

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 38533 of 2010 (N)

PETITIONER :

**T.V.ACHUMMA, W/O. SUKKUR,
HEADMISTRESS, MIUP SCHOOL, PONNANI,
P.O. PONNANI NAGARAM, MALAPPURAM DISTRICT 679 583.**

**BY ADVS.SRI.P.K.IBRAHIM
SMT.K.P.AMBIKA
SMT.A.A.SHIBI
SRI.JOMON P.VARGHESE**

RESPONDENTS :

- 1. THE STATE OF KERALA
SECRETARY TO GOVERNMENT, GENERAL EDUCATION, DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 2. THE COMMISSIONER FOR GOVERNMENT
EXAMINATIONS, PAREEKSHA BHAVAN, POOJAPPURA
THIRUVANANTHAPURAM 695 012.**
- 3. THE ASSISTANT EDUCATIONAL OFFICER,
PONNANI 679 583, MALAPPURAM DISTRICT.**
- 4. THE MANAGER,MIUP SCHOOL,PONNANI ,
P.O. PONNANI NAGARAM, MALAPPURAM DISTRICT 679 583.**

ADDL.R5 IMPEADED :

- 5. MUHAMMED K.B
S/O.THE LATE BAVO, UPPER PRIMARY SCHOOL ASSISTANT
MOULATHUL ISLAM HIGHER SECONDARY SCHOOL FOR GIRLS
PUDUPONNANI, PONNAI SOUTH P.O.,
MALAPPURAM DISTRICT - 679 586
RESIDING AT 'SUBAH MAHAL', OPPOSITE A.K.G CLUB
PALLAPPURAM, PONNANI, MALAPPURAM DISTRICT - 679 577.**

ADDL.R5 IMPEADED AS PER ORDER DATED 19.06.2015 IN IA 8229/15.

WP(C).No. 38533 of 2010 (N)

ADDL. R6 IMPEADED

**6. STATE OF KERALA
REPRESENTED BY THE SECRETARY
PERSONNEL AND ADMINISTRATIVE REFORMS DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

ADDL.R6 IS IMPEADED AS PER ORDER DATED 25.06.2015 IN IA 8531/15.

**R1 TO R3 & ADDL R6 BY GOVERNMENT PLEADER SMT. LOWSY A
ADDL R5 BY SRI.O.V.RADHAKRISHNAN SENIOR ADVOCATE
ADDL. R5 BY ADVS. SMT.K.RADHAMANI AMMA
BY ADV. SRI.ANTONY MUKKATH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON 21-07-2015 DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF APPLICATION DT 3/3/1993.
- P2: COPY OF THE APPEAL FILED BEFORE THE GOVERNMENT.
- P3: COPY OF THE ORDER G.O.(RT) NO. 4114/96/G.EDN. DT 17/12/1996.
- P4: COPY OF THE ORDER NO. GO.O. (RT) NO. 1779/2000/G.EDN. DT 8/5/2000.
- P5: COPY OF THE ORDER NO. GO(RT) NO. 1551/04/G.EDN. DT 20/4/2004.
- P6: COPY OF THE ORDER NO. K.DIS.EX/B5/195/2003/CGE DT 13/6/2005.
- P7: COPY OF THE EXTRACT OF THE SSLC BOOK.
- P8: COPY OF THE LETTER NO. 74646/B1/06/GE DT 13/9/2007.
- P9: COPY OF THE DECISION REPORTED IN 1999(1) KLT SN 4(C.NO.5) DT 24/9/1998.
- P10: COPY OF THE REPRESENTATION SUBMITTED BEFORE THE GOVERNMENT DT 28/12/2008.
- P11: COPY OF THE ORDER NO. 7699/B1/09/G.EDN DT 21/10/2010.
- P12: COPY OF THE REVIEW PETITION DT 2/11/2013.
- P13: COPY OF THE ORDER NO. G.O.(P) NO. 587/2015/G.EDN DT 9/2/2015.
- P14(a): COPY OF THE ORDER NO. GO.(P) NO. 45/91/P&ARD DT 20/12/1991.
- P14(b): COPY OF THE ORDER N.G.O.(G) NO. 587/2015 G.EDN DT 9/2/2015 REJECTING THE REVIEW PETITION.

