verifying Exhibit P1 date of birth certificate obtained from the Corporation, the petitioner came to know for the first time that he was born on 21.11.1958—not on 30.11.1957, which his SSLC book reflected and which he mentioned in his service records.

3. As soon as the petitioner had come to know about the discrepancy in the date of birth, on 01.01.2007 he submitted Exhibit P14 application to the Government for having the delay condoned so that he could apply for correction of date of birth as per Rule 3 Chapter VI of KER. Later, he followed it up with other applications, such as Exhibit P16 dated 20.02.2007, and Exhibit P5 dated 01.02.2012. The petitioner, however, avers that he has sent many applications in quick succession; most of them have not been filed before the court, however.

4. In 2009, apparently for the first time, the first respondent addressed Exhibit P3 communication to the petitioner asking him to provide his service details to consider the case for correction of date of birth. It seems that Exhibit P3 was in response to the petitioner's application dated 01.08.2009. Once again the first respondent asked the petitioner through Exhibit P4

communication dated 03.01.2012 to submit an application through his employer. Under those circumstances, the petitioner submitted Exhibit P5 application dated 01.02.2012 to the third respondent to be forwarded to the first respondent.

5. In turn, the first respondent addressed Exhibit P6 communication to the third respondent seeking further clarification especially concerning the applicability of G.O. (P)No.45/1991/P&ARD dated 30.12.1991 to the employees of the co-operative service. In fact, the third respondent wanted to have an official say on the issue of the applicability of the Government Order referred to above. Accordingly, he submitted an application before the Joint Registrar of Co-operative Societies. The said official, then, through Exhibit P7 informed that the Government Order had no application to the employees of the co-operative service.

6. It is not clear from the record whether the third respondent, having received the information from the Joint Registrar, communicated it to the first respondent. At any rate, the petitioner filed W.P.(C)No.11677/2015 and invited Exhibit P8 judgment, through which this Court directed the third respondent to submit a report to the first respondent, who was to further process the petitioner's claim thereafter. Under those circumstances, based on the information supplied by the third respondent, the first respondent issued Exhibit P9 order condoning the delay to correct the date of birth. However, Exhibit P9 contained a rider that the corrected date of birth shall not be used to effect changes in his service records.

7. Notwithstanding the rider in Exhibit P9, since there is a condonation of delay for correcting the school records, the petitioner proceeded further and submitted an application to the Joint Commissioner for Government

Examinations, who in fact issued Exhibit P10 order authorising correction in the school records, i.e. SSLC book. As a result, the petitioner obtained Exhibit P11 corrected SSLC book.

8. After obtaining Exhibit P11 corrected SSLC book, the petitioner submitted Exhibit P12 application before the third respondent seeking correction of the date of birth in his service records as well. When the third respondent had not responded to the petitioner's Exhibit P12 application, he filed the present writ petition questioning the inaction of the third respondent as well as the validity of the rider in Exhibit P9 that the corrected date of birth shall not be used for securing any service benefits by the petitioner.

9. As a matter of subsequent development, after filing of the writ petition, the respondent Bank issued Exhibit P13 order intimating the petitioner that the Administrative Committee of the respondent Bank through

its Decision No.1997, dated 23.09.2015, rejected the petitioner's request to correct the date of birth in his service records.

Submissions:

Petitioner's:

10. In the above factual backdrop, the learned counsel for the petitioner has submitted that the petitioner has all along been diligent in his approach. In elaboration, he has submitted that the petitioner came to know for the first time in December 2006 when he obtained Exhibit P1 certificate from Kollam Municipal Corporation that there was discrepancy in his date of birth. According to the learned counsel, within a month's time the petitioner submitted a representation to the Government for having the delay condoned so that he could take recourse to Rule 3 Chapter VI of KER. It is also his case that the petitioner went on submitting numerous applications either directly or

through his employer, the third respondent.

