

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.24989 of 2015

Sundaramurthy

... Petitioner

versus

1. Union of India rep.by
The Chief Secretary,
Government of Puducherry,
Puducherry.
2. The Under Secretary (Law),
Government of Puducherry,
Puducherry.
3. The Director of Agriculture,
Puducherry.
4. The Additional Director of Agriculture,
Government of Puducherry,
Puducherry.
5. The Deputy Director of Agriculture,
Puducherry.
6. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed in O.A.No.310/01709 of 2014, dated 12.06.2015, on the file of the 6th respondent, quash the same and direct the respondents to alter the date of birth of the

applicant in his service book as 26.05.1957, instead of 10.08.1955, as per the entries found in the corrected Birth Certificate, SSLC book and Transfer Certificate and award all consequential benefits.

For Petitioner : Mr.M.S.Soundararajan

For Respondents : M/s.Syed Mustafa, AGP (P)
1 to 5

O R D E R

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition, is to the order, dismissing O.A.No.310/01709 of 2014, dated 12.06.2015, by which, the Central Administrative Tribunal, Madras Bench, has refused to direct alteration of Date of Birth of the petitioner, in his service book from 10.08.1955 to 26.05.1957.

2. Facts deduced from the material available on record and the order impugned, are that the petitioner joined, as Field Manager in Agricultural Department, Puducherry on 23.12.1981. He was promoted as Composed Development Inspector on 13.07.1988, which post has been re-designated as Assistant Agricultural Officer. According to the petitioner, while he was working as a Field Manager, he came to know that his Date of Birth was wrongly entered in the Service Book, as 10.08.1955, as mentioned in the SSLC Certificate, submitted by him, at the time of joining service, but his actual date of birth is 26.05.1957. Immediately, he made a representation to the respondents on 08.07.1984 and the same was kept pending. Thereafter, he got the Birth Extract from Bahour Commune Panchayat, Bahour, Pondicherry in Serial No.2478, wherein, his date of birth, has been mentioned as 26.05.1957 and based on the same, a certificate, dated 15.09.2009 was also issued. Considering the application of the petitioner, dated 10.09.2009, the Joint Director, School Education Department, Pondicherry, vide proceedings dated 01.02.2010, directed the Vice Principal, Bharathi Government Boys Higher Secondary School, Bahour, Puducherry