RESPONDENT'S EXHIBITS :

- EXT.R5(a): COPY OF THE G.O.(P) NO. 45/91P & ARD DT 30/12/1991 OF THE R1
- EXT.R5(b): COPY OF THE GO(MS) NO. 587/2015/G.EDN. DT. 9/2/2015 OF THE R1
- EXT.R5(c): COPY EXTRACT OF THE COMMON SENIORITY LIST AS N 1/1/2015 OF THE MANAGER, MIHSS FOR GIRLS PUDUPONNANI.

//TRUE COPY//

P.A. TO JUDGE

bp

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.38533 OF 2010 (N)

Dated this the 21st day of July, 2015

J U D G M E N T

The issue regarding permissibility of correction of date of birth in one's service records is one that has been considered by this Court and the Supreme Court on many occasions. Although it is now well settled that in any service, an employee ought not, without valid justification, to be permitted to correct the date of birth in his service records at the fag end of his service in the establishment, the case law on the point covers a myriad of factual situations that it cannot be stated as a general proposition that such a correction in the service records can never be done. The facts in the instant writ petition require me to wade through a maze of case law to see whether the petitioner can be permitted to get a correction of date of birth effected in her service records on the verge of her retirement. As a matter of fact, the petitioner retired from service during the pendency of the writ petition although her retirement was made subject to the result of the writ petition, and on condition that, if she were to succeed in the writ petition, she would be entitled to all the benefits

flowing from the judgment, including re-instatement in service, if applicable.

2. The petitioner, who passed her SSLC examination in March 1979, entered service in MI UP School, Ponnani on 16.07.1990. Within three years of entering into service, she preferred Ext.P1 application dated 03.03.1993 for correction of the date of birth in her SSLC book. The said application was supported by a birth certificate issued based on the entries in the register of birth/death of the Panchayath. She did not then prefer an application for correction of the date of birth in her service records because, as per the provisions of the Kerala Service Rules [hereinafter referred to as the 'KSR'] and Kerala Education Rules [hereinafter referred to as the 'KER'] governing correction of date of birth in the service records, an employee who had passed SSLC, and had relied on the date of birth entered in the SSLC book while declaring her age at the time of entry into service, could not apply for a correction of the date of birth in her service records unless such correction was first effected in the SSLC book. Ext.P1 application of the petitioner was rejected by the Commissioner of Government examinations, the 2nd respondent

herein, by an order dated 14.02.1996. The said order was a non-speaking one that merely stated that the genuineness of the request made by the petitioner could not be proved beyond doubt, and a correction of date of birth could be allowed only if the sanctioning authority was fully satisfied with the documents produced. The petitioner, therefore, preferred a statutory appeal before the Government on 02.05.1996. By an order dated 17.12.1996, the Government allowed the appeal by way of remand. The Government found that, although in the birth certificate produced by the petitioner, her name was shown as Kadeeja and not as Achumma, the petitioner had produced an identification certificate to show that Kadeeja and Achumma referred to the same person, and further, that the verification officer had reported that no birth was seen registered on the date corresponding to the date of birth of the petitioner as recorded in her SSLC book. The 2nd respondent then took two years to consider the matter and, once again, rejected the application by an order dated 11.03.1998. The reasons stated for the rejection, as discernible from the appellate order of the Government, are as follows:

“1. As per the affidavit sworn by the applicant and her mother on 22.2.1993, her actual date of birth is

01.06.1959;

2. There does not appear to be any peculiarity in Muslim girls being admitted to school later than at age 5;

3. The birth register of Khadeeja showing date of birth as 25.02.62 had not been proved beyond reasonable doubt to be the birth register relating to the applicant.”

3. The petitioner, therefore, preferred another appeal before the Government on 05.08.1998. By Ext.P4 order dated 08.05.2000, the Government, once again, allowed the appeal by way of remand. The Government found that the details in the birth certificate produced by the petitioner were in conformity with the details in the affidavits that were produced by the petitioner, at the instance of the 2nd respondent, and when read with the extracts of the school admission registers and the report of the verification officer, the case of the petitioner required a reconsideration at the hands of the 2nd respondent. The 2nd respondent, thereafter, took two years to consider the matter and, by an order dated 30.10.2002, once again rejected the application preferred by the petitioner. This prompted the petitioner

to approach the Government through an appeal for the third time. This time around, the Government, by Ext.P5 order dated 20.04.2004, allowed the appeal and directed the 2nd respondent to correct the date of birth of the petitioner in her SSLC book from 01.06.1959 to 25.04.1962. The relevant portion of Ext.P5 order reads as follows;

GOVERNMENT OF KERALA

Abstract

General Education - Correction of date of birth of Smt.T.V.Achumma, Thayyachana Valappil, N.V.House, Chandappadi, P.O.Ponnani, Malappuram District - Review petition allowed - orders issued.