11. The learned counsel has also submitted that it is not in dispute, as has been clarified by the Joint Registrar, that Exhibit R3(b) Government Order has no application to the employees of the co-operative service. He has further submitted that a learned Division Bench of this Court in **The Kannadi Service Co-operative Bank Ltd. v. Viswanathan**¹ has affirmed the said fact.

12. The substantive contention of the learned counsel for the petitioner is that, first, the Government has no power to impose any restriction in Exhibit P9 that despite the correction of date of birth in the school records it shall not be used for the purpose of having the service records also corrected. According to the learned counsel, Exhibit P9 to the said extent is ultra vires of the Government. Second, once the school records stand corrected, inevitably it shall have its full impact so that any other benefit which is

¹ 1998 (2) KLT 573

dependent on the date of birth thus corrected shall also correspondingly accrue to the petitioner's benefit. In other words, the petitioner shall be entitled to have his service records corrected so long as there is no other statutory impediment in that regard.

13. Having taken me through the judgment of the learned Division Bench in Viswanathan (supra), the learned counsel has contended that the issue raised in the present writ petition stands squarely answered by the said judgment. He has further drawn my attention to a recent judgment of this Court in **Achumma v. State of Kerala**², which is said to have taken the same line of judicial reasoning under a similar factual backdrop.

14. Summing up his submissions, the learned counsel has urged this Court to allow the writ petition and direct the third respondent to effect the changes in the service records, thus duly reflecting the corrected date of birth so

² 2015 (3) KLT 511

that the petitioner could continue in service till what is said to be his actual date of superannuation.

Respondent No.3:

15. Per contra, the learned counsel for the third respondent Bank has submitted that the petitioner's frequent representations, if any, before the Government without reference to the third respondent are of no consequence. He has submitted that the petitioner has been indolent and has never taken any steps for about sixteen years having joined the service in 1991. He has further submitted that the petitioner is not absolved of his responsibility to pursue the matter diligently after submitting the applications to the Government. According to him, the petitioner ought not to have been silent till recently having allegedly filed his first representation in 2007. In other words, the petitioner could have taken recourse to the judicial redressal at the earliest point of

time and sought the correction of date of birth well in advance.

16. Conceding that Exhibit R3(b) Government Order has no application to the employees of the co-operative service, the learned counsel has, nevertheless, contended that the petitioner's efforts were extremely belated and his conduct suffers from the vice of laches. In support of his submissions, the learned counsel has placed reliance on **State of Madhya Pradesh and Others v. Premlal Shrivastava**³.

Respondents 6 to 9:

17. Adopting the submissions of the learned counsel for the third respondent, the learned counsel for respondents 6 to 9 has, to begin with, contended that the contesting respondents being the juniors to the petitioner are to be adversely affected if the service records undergo any correction as to the petitioner's date of birth. Placing reliance on **M/s. Bharat Coking Coal Ltd. and others v.**

³ (2011) 9 SCC 664

Chhota Birsa Uranw⁴, the learned counsel would contend that any belated correction of date of birth in service records will have disastrous consequences. It is the singular contention of the learned counsel that respondents 6 to 9 who have been legitimately expecting career advancement by way of promotion in due course now have their chances in jeopardy.

18. The learned counsel has also submitted that the respondents' enquiry reveals that Exhibit P1 date of birth certificate allegedly issued by the Kollam Municipal Corporation is fraudulent and cannot be relied on. In elaboration, he has submitted that the respondents' efforts to secure information under the Right to Information Act has not yet borne fruit because of paucity of time. In that context, the learned counsel would contend that since the genuineness of Exhibit P1 is disputed, and thereby the

⁴ AIR 2014 SC 1975

correctness of the petitioner's date of birth is also disputed, the only recourse available to the petitioner is to approach a competent civil court and get a declaration as regards his date of birth. The learned counsel, therefore, reminds this Court that under Article 226 of the Constitution disputed questions of fact cannot be adjudicated upon. The learned counsel has also contended that the petitioner has not challenged the resolution of the Managing Committee, through which a decision was taken to reject the petitioner's claim.

