

In the High Court of Judicature at Madras

Reserved on: 01.7.2015 & Pronounced on : 13.7.2015

Coram:

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice T.MATHIVANAN

Writ Petition No.13016 of 2015 and M.P.No.1 of 2015

1. The Additional Chief Secretary to Government,
Environment and Forests Department,
Fort St. George, Chennai-600 009.
 2. The Principal Chief Conservator of Forests,
Jeenis Road,
Panagal Building, Saidapet,
Chennai - 15. ... Petitioners
- Versus

1. Thiru.V.T.Kandasamy, IFS.,
2. Union of India rep. by the
Secretary, Ministry of Environment and
Forests, Paryavaran Bhavan,
Lodhi Road, New Delhi.
3. Hon'ble Central Administrative Tribunal,
Madras Bench at Chennai. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the orders passed in O.A.No.310/00277 of 2014 dated 05.12.2014 by the Central Administrative Tribunal, Chennai and quash the same.

For Petitioners .. Mrs.A.Srijayanthi, Spl.G.P.

For Respondent-1 .. Mr.S.N.Kirubanandam

For Respondent-2 .. Mr.Venkatasamybabu, SPC GOI.

O R D E R

V.RAMASUBRAMANIAN,J

The State of Tamil Nadu has come up with the above writ petition, challenging an order of the Central Administrative Tribunal, Madras Bench, Chennai, allowing a claim made by the first respondent for alteration of his date of birth.

2. We have heard Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the State, Mr.S.N.Kirubanandam, learned counsel appearing for the first respondent and Mr.Venkatasamy Babu, learned Central Government Standing Counsel appearing for the second respondent/Union of India.

3. The first respondent herein was originally appointed as a Forest Apprentice and he joined duty on 20.9.1978. Subsequently, he participated in a direct recruitment to Group-I Services of the State conducted by the Tamil Nadu Public Service Commission and he was selected and appointed under G.O.Ms.No.88, Forest and Fisheries Department dated 30.1.1982.

4. At the time of his entry into service, the first respondent had given his date of birth as 30.6.1956. It was in accordance with what was reflected in the Secondary School Leaving Certificate.

5. It appears that the first respondent gave a representation on 25.8.1983 for the alteration of his date of birth from 30.6.1956 to 24.2.1958. This representation was made by the first respondent to the Principal Chief Conservator of Forests, who is the second petitioner in this writ petition.

6. Though the second petitioner acknowledged the receipt of the representation and directed the first respondent, by proceedings dated 16.3.1984, to submit his original S.S.L.C. Book, there was no progress thereafter. It appears that in the years 1995 and 2004, there were some communications, but nothing happened.

7. In the meantime, the first respondent herein was selected for appointment to the Indian Forest Service through UPSC and he became a member of the All India Services on 14.3.1996. Obviously, the Union Public Service Commission and the Union of India took the date of birth of the first respondent only as 30.6.1956, at the time of appointing him to the All India Services.

8. In the year 2004, the first respondent filed an application in O.A.No.795 of 2004 on the file of the Central Administrative Tribunal, Madras Bench. The prayer made in the said application was only to direct the State Government and the Chief Conservator of Forests to dispose of his representations dated 25.8.1993 and 5.7.2003. The said application was disposed of by the Central Administrative Tribunal on 10.9.2004, even at the stage of admission, without any notice either to the Union of India or to the State Government. But in the order of the Central Administrative Tribunal, it was recorded that one Mr.M.Chidambaram, learned counsel took notice for the respondents. But unfortunately, Mr.M.Chidambaram was only a Central Government Standing Counsel and not a counsel for the State of Tamil Nadu. As a consequence, the Secretary to Government, Ministry of Environment and Forests of the State of Tamil Nadu went unrepresented, though a direction was issued to them

to consider the representations of the first respondent and to pass orders.

9. Pursuant to the said direction, an enquiry seems to have been conducted by the Revenue Divisional Officer and a report favourable to the first respondent was submitted. Therefore, the Commissioner of Revenue Administration sent his recommendations on 17.7.2012 to the Principal Conservator of Forests, who in turn sent his recommendations to the Government on 31.8.2012.

10. However, the Government passed an order in G.O.2(D) No.72, Environment and Forests dated 18.10.2013, rejecting the plea of the first respondent for alteration of date of birth.

11. Challenging the said order of the State Government, the first respondent filed an application in O.A.No.277 of 2014 on the file of the Central Administrative Tribunal, Madras Bench. By a final order dated 5.12.2014, the Tribunal allowed the application. Aggrieved by the said order, the State of Tamil Nadu has come up with the present writ petition.