GENERAL EDUCATION (G) DEPARTMENT
G O (Rt) 1551/04/G1.Edn. Dated Thiruvananthapuram, 20.04.2004.

Read: 1. Order No.KDIS.24761/93/Ex.B5 dt. 14.2.96 of the Commissioner for Government Examinations.
2. G O (Rt) 4114/96/G1.Edn. dt. 17.12.96.
3. Order No.Ex.B5/7527/96 dt.11.03.98 of the Commissioner for Government Examinations.
4. Order No.KDIS.Ex.B5/19619/00/CGE dt.30.10.02 of the CGE.
5. Review petition dt. 10.06.02 from Smt.T.V.Achumma, Thayyachana Valappil, N.V.House, Chandappadi, Ponnani.

O R D E R

Smt.T.V.Achumma has requested for correction of her date of birth in SSLC Book/School records from 1.06.1959 to 25.4.1962. The Commissioner for Government Examinations as per order read as 1st paper above had rejected the request on the ground that the petitioner could not prove the genuineness of her claims beyond doubt. Aggrieved by the order she preferred appeal petition

before the Government.

Government after careful examination and after giving a personal hearing, remitted back the case to the Commissioner for Government Examinations for reconsideration.

As per order read as 3rd paper above, the Commissioner for Government Examinations had again rejected the request of the petitioner. Smt.T.V.Achumma filed the review petition read as 5th paper above before Government requesting to reconsider her request.

Government conducted a spot verification of the birth Registers of the Punnayoorkulam Grama Panchayat. On verification it was found that the dates of births of the immediate elder and younger sisters of Achumma are 10.3.1960 and 1.6.1966 respectively. The petitioner is the 2nd child born to her parents as per the Birth register. The Village Officer, Ponnani has also identified the petitioner. As the date of birth of her immediate elder sister is 10.3.1969, Government are of the view that the existing date of birth of the petitioner, is 1.6.1959 cannot be treated as her actual date of birth. The documentary evidences are in favour of the petitioner.

The petitioner is seen admitted to standard I on 2.6.1968 with date of birth 1.6.1959, ie. at the age of 9 years. If 24.04.1962 is mentioned as her correct date of birth, she would have attained 6 years of age when she was admitted to Std.I. Hence it is obvious that she has not availed of any undue benefit. Government consider that the above points are in favour of the claim of the petitioner for correction of date of birth from 1.6.1959 to 25.4.1962.

In the above circumstances Government allow the review petition of Smt.T.V.Achumma. Accordingly, they set aside the orders of the Commissioner for Government Examinations read as 4th paper above. The Commissioner for Government Examinations will take necessary action to correct the date of birth of the petitioner from 1.6.1959 to 25.4.1962 in the SSLC Book and School records.

4. On receipt of Ext.P5 order, and fourteen months thereafter,

the 2nd respondent passed Ext.P6 consequential order dated 13.06.2005 correcting the date of birth of the petitioner in her SSLC book.

5. Having obtained a correction of the date of birth in her SSLC book, the petitioner, by an application dated 21.06.2005, applied for a correction of the date of birth in her service records. The said application was, however, rejected by the Government by Ext.P8 order dated 13.09.2007 on the ground that the application had been preferred beyond the period of five years from the date of entry into service, as contemplated in G.O.(P) No. 45/91/P&ARD dated 30.12.1991, produced as Ext.P14(a) in the writ petition. Although the petitioner approached the Government with review petitions seeking a review of the decision in Ext.P8 order, the said review petitions were dismissed by the Government, by separate orders dated 21.10.2010 and 09.02.2015 respectively. The petitioner had, however, by that time, approached this court through the present writ petition impugning the orders of the Government dated 13.09.2007 and 21.10.2010, and seeking a direction to the Government to correct the date of birth in her service records. As already noted, during the

pendency of the writ petition, the petitioner retired from service, although her retirement was made subject to the result of the writ petition, and on condition that, if she were to succeed in the writ petition, she would be entitled to all the benefits flowing from the judgment, including re-instatement in service, if applicable.