Reply:

19. In reply, the learned counsel for the petitioner has submitted that the resolution of the Managing Committee through which the petitioner's claim is said to have been rejected has not been, in the first place, communicated to the petitioner. Since Exhibit P13 order alone has been communicated to the petitioner, he has

confined his challenge to the said order. The learned counsel has also made strenuous efforts to refute the contentions of the learned counsel for respondents 6 to 9 as well as the learned counsel for the respondent Bank that the petitioner's case suffers from any laches.

20. Eventually, the learned counsel has submitted that there are no disputed questions of fact compelling the petitioner to approach a civil court. According to him, the school records, including the SSLC book, have already been corrected. All that the third respondent has to do is to act further in recognition of the said correction and make the corresponding changes in the service records.

21. Heard the learned counsel for the petitioner and the learned counsel for the third respondent, as well as the learned counsel for respondents 6 to 9, apart from perusing the record.

Issues:

- I.** Whether any disputed questions of fact are involved so as to compel the petitioner to approach the competent civil court?
- II.** Whether the Government is empowered to restrict the benefit of correction of date of birth excluding from its purview the service records?
- III.** Whether the respondent Bank is bound to take cognizance of the corrected date of birth in the SSLC book and correspondingly effect changes in his service records?
- IV.** Whether the petitioner's efforts to have his date of birth corrected in his service records is highly belated?

Issue No.I:

22. One of the substantive issues raised by the learned counsel for respondents 6 to 9 is that Exhibit P1 birth certificate is disputed and that the said dispute has to be resolved by a competent civil court after appreciating both oral and documentary evidence. Without much cavil, I may observe that the courts have time and again held that

expansive as the powers of the High Court under Article 226 of the Constitution are, there shall be no adjudication on the disputed questions of fact, especially if the resolution of the dispute requires both oral and documentary evidence. That said, I may still have to examine whether there are any disputed questions of fact in the present instance.

23. The Government issued Exhibit P9 proceedings, after a prolonged pursuit by the petitioner, permitting the correction of date of birth in the school records. The authorities concerned, then, issued Exhibit P10 proceedings allowing correction in the school records. Consequently, Exhibit P11 corrected SSLC book was given. Now, the respondent Bank has to act on Exhibit P11. In other words, so long as Exhibit P11 stands undisturbed, in terms of Section 114 of the Evidence Act, the said document having been issued by a competent official enjoys a certain presumptive evidentiary value. Of course, the third

respondent Bank could not proceed further on the request of the petitioner so long as the limitation imposed by the Government in Exhibit P9 order stands. Thus, as the Government has corrected the school records and as the petitioner is only insisting on having certain consequential advantages in the wake of the said correction, it is difficult to hold that the issue leaves in its wake any undisputed questions of fact.

24. Nevertheless, I must observe that the right of the petitioner to insist on the correction of the date of birth in the service register does depend on the correctness or legality of Exhibit P9 and the other consequential orders passed by the authorities.

Issue No.II:

25. Without much cogitation, I am prepared to hold that the Government has undoubted power either to entertain the petitioner's request or reject it, albeit, subject

to various statutory constraints. In other words, so long as the Government exercises its power by following the due process, its conclusion, even assuming to be erroneous, cannot be the subject matter of judicial review. In the present instance, having acceded to the petitioner's request to condone the delay so that the petitioner could have correction of his date of birth, paradoxically, the Government has applied restrictions in Exhibit P9 order. It is profitable to extract the order to the extent of the restriction that has been imposed. The order reads thus:

“[I]n the above circumstances, Orders are issued granting permission to Sri.Sudhakaran.B.B., Koipurath Aiswarya, Mundakkal East, Kollam, by condoning the delay, for submitting application before the Commissioner for Government Examinations for correcting the date of birth in School records/Secondary School Leaving Certificate. However, the corrected date of birth will not be considered for any employment/service benefits/extension of service in Government/ Public Sector Undertaking/Semi Government Institutions.”