12. The main grounds on which the Tribunal allowed the application of the first respondent were (a) that as per the report of the Revenue Divisional Officer and the recommendation made by the Commissioner for Revenue Administration, the first respondent was entitled to have his date of birth corrected in the Service Register and (b) that the application for alteration of date of birth had been submitted by the first respondent within 5 years of entry into service as per Rule 49 of the General Rules for Tamil Nadu State and Subordinate Services.

13. However, the State of Tamil Nadu challenges the order of the Tribunal, on the grounds inter alia that the earliest application submitted by the first respondent on 25.8.1983, was neither accompanied by any document nor submitted to the competent authority; that the Tribunal had failed to take note of the decision of the Supreme Court in K.S.Sripathy v. Central Administrative Tribunal [CDJ 2008 MHC 3604]; and that the Tribunal ought to have taken into account the implication that the outcome of the case would have upon other persons who are in service.

14. We have carefully considered the above submissions.

15. Admittedly, the first respondent entered the Group-I Services of the State of Tamil Nadu, after having been selected by the Tamil Nadu Public Service Commission, way back in January 1982. Prior to his selection to Group-I Services, he had rendered services as a Forest Apprentice for a period of over 3 years from 20.9.1978. At the time of his first entry into service namely 20.9.1978 and at the time of his direct recruitment to Group-I Services of the State, in January 1982, the first respondent has given his date of birth only as 30.6.1956, on the basis of the entry found in the Secondary School Leaving Certificate.

16. It is also not in dispute that the first respondent gave the earliest application seeking alteration of date of birth, to the Principal Chief Conservator of Forest on 25.8.1983. Therefore, it is the contention of the first respondent that the bar under Rule 49 (c), providing for the summary rejection of an application for alteration of date of birth, submitted after 5 years of entry into service, will not apply in his case.

17. In order to test the correctness of the said contention, it is necessary to have a look at Rule 49 of the General Rules for Tamil Nadu State and Subordinate Services. It reads as follows:-

49. Alteration of date of birth --

(a) If, at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C. or 66 Matriculation Register or School records, he shall make an application to the Tamil Nadu Public Service Commission in cases where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and, on receipt of the report, the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected: Provided that in case of a candidate who was born outside the State of Tamil Nadu the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall examine and scrutinize the records that may be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.

(b) After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-rule (a). (c) Any application received after five years after entry into service or any application, which is not supported by entries in Secondary School Leaving Certificate, School, College or University records, birth extract from records of local bodies or military discharge certificates, shall be summarily rejected. *Proviso-

[Omitted in G.O.Ms.No.388, P & AR (Per.S), dt.27-12-95, w.e.f.3-8-94]

(d) In considering the question of permitting an alteration on the date of birth as entered in the official records even when such entry is proved to have been due to a bonafide mistake, the Government or the appointing authority shall take into consideration the circumstance whether the applicant would normally be eligible for appointment to the post at the time of entry into service had his age been correctly stated and what would have been its effect on his service and the service conditions of other officers in the service and may permit the alteration subject to such condition as they or it may deem fit to impose: Provided that the Tamil Nadu Public Service Commission shall be consulted in the case of an applicant who has been initially recruited through the Tamil Nadu Public Service Commission, if it is proposed to accept his request for alteration of date of birth.

(e) The Procedure laid down in sub-rule (a) shall be followed in all cases where alteration of date of birth is proposed suo motu by the Head of Office on the basis of medical opinion, in the absence of any other authoritative records.

Explanation - For the purpose of this sub-rule "authoritative records" are the secondary school leaving certificate or University, College, or School records or Discharge Certificate of Army. 67

(f) The decision of the Tamil Nadu Public Service Commission, the appointing authority or the Government, as the case may be, shall be final.

18. It is seen from Rule 49 of the General Rules extracted above, that the Rule prescribes a detailed procedure for considering any claim for alteration of date of birth. The procedure stipulated in Rule 49 can be summarised as follows:

(i) If a candidate claims at the time of appointment, that his date of birth is different from the one recorded in School Secondary Leaving Certificate, he should make an application to the Tamil Nadu Public Service Commission, in cases where the appointment is made in consultation with Tamil Nadu Public Service Commission.

(ii) In other cases, the application should be submitted to the appointing authority.

(iii) The application should state the evidence on which reliance is placed and the explanation as to how the mistake had occurred.

(iv) The application so presented should be forwarded to the Commissioner for Revenue Administration, for the conduct of an investigation by an Officer not below the rank of the Deputy Collector.