6. A counter affidavit has been filed on behalf of the contesting respondent, who got himself impleaded in the writ petition. He is the senior most teacher in the school, eligible to be appointed as Headmaster, in the vacancy arising pursuant to the retirement of the petitioner. The thrust of the averments in the counter affidavit is with regard to the aspect of delay, occasioned by the petitioner, in approaching the Government for a correction of date of birth in the service records. It is contended that, if the petitioner were permitted to get a correction of the date of birth in her service records, it would seriously prejudice the interests of the respondent inasmuch as his chances of promotion as a Headmaster of the school would be sabotaged. There is no counter affidavit filed on behalf of the Government, although the learned Government Pleader would support the decision of the Government, in the matter of rejection of the

application of the petitioner for correction of the date of birth in her service records, on the basis of the reasons stated in the impugned orders.

7. I have heard Sri. P.K.Ibrahim, the learned counsel for the petitioner, Sri. O.V.Radhakrishnan, the learned senior counsel, appearing for the respondent and the learned Government Pleader appearing for the official respondents. Before proceeding to deal with the submissions of counsel on either side, it would be apposite to undertake a brief survey of the law governing correction of date of birth in one's service records.

8. It is not in dispute that there is no statutory provision that would be applicable on the facts of the instant case, governing correction of date of birth in service records. In the absence of statutory provisions, the subject should be governed either by executive orders of the Government or by the principles laid down in decided cases. In the absence of an executive order prescribing a time limit for the preferring of applications, available legal literature suggests that the employer can consider a claim for correction of date

of birth in the service records if an application is preferred within a reasonable time. As to what would constitute reasonable time, decided case law suggests that it is a decision that has to be taken on a case to case basis, taking into account various factors such as the bona fides of the claimant, his/her conduct, whether he/she would have obtained an unintended advantage while securing employment were the corrected date of birth taken as the actual date of birth, whether the employee is estopped from claiming a different date as his date of birth and the prejudice that would be caused to his juniors in service through an acceptance of the claim. The aforesaid legal position has been quite eloquently stated in the decisions of the Supreme Court in **Secretary and Commissioner, Home Department and Others v. R. Kirubakaran [1994 Supp (1) SCC 155]** and **Burn Standard Co. Ltd. and Others v. Dinabandhu Majumdar and Another [(1995) 4 SCC 172]**. Both the aforementioned cases dealt with employees who had preferred applications for correction of date of birth in their service records at the fag end of their service. In **Kirubakaran's case (Supra)**, taking note of the fact that the applicant had joined service in 1958 and had filed the application seeking correction of date of birth in his service

records in 1991, when he was due to retire from service in 1992, the court observed as follows:

4. Normally, in public service, with entering into the service, even the date of exit which is said as 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 and for calculating the date 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 dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the concerned Administrative Tribunals, for adjudication as to whether the dates of birth recorded were correct or not.

5. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant.

7. 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. It need not be pointed out that any such direction for correction of the date of birth of the

public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. 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 can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must,

therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.

9. Similarly, in **Burn Standard Company's case (Supra)**, the Court considered the case of an employee who had joined service in 1953 and preferred an application for correction of date of birth in his service records in 1989, two years prior to his retirement that was due in 1991. While discussing the rationale behind permitting a correction of date of birth in the service records and the role of courts in such matters, the Court observed as follows:

8. The importance of the date of birth of an employee given to his employee and accepted as correct by the latter and entered in the 'Service and Leave Record' of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer has to be necessarily regulated according to such date of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even where the persons so appointed fail to produce the certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or dates of birth. When, on the basis of such declaration made or

certificates produced by the employee an entry is made of his date of birth in his 'Service and Leave Record' to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality. When such entry is made in Service Record of the employee the only way in which the employer, Government or its instrumentality can get over such entry, because of subsequent disclosures as to its incorrectness, is to hold an inquiry into the matter by affording an opportunity to the employee concerned to have his say in the matter. But when once the employer, the Government or the instrumentality concerned accepts the date of birth of an employee as declared by him and supported by certificates or documents produced by him and allows him to enter into its service and continue on such basis, is it open to such employee to claim that the date of birth declared and authenticated by him was incorrect and, therefore, the employer, be it the Government or its instrumentality, should correct his date of birth in his 'Service and Leave Record' according to what he claims to be true and if the Government or its instrumentality concerned refuses to accept such claim, can the High Court in exercise of its discretionary extraordinary writ jurisdiction entertain a writ application, to consider the merit of such claim?