26. It is axiomatic to observe that to allow a person a benefit conditionally requires a specific statutory sanction.

The restraint applied against the petitioner from his using the corrected date of birth in the service records has to be traced to a particular statutory mandate. Neither of the counsel for the respondents has succeeded in placing before me any provision that empowers the Government to impose such a restriction as has been done in Exhibit P9. Thus, invoking the oft-repeated judicial dictum, I may observe that the authorities are bound to act in accordance with law or not at all. Accordingly, I hold that Exhibit P9 is illegal to the extent of restraining the petitioner from having advantage of the corrected date of birth applied to his service records. It is, yet, reiterated that the declaration presently made is contingent upon the legality of Exhibits P9 and P11.

Issue No.III:

27. Doing is the right; prevention from doing is the restriction. A right needs no State sanction; a restriction

does. To enter one's date of birth is a thing done in exercise of one's right; to alter it—unilaterally—is the undoing. A restriction.

28. An employer is bound to recognise the date of birth reflected in an authenticated certificate issued by a competent authority. Here, it did. Thus, it has become a party to the fact reflected in the certificate. It has a stake in it. If the acknowledged fact is to be altered, it shall have a say in it.

29. Expatiating on the issue, I may say that an employer takes into account the length of service of every employee in the organisation to determine and regulate its staffing system. On the length of the service of an employee—if it is not an exaggeration—the career prospects of many other employees are dependant. If the date of birth is to be altered behind the back of the employer and the other affected employees, too; it will have deleterious

consequences: the employer is left holding the baby, as it were.

30. It is elementary that a decree or an order to bind a person, that person needs to be a party and be heard. This is the essence of the principle *audi alteram partem*. While condoning the delay or altering the date of birth the officials under KER are not concerned with the order's ramifications on the service of not only the applicant but also others, the employer included. But, the provisions have not provided for the participation of any other person in the proceedings. The correction of date of birth is treated as an administrative function rather than a quasi-judicial one. That said, it is fair to acknowledge the fact that the correction of the date of birth is in the nature of deciding a person's civil right having far reaching consequences. It involves—nay, affects—others, too. It is not, I must say, a mere arithmetic exercise.

31. To be equally fair to the petitioner, I must hold that a precedent, if any, available in support of the petitioner's plea has to be taken note of and applied. Judicial propriety and discipline demand conformity and compliance, as well.

32. In this context, I may observe that the Joint registrar in his Exhibit P7 communication has informed the respondent Bank that Exhibit R3(b) Government Order does not apply to the employees in the co-operative service. Further, a learned Division Bench of this Court in Viswanathan (supra) has clearly held that the Government Order has no application. The learned Division Bench having followed the decision of a learned Full Bench in **Kunhikrishnan v. State of Kerala**⁵, has held that the note appended to Rule 197 is analogous to the note appended to Rule 28 of Chapter XIV-A of KER. Their Lordships have, in

⁵ 1982 KLT 13

fact, further observed as follows:

“In this case Exhibit P4 was passed on the reasoning that the first respondent has not applied to correct his date of birth within five years prior to the retirement. The reasoning is not correct. We have already noticed that the Government order does not apply to the employees of the Co-operative Societies and they are governed by the provisions under R.197 for correction of date of birth. Therefore the Government orders referred to above by the learned counsel for the appellant will not apply to a co-operative society. There is a fundamental fallacy in the order impugned in the Writ Petition. According to R.197 of the Co-operative Societies Rules every co-operative society shall maintain a service register in the form prescribed. As far as the first respondent is concerned the date entered in his S.S.L.C. book is 3.2.1941 according to the alternations in terms of various government orders. There is no rule preventing the society now for carrying that date into the service book as per the S.S.L.C. Book. The date of birth of first respondent has already been corrected in his S.S.L.C. book in accordance with law and that has become final. The date cannot be questioned by anybody. There is no rule applicable to the society to make correction within any period. There is no reason at all for the society to refuse to do the corrections sought by the first respondent. The Joint Registrar, instead of carrying out the directions issued by this court to consider and pass orders, has instead considered the validity of correction of the date of birth which is clearly outside his jurisdiction. The only question left to be decided by the Joint Registrar was that the correction already carried out should be entered in the service records. The rule referred to above is absolutely clear as it has to be so. Instead the Joint Registrar has sat in judgment over the correction itself which is totally beyond his jurisdiction.”