(v) After the receipt of the report from the Commissioner for Revenue Administration, the Public Service Commission or the appointing authority should decide whether the request should be

considered.

(vi) Any application for alteration of date of birth, if made after entry into service, should be made within 5 years of entry into service.

(vii) An application should be made to the authority competent to make an appointment to the post held by the candidate at that time.

(viii) Any application which is received after 5 years of entry into service and any application which is not supported by Secondary School Leaving Certificate or Birth Extract etc., should be summarily rejected.

(ix) Even in cases where the competent authority is satisfied that there has been a wrong entry, due to a bona fide mistake, the competent authority should take into account other factors such as whether he would have been eligible for appointment at that time, if his age was as stated by him and whether the correction of date of birth would have any impact upon the service conditions of other officers.

19. Keeping the provisions of Rule 49 of the General Rules in mind, if we now get back to the facts of the case, it can be seen that the first respondent was appointed under G.O.Ms.No.88, Forest and Fisheries Department, dated 30.1.1982 as Assistant Conservator of Forests. This post of Assistant Conservator of Forests is in Group-I Services of the State of Tamil Nadu. It is needless to point out that the Services in the State of Tamil Nadu are divided into (i) State Services (ii) Subordinate Services (iii) Ministerial Services and (iv) Basic Services. All posts, whether permanent or temporary in the State of Tamil Nadu will fall under any one of these four Services.

20. There is no dispute about the fact that the post of Assistant Conservator of Forests is in the State Service. For posts falling in the State Service, it is the State Government which is the appointing authority. This is why the first respondent was appointed, after having been selected by the Tamil Nadu Public Service Commission, only by the Government of Tamil Nadu under G.O.Ms.No.88. The Principal Chief Conservator of Forests is only the Head of the Department and not the Government. The Principal Chief Conservator of Forests is not the appointing authority for the post of Assistant Conservator of Forests. It is the Government which is the appointing authority for the post of Assistant Conservator of Forests, to which the first respondent was appointed under G.O.Ms.No.88 dated 30.1.1982.

21. Therefore, under Rule 49(a), of the General Rules, for Tamil Nadu State and Subordinate Services, the first respondent was obliged to make an application only to the appointing authority. As we have seen above, the provisions of Rules 49(a) makes a distinction between (i) an application made at the time of appointment and (ii) an application seeking alteration of date of birth, made after the appointment. Rule 49(a) makes one more distinction. This distinction is between cases where an appointment is made in consultation with Tamil Nadu Public Service Commission and cases in which such consultation is not necessary.

22. Since the case of the first respondent is one where an application for alteration of date of birth was made after entry into service, the first respondent was expected to submit his application to the appointing authority, clearly stating the evidence on which he relies and explaining how the mistake had happened.

23. But, unfortunately, the first respondent even as per his own statement, made the application for alteration of his date of birth, only to the Head of the Department and not to the Government which was the appointing authority.

24. To overcome this difficulty, the first respondent has pleaded in his counter affidavit that in respect of the post of Forest Apprentice in which he joined on 20.9.1978, the appointing authority was the Chief Conservator of Forests and that therefore, an application seeking alteration of date of birth was made within 5 years of his entry as Forest Apprentice.

25. But we are unable to accept the above stand taken by the first respondent. The appointment of the first respondent as Assistant Conservator of Forests was by the method of direct recruitment, through the Tamil Nadu Public Service Commission. It was not on promotion from the post of Forest Apprentice. Therefore, he cannot escape by contending that his application was made to authority which was the appointing authority for the post that he had held temporarily from 1979 to January 1982.

26. In the light of the above, it is clear that the application of the first respondent did not satisfy the requirements of Rule 49 (a) of the General Rules for Tamil Nadu State Subordinate Services. Once it is clear that the application of the first respondent was not in accordance with the stipulation contained in Rule 49(a), then the conclusion which is inevitable is that there was no proper application in the eye of law, within the period stipulated. Consequently, the question of directing the State Government to consider such an application favourably does not arise.

27. Apart from the above, there are two more difficulties, which are really insurmountable for the first respondent. The first is that the first respondent appears to have completed SSLC in 1971. In the course of hearing of the writ petition, we directed the learned Counsel for the first respondent to circulate a copy of the Secondary School Leaving Certificate and a copy of the notification of the Central Government appointing him to the Indian Forest Service. The learned Counsel circulated both. The copy of the Secondary School Leaving Certificate produced by the first respondent shows that it was issued in November 1971. Therefore, if the correct date of birth of the first respondent was not 30.06.1956, as recorded in the Secondary School Leaving Certificate, but 24.02.1958 as claimed now, the first respondent would have completed SSLC at the age of 13 years. As per the

stipulations, no one is entitled to complete SSLC at the age of 13. Therefore, we cannot today direct the Government to do something that would result in affixing a seal of approval upon the first respondent completing SSLC at the age of 13 years. This is the first difficulty for the first respondent.