9. No doubt, there may be special law or rules which permit a person appointed in the service of the Government or its instrumentality to seek correction of his date of birth which might have been accepted by the Government or its instrumentality, as the case may be, as correct at the time of his appointment. But, the special law or rules governing the service of an employee after its acceptance by the Government or its instrumentality, its subsequent correction at the instance of such employee, becomes impermissible. However, in the absence of such special law or rules it may be open to the employee concerned to seek correction from the Government or its instrumentality, of the date of birth declared by him and accepted by the Government. Even where such correction is sought, the Government or its instrumentality, as the

case may be, could be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction. If that be the legal position, can it be said that it is open to a High Court in exercise of its extraordinary writ jurisdiction to entertain a writ application of an employee of the Government or its instrumentality, as the case may be, for correction of his date of birth entered in his 'Service and Leave Record' at the time of his appointment and direct the Government or its instrumentality concerned to correct such date of his birth in his 'Service and Leave Record' and continue him in service beyond the date of his normal retirement, is the question. It is true that the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution can even enter upon disputed question of fact, if the case in which the extraordinary jurisdiction is invoked warrants adoption of such inevitable course and decide upon the same for giving relief to the concerned party. But, the question is that if an employee of the Government or its instrumentality, who is at the fag end of his service and due for retirement from his service shortly, accordingly to his date of birth found in his 'Service and Leave Record' files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for the High Court to entertain such application to enquire into disputed facts pertaining to his date of birth for correcting it and extend his period of service?

10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees

to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.

10. Thereafter, the Court proceeded to lay down guidelines as

regards the grant of interim orders in matters where an employee had approached for correction of date of birth at the fag end of his service, and sounded the following caveat:

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following :

12. When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the

establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases interim injunction for continuance in service should not be granted as it visits the junior with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief.

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. Premal Shrivastava [(2011) 9 SCC 664] and Bharat Coking Coal Limited And Others v. Chhota Birsa Uranw [(2014) 12 SCC 570]].**

12. In cases, such as the present, where the procedure for correction of date of birth in service records, including the time frame within which the said application is to be preferred, is spelt out in

executive orders issued by the Government, courts have had to deal with the further question as to how the provision prescribing a time limit has to be construed. Here again, the consistent view taken is that the provision specifying the time limit for preferring applications has to be strictly construed against the applicant, for the executive order cannot be seen as conferring any right on an employee to prefer the application but, is rather in the nature of a concession granted to the employee. This is the central principle that has guided the decisions of this court while interpreting the provisions of G.O. (P) No. 45/91/P&ARD dated 30.12.1991, produced in the writ petition as Ext.P14 (a). The said G.O. reads as follows:

GOVERNMENT OF KERALA

Abstract

PUBLIC SERVICES - CORRECTION OF DATE OF BIRTH IN SERVICE
BOOKS - REVISED ORDERS ISSUED

PERSONNEL & ADMINISTRATIVE REFORMS (ADVICE-C) DEPARTMENT

G.O.(P) No.45/91/P&ARD. Dated, Thiruvananthapuram, 30th December, 1991.

- Read- 1. Circular No.11980/SC3/87/P&ARD dated 3-12-1987.
2. Circular No.6644/Adv. C3/88/P&ARD dated 24-10-1988
3. G.O. (P) No.26/91/P&ARD dated 27-8-1991.

ORDER

According to the existing orders, a Government employee can apply for correction of date of birth entered in his Service Book upto the period beyond two years preceding his retirement reckoned with reference to the date of birth as originally entered in the Service Book.