33. In the light of the above definitive pronouncement of the learned Division Bench, the respondent Bank is bound to take cognizance of the corrected date of birth in the SSLC book and correspondingly effect changes in the petitioner's service records, if the correction is in accordance with law.

Issue No.IV:

34. It is too well established to be re-stated that to approach any forum or official for redressal, a person is to be diligent in his efforts. In the absence of any time frame fixed for seeking any particular relief, one has to, as is well settled, approach the forum or the authority within a reasonable time. The concept of 'reasonable time' is indeed quite subjective and varies from case to case. A given span of time may be trivially short in one case, but fatally too long in another. It is, therefore, almost impossible to fix any strict temporal bounds as regards what is reasonable time.

35. In the present instance, the petitioner passed his SSLC in 1973 and joined the respondent Bank in 1991. But he is said to have come to know about his correct date of birth only in December 2006. The very next month, i.e. on 01.01.2007, the petitioner is said to have approached the first respondent to have the delay condoned so that he could apply under Rule 3 Chapter VI of KER for correction of his date of birth. Indeed, the learned counsel has averred that the petitioner has with unfailing regularity submitted many representations to the Government seeking condonation of delay and correction of his date of birth. At least, as can be seen from record, from 2007 onwards there has been sufficient material to establish that the petitioner did approach the first respondent at the earliest point of time.

36. The learned counsel for the respondents have taken a plea that mere repeated representations cannot

come to the rescue of the petitioner and that he ought to have approached a court of law at the earliest point of time. In this regard, it suffices if I refer to a very pertinent observation of a learned Single Judge of this Court in *Achumma* (supra). On an exhaustive consideration of various issues, his Lordship has observed that when it comes to the discharge of duties by public authorities, non-recourse by a citizen to constitutional remedies for expediting the discharge of those duties cannot be held against the citizen while examining whether he/she was diligent in the pursuit of his/her application. This is more so when one considers that litigation today does not, it is observed, come without attendant costs to a litigant and there are many who cannot afford to spend huge amounts on litigation.

Precedential Position:

37. In **Home Deptt. v. R.Kirubakaran**⁶, the Hon'ble

⁶ AIR 1993 SC 2647

Supreme Court has observed that an application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. A direction for correction of the date of birth of a public servant may have a chain reaction, because others waiting for years below him for their respective promotions are affected in this process. Having observed thus, the Apex Court has further held in paragraph 7 of the judgment that if no rule or order has been framed or made prescribing the period within which such application has to be filed, then such application must be filed within the time, which is to be reasonable.

38. In *Chhota Birsa Uranw (supra)*, relied on by the learned counsel for the contesting respondents, an employee sought the correction of his date of birth in the service register. To negate the employee's claim, the employer took a plea that the employee moved the

application at the tail end of his service. The Supreme Court has repelled the employer's objection having observed that the employee moved the application two decades ago.

39. On a perusal of the judgment, especially paragraph 11 thereof, it emerges that the employer gave all its employees a chance to identify and rectify the discrepancies in the service records by providing them a nominee form containing details of their service records. This initiative of the appellants, according to their Lordships, clearly indicated the existence of errors in service records of which the appellants were aware and were taking steps to rectify. The Court has also further observed that the stance of the employer that the records in the Form B register must be relied upon does not hold good as it is admitted by the employer that errors existed in the register.