28. The second difficulty for the first respondent is that any alteration of his date of birth from 30.06.1956 to 24.02.1958, would have serious repercussions upon the other officers, especially his juniors. He was appointed to the Indian Forest Service by a notification dated 14.03.1996, taking into account his date of birth as 30.06.1956. It means he was appointed to the All India Service before he completed 40 years of age. The age of retirement of an officer of the State Service is 58, while that of an officer of the All India Service is 60. If his date of birth is now altered to 24.02.1958, his tenure in the All India Service would get extended from 20 years to 22 years. Since a quota is available for the officers of the State Service, to be appointed to the All India Service, the length of service that an officer has upon his appointment to the All India Service, will have an impact upon the career prospects of his juniors.

29. Rule 49 itself obliges the State to take into account the impact that any alteration of date of birth of an officer would have upon the service conditions of the other officers. Even the Supreme Court has highlighted the importance of this aspect.

30. In *The SECRETARY & COMMISSIONER VS. R.KIRUBAKARAN*, (1994) Supp (1) SCC 155, the Supreme Court has held 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. The court observed further as follows:

"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 their promotions 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."

31. Again, on the question of balancing the private interest of the individual that may suffer due to the rejection of his request, with the public interest that may suffer due to the acceptance of his interest, the Supreme Court pointed out in DR.M.ARUMUGAM VS THE REGISTRAR , TAMIL NADU AGRICULTURAL UNIVERSITY, [2012 (3) MLJ 594] as follows:

"It is well settled law that private interest is subservient to public interest. The Hon'ble Apex Court in Mardia Chemicals Ltd. vs. Union of India reported in 2004 (4)SCC 311 held that Public Interest is always been considered to be above the private interest and that the interest of an individual may, to some extent, be affected and it cannot have potential of taking over the public interest. Considering the public importance and the interest of crores of job seekers, and the availability of less government jobs, it would be appropriate for the government not to allow the government servant to alter their date of birth at the time of entering into service or after entering into service, even if there is mistake or wrong entry of date of birth resulting in infringement of his rights. His right to correct his date of birth and the candidates should not be allowed to change/alter at any point of time during the service as it would cause irreparable loss, injustice to those who are in the ladder as spelt out by the Hon'ble Supreme Court in Secretary & Commissioner Home Department vs. R.Kirubakaran reported in 1994 Supp(1) SCC 155, in Burn Standard Co. Ltd. vs. Dina Bandhu Majundar reported in 1995 (4) SCC 172."

32. Therefore, we are of the considered view that the Central Administrative Tribunal committed an error in allowing the application of the first respondent for alteration of date of birth. The Tribunal did not examine the case of the first respondent on the basis of relevant parameters such as (1) the age at which he would have completed SSLC, if his case is true and (2) the impact that the acceptance of his request would have upon the career prospects and service conditions of his colleagues. We have examined the request of the first respondent from these perspectives and we find that the Government was right in rejecting the request of the first respondent, due to the mandate of Rule 49.

33. As a matter of fact, the first respondent entered the State Service in January 1982, after a stint in the subordinate service for about four years. As per the date of birth already recorded, he would reach superannuation on 30.06.2016, after completing a total service of more than 34 years. Therefore, he would be entitled to full pension in any case. Hence, the first respondent is also not likely to suffer any serious prejudice, due to the denial of his request, except that he may continue in service for 20 more months if his request is accepted.

34. Therefore, we find that the stand taken by the State Government is perfectly in tune with the statutory prescription, public policy and public interest and the order of the Tribunal is not in accordance with law. Hence, the writ petition is allowed and the order of the Tribunal is set aside. Consequently, the Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gr.

To

1. The Secretary, Ministry of Environment and Forests, Paryavaran Bhavan, Lodhi Road, New Delhi.
2. The Registrar
Central Administrative Tribunal,
Madras Bench at Chennai.
3. The Conservator of Forests
Coimbatore Circle, Coimbatore

2 ccs to Mr. Venkataswamy Babu, Advocate, Sr. 32472, 25662
1 cc to Mr.S.N. Kirubanandam, Advocate, sr. 35189
1 cc to the Government Pleader, Sr. 35158

W.P.No.13016 of 2015.

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