2. Government feel that the growing tendency on the part of the Government employees to get date of birth corrected when they are about to retire has to be discouraged. They have therefore reviewed the entire matter with due regard to the system followed in the case of Central Government Employees. Normally the need for correction should not arise at all once one's date of birth is entered in the Service Book because it is the date furnished by him for selection to the post and it is again based on the proof therefore furnished by the employee himself that the entry is made. One realizes his date of birth on a number of occasions in his life - the moment he gets his S.S.L.C. or secures extract from School Admission Register, when he registers his name in the Employment Exchange, applies for higher studies or furnishes the date of birth in the Employment Exchange, applies for higher studies or furnishes the date of birth in the very application that leads to his entry in Government Service. Thus one's date of birth is entered in his Service Book after full realisation thereof by that individual, over a reasonably long period. The employee also signs the Service Book and thus gets an opportunity to verify whether the date is correctly entered in his Service Book. There is therefore no rationale in allowing a correction at all.

3. Still an opportunity can be granted during the initial periods of one's service to make corrections in bonafide cases Government are pleased to adopt the system followed by Government of India in this matter. They accordingly order in the modification of the existing orders that applications for correction of date of birth if any needed in the case of a Government Employee shall hereafter be made within five years of one's entry in service. In the case of those who have already crossed this limit, one year time from the date of this order shall be allowed provided they apply beyond the two year period preceding retirement reckoned with reference to the date of birth as recorded in the Service Book. The applications for correction of date of birth in Service Book shall be submitted to Government in the Administrative Department concerned, through proper channel.

4. The conditions that such applications, in the case of those who have attended a School, shall be supported by attested copies

of S.S.L.C./S.S.C. Book or extract of school record as corrected and that mere correction of date of birth in the school record does not entitle the employee for consequential correction of date of birth in Service Book will remain unchanged. Each case will be considered by Government on merits and orders passed.

5. Applications for condonation of delay and for entertainment of applications in relaxation of the condition regarding time limit shall be summarily rejected.

6. Heads of Departments/Offices shall circulate this order to employees.

7. Appointment orders issued in future should also mention the time limit provision as per this order for correction of date of birth so that new entrants to service should not complain later that they were not aware of this provision.

By order of the Governor,

13. As already noted, the time limit specified in the aforesaid GO has been strictly construed, and applicants seeking correction of date of birth in their service records have been denied the benefit of the G.O notwithstanding fervent pleas that the delayed approach for getting the correction in the service record was consequent to a delay in getting the date of birth corrected in their SSLC book. In the decisions of this court in **Mariamamma v. State of Kerala [1997 (2) KLT 115]**, **T.O.Joseph v. State of Kerala & Ors. [1998 (1) KLJ 827]**, **M.Bhaskaran v. State of Kerala and another [(2000) 1 ILR (Ker) 274]**, **Ravindran v. State of Kerala and Others [(2000)**

2 ILR (Ker) 55] and more recently, in the unreported judgment dated 19.12.2014 of a Division Bench of this Court in O.P. (KAT) No.173/2014, the applicant was denied permission to correct his date of birth in the service record in circumstances that indicated that he had not been diligent in the matter of preferring the application within the time prescribed in the GO. The limitation provisions in the G.O were strictly construed against the applicant, and it has been held that the Government cannot entertain a request for condonation of the delay in preferring the application, in the absence of a clause in the G.O that enables the Government to do so. It is significant to note, however, that in none of the aforesaid decisions was there a situation that necessitated the court to enquire into whether, while computing the period of limitation of five years from the date of entry into service, there could be any period that could be excluded for the purposes of reckoning the said period. This aspect assumes importance because, if in any particular case there is a situation where, as per the procedure laid down by the employer, a correction of date of birth in the service records cannot be effected without first obtaining a correction of date of birth in another record that is maintained by the same employer, then a delay attributable to

the employer in correcting the connected records must necessarily be excluded while computing the period within which the employee has approached the said employer with a request for correction of the date of birth in his service records.

14. The situation is quite akin to the one that was dealt with in a recent pronouncement of the Supreme Court in **M.P.Steel Corporation v. Commissioner of Central Excise [(2015) 80 VST 402 (SC)]**. That was a case where an assessee under the Customs Act, who was engaged in ship breaking activities, was aggrieved by an order of a Superintendent of Customs in 1992, which in turn was based on an order passed by the Collector of Customs in the same year, directing the encashment of a bank guarantee that was furnished by the assessee before the Customs authorities. The assessee filed an appeal, against the order of the Collector and the Superintendent before the Appellate Tribunal, which allowed the appeal and set aside the order of the Collector. In the year 2000, the department preferred an appeal before the Supreme Court and in March 2013, the Supreme Court allowed the appeal without going into the merits, holding that the decision taken by the Collector was