40. The Apex Court in the end upheld the judgment of the High Court, which ordered the correction of the date of birth. In that context, the Court has observed that the employee followed the due process and had been diligent in his approach. In any event, the fact situation in *Chhota Birsa Uranw (supra)* is entirely different from the present one. I do not think the said decision is an authority for the proposition that an employee could apply for the correction of date of birth only when the employer provides an opportunity as was sought to be canvassed by the learned counsel for the contesting respondents.

41. In **State of Punjab v. S.C.Chadha**⁷, the Hon'ble Supreme Court has noted with concern the increasing trend of clamour for correction of the date of birth in service records at the tail end of one's career. It has a cascading, at times deleterious, effect. Their Lordships have observed thus:

⁷ 2004 (2) Scale 337

"9. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not."

42. In **Union of India v. Harnam Singh**⁸, the position in law was, however, put in perspective to the following effect:

"A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

43. Before proceeding further, I may observe that in service jurisprudence the role of precedents, binding as

⁸ (1994) 1 LLJ 318 (SC)

they are, is quite restricted. For in the absence of any statutory scheme, the service conditions of the employees are mostly governed by subordinate legislation or administrative instructions. Most of them are designed as a matter of administrative expediency and exigency—not in the pejorative sense, though. In **Union of India v. Chajju Ram**⁹, the Constitution Bench of the Apex Court has held that even a little difference in facts or additional facts may lead to a different conclusion while deciding whether a decision would operate as a binding precedent. In **Bhavnagar University v. Palitana Sugar Mill Private Limited**¹⁰, a learned Three Judge Bench of the Apex Court has further held that a decision is an authority for which it is decided and not what can be deduced there from logically.

⁹ (2003) 3 SCR 647

¹⁰ AIR 2003 SC 511

44. As a result, the position can be summed up to the effect that it cannot be laid down as a rule that under no circumstances, the date of birth of an employee in public service be permitted to be changed. That would depend upon the rules governing the service of a particular employee and if any specific procedure has been prescribed, the same can be done in accordance with such procedure and not otherwise.

45. In *Premlal Shrivastava* (supra), the Apex Court has held that if a Government servant makes a request for correction of the recorded date of birth after lapse of a long time, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous.

46. In **Union of India v. Harnam Singh**¹¹, a two-Judge Bench of the Hon'ble Supreme Court has held to the following effect:

“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights.”

47. In the present instance, first, no time has been fixed by the employer within which period an employee can

¹¹ (1993) 2 SCC 162

file an application for the correction of the date of birth in the service registers. Indisputably, Exhibit R3(b) Government Order, too, has no application. I, however, hasten to reiterate that absence of time frame is no licence to any employee to raise the bogey of the error in the date of birth ad infinitum. Pertinently, in Premlal Shrivasa (supra) Rule 84 of the M.P. Financial Code, which is applicable, mandates that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the Government servant.

Statutory Status:

48. At this juncture, we may examine the statutory position governing the case on hand. Rule 197 of the Kerala Co-operative Societies Rules ('the Rules' for brevity) deals with the maintenance of service register. And the provision reads as follows:

“197. Maintenance of Service Register.-Every society shall maintain a service register in the form prescribed by the

Registrar for every employee to indicate his date of birth, qualifications, date of appointment, etc. The Chief Executive Officer shall authenticate the entries in the register and such register of the Chief Executive Officer shall be authenticated by the President/Chairman and kept in his custody.

Note.- The date of birth of the employee shall be that entered in the school admission register, Matriculation book or S.S.L.C. book.”

49. Evidently, for recording the date of birth in the service register, the S.S.L.C book forms the basis. It is, therefore, essential for us to examine the regnant regulations that govern the school certificates. Chapter VI of Kerala Education Rules (KER) deals with admission, transfer and removal of pupils.

50. Rule 3 Chapter VI KER mandates that the date of birth of a pupil once entered in the Admission Register shall not be altered except with the sanction of the authority specified by the Government in that behalf. Applications for such alterations and corrections should be submitted through the Headmaster with satisfactory evidence. In fact,

a time limit of fifteen years from the date of leaving the school or the date of appearing for the S.S.L.C Examination for the last time, whichever is earlier, is fixed for entertaining the requests for correction of date of birth in school records by the Commissioner of Government Examinations.

51. The note appended to the said provision provides for condonation of delay in making the application for correction of date of birth in school records in deserving cases, on merits, provided that the applicant is within 50 years of age as per the original entry in the school records. If the authority referred to in sub-rule (1) is satisfied after necessary enquiries that the change applied for could be granted, he will issue an order to make the alteration. The alteration shall then be made in the Admission Register and the other connected records of the schools previously

attended by the pupil as well as in the school in which he was studying at the time.

52. The petitioner, as can be seen, claims to have been born on 21.11.1958. He completed 50 years by 21.11.2008, before which date, in terms of Rule 3, he ought to have applied to the authorities. Exhibit P14 is said to be the application the petitioner submitted on 01.01.2007. It is apparently a Xerox copy with date overwritten.

53. Initially, I was not inclined to accept the authenticity of Exhibit P14, which is a xerox copy without any proper endorsement by the officials as to its acceptance by them. However, the learned counsel for the petitioner filed I.A.No.17189/2015 at the very last moment, though, seeking the indulgence of this Court to accept Exhibit P17, an additional document. This Court did allow the said interlocutory application.

54. As can be seen from Exhibit P17, it is a communication dated 20.01.2007 from the first respondent to the petitioner. The document evidently refers to the petitioner's Exhibit P14 application dated 01.01.2007. The fact, nevertheless, remains that the first respondent has in the said communication felt that the petitioner has not stated sufficient reasons for condoning the delay in submitting the application for correction of date of birth. As a result, the application was rejected.

55. In the face of the subsequent acceptance of the petitioner's plea and the condonation of delay by the first respondent through Exhibit P9, the initial rejection through Exhibit P17 may not be germane. The document, at best, serves to show that Exhibit P14 was, in fact, submitted by the petitioner. The natural corollary is that the petitioner had applied for the correction of date of birth in compliance with Rule 3 Chapter VI KER, i.e. before he attained 50 years

of age.

56. Without fear of contradiction, I may place on record that the issue of correction of date of birth and its fall out on the career of not only the applicant, but also other employees in the organisation is a vexed one. More particularly, the issue of an employee seeking the correction of the date of birth at the tail end of his career has reared its irrepressible head on numerous occasions causing discomfort to the employer and the decisional dilemma to the courts, too. There has been, in the course of time, a definite shift in the judicial thinking to the effect that unless the applicant makes out a compelling case, the courts should be averse to interfering, especially in the twilight years of the applicants' career.

57. In the present instance, fidelity to judicial propriety and discipline is called for. Under almost identical circumstances, a learned Division Bench of this Court has

held in favour of the applicant. It seems, their Lordships have ruled thus based on an earlier dictum of a learned Full Bench of this Court. Under these circumstances, I cannot but be bound by stare decisis.

58. In the facts and circumstances, I hold that Exhibit P9 to the extent of imposing a limitation that the corrected date of birth shall not be used to correct the petitioner's service record cannot be sustained. And it is accordingly set aside. Consequently, Exhibit P13 order of rejection issued by the respondent Bank is also set aside. This Court, therefore, directs the respondent Bank to effect the necessary changes in the petitioner's service records as regards his date of birth and extend to the petitioner all consequential benefits, he is entitled to.

59. Given the apprehension expressed by the learned counsel for the petitioner that the petitioner is to retire by the end of this month, the respondent Bank shall effect all

the necessary changes in the record and permit the petitioner to continue in service on the basis of the corrected entry.

This writ petition is allowed to the extent indicated above. No order as to costs.

Dama Seshadri Naidu, Judge

tkv