not taken in his capacity as Collector (Appeals), that the order by which the assessee was aggrieved was the order passed by the Superintendent against which an appeal lay before the Commissioner (Appeals), that the Appellate Tribunal had no jurisdiction to entertain such an appeal and that the order was passed without jurisdiction. Within 60 days of receipt of a certified copy of the judgment of the Supreme Court, the assessee filed an appeal before the Commissioner (Appeals) against the order passed by the Superintendent with an application to condone the delay in filing the appeal. The statutory period for filing an appeal before the Collector (Appeals) was 60 days plus 30 days. The Commissioner (Appeals) therefore dismissed the appeal on the ground of delay and the Appellate Tribunal dismissed the assessee's appeal against the said order stating that the Commissioner (Appeals) had no power to condone delay beyond the period specified in Section 128 of the Customs Act. When the matter reached the Supreme Court, in an appeal preferred by the assessee, the Court held as follows:

(i) that although the assessee at no point of time had taken up a plea based on section 14 of the Limitation Act, 1963, in an application for condonation of delay the assessee pointed out that it was pursuing a remedy before another appellate forum which ought to be excluded. This averment was sufficient for the assessee to contend that section 14 of

the Limitation Act or principles laid down thereunder would be attracted to the facts of this case.

(ii) That the conditions for application of section 14 of the 1963 Act were satisfied. Both the prior and subsequent proceedings were civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith. The time taken between April 3, 1992 and June 22, 1992 to file an appeal could not be said to be inordinately long. Thus, neither was there any negligence, lapse or inaction on facts nor did the assessee delay proceedings to harass the Department by pretending that there was a mistake. The assessee bone fide believed that it was the Collector's order which was appealed against and hence an appeal to the Tribunal would be maintainable but court in the order dated March 12, 2003 set aside the Appellate Tribunal's order on the ground that it was without jurisdiction. The earlier proceeding and the later proceeding related to the same matter in issue. Although the proceedings were before a quasi-judicial Tribunal and not in a court, this was not fatal to the proceeding as the principles of section 14 would get attracted to the facts of this case.

(iii) That the abortive appeal had been filed against the orders passed in March-April, 1992. The present appeal was filed under section 128, which section continued on the statute book till date. Before its amendment in 2001, it provided a maximum period of 180 days within which an appeal could be filed. Time began to run on April 3, 1992 under section 128 pre-amendment when the assessee received the order of the Superintendent intimating it about an order passed by the Collector on March 25, 1992. On the principles contained in section 14 of the Limitation Act the time taken in prosecuting an abortive proceeding would have to be excluded as the assessee was prosecuting bona fide with due diligence the appeal before the Appellate

Tribunal which was allowed in its favour by the Appellate Tribunal on June 23, 1998. The Department preferred an appeal against the order some time in the year 2000 which appeal was decided in its favour by the court only on March 12, 2003 by which the Appellate Tribunal's order was set aside on the ground that the Appellate Tribunal had no jurisdiction to entertain such appeal. The time taken from March 12, 2003 to May 23, 2003, on which date the present appeal was filed before the Commissioner (Appeals) would be within the period of 180 days provided by the pre-amended section 128, when added to the time taken between April 3, 1992 and June 22, 1992. The amended section 128 had reduced this period, with effect from 2001, to 60 days plus 30 days, which was 90 days. The order challenged was passed before 2001. The right of appeal within a period of 180 days (which includes the discretionary period of 90 days) from the date of the order was a right which vested in the assessee. A shadow was cast by the abortive appeal from 1992 right up to 2003. This shadow was lifted when it became clear that the proceeding filed in 1992 was a proceeding before the wrong forum. The vested right of appeal within the period of 180 days had not yet got over. Upon the lifting of the shadow, a certain residuary period within which a proper appeal could be filed still remained. That period would continue to be within the period of 180 days notwithstanding the amendment made in 2001 as otherwise the right to appeal itself would vanish given the shorter period of limitation provided by section 128 after 2001.

15. Coming now to the facts of the instant case, I find that a conjoint reading of Rule 3 (1A) of Chapter VI of the KER, Rule 3 of Chapter XXVIII B KER and Instruction No.1 to Rule 143 of Part III KSR indicates that a matriculate who has entered service is obliged to rely

only on his SSLC book to support a declaration of his date of birth at the time of entering in service. If he discovers an error in the entry relating to date of birth in his SSLC book, then he can approach the Controller of Government Examinations of the State Government within a period of 15 years from the date of passing the SSLC examination. In the case of the petitioner, she passed the SSLC examination in March 1979 and, therefore, had time up to March 1994 to get a correction of the date of birth in her SSLC book. She entered service on 16.07.1990 and, therefore, going by the terms of Ext.P14 (a) G.O. had to prefer an application for correction of the date of birth in her service records by 16.07.1995. A mandatory precondition for effecting a correction of the date of birth in her service records was that she had to first get the date of birth corrected in her SSLC book. As a matter of fact, the petitioner approached the Controller of Government Examinations with Ext.P1 application dated 03.03.1993. This application was both, within the time stipulated for correction of date of birth in the SSLC book as also within the time contemplated for approaching the Government for effecting a correction in the service records. Although the petitioner filed the application, supported with the necessary documents to show her

actual date of birth, the Controller of Government examinations rejected her application, as he was not convinced of her case based on the documents that were produced by her. Thereafter, the petitioner had to endure three rounds of appeals and remands before finally getting an order from the appellate authority directing the Controller of Government Examinations to correct the date of birth in her SSLC book. Even thereafter, the latter took almost a year to pass consequential orders. As a result, a long period of over 12 years (between 03.03.1993 and 13.06.2005) was lost to the petitioner for no fault of hers. In fact, the events that unfolded in the aforesaid period of 12 years and more, which have already been referred to above, reveal the exasperating journey that the petitioner had to undertake through a perplexing web of beaurocracy. Although learned Senior Counsel for the contesting respondent would point out that the petitioner had not ensured a more expeditious disposal of the appeals and de novo adjudication by filing writ petitions before this court, I am of the view that when it comes to the discharge of duties by public authorities, a 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 come without attendant costs to a litigant and there are many who cannot afford to spend huge amounts on litigation.

16. In the case of the petitioner, the traumatic journey did not end with the issuance of the order correcting the date of birth in her service records. In fact, little did the petitioner realize that she had emerged from one quagmire only to be instantly hurled into another. When she approached the Government with an application dated 21.06.2005, for correction of the date of birth in her service records, the said application was promptly rejected by an order dated 13.09.2007 stating that her application was belated, having been filed more than 5 years after she joined service. A request for reconsideration also did not meet with any success and hence the petitioner was constrained to approach this court with the present writ petition. On the facts of this case, and taking cue from the decision of the Supreme Court in **M.P. Steel Corporation's case (Supra)**, I am of the view that the entire period of over 12 years, between 03.03.1993 and 13.06.2005, has to be excluded while examining whether the petitioner had approached the Government,

with an application for correction of date of birth in her service records, within five years from the date of her entry into service. As already noticed, she entered service on 16.07.1990 and her application for correction of date of birth in the school records was preferred on 03.03.1993. If the period between 16.07.1990 and 03.03.1993 is deducted from the total period of 5 years, the petitioner still had over 2 years and 5 months to submit her application for correction of her service records. Thereafter, when the period between 03.03.1993 and 13.06.2005 is excluded, and the marginal time from the date of the order correcting her SSLC book (13.06.2005) till the date of her application before the Government for correcting her service records (21.06.2005) taken into consideration, it will be clear that the petitioner did not take 5 years from the date of entry into service to prefer the application for correction of the date of birth in her service records. It may not also be out of place to notice that the petitioner had, in fact, taken the first step towards correction of her service records within 5 years from 1990, as her application for correction of her SSLC book was preferred in 1993. Such a person cannot be treated at par with one who approaches an employer with an application for correction of date of birth at the fag end of her

service. The said aspect would serve to distinguish the instant case from the facts of the cases noticed above where a belated application was rejected by the employer.

Resultantly, I quash Exts.P8, P11 and P14(b) orders of the 1st respondent and allow the writ petition by directing the 1st respondent to consider and pass orders on the application preferred by the petitioner for correcting the date of birth in her service record, by treating the same as one filed within the time stipulated in Ext.P14(a) G.O. The 1st respondent shall pass orders as directed, within a period of three months from the date of receipt of a copy of this judgment. The entitlement of the petitioner to re-instatement in service, and other consequential benefits, will be based on the orders to be passed by the Government pursuant to the directions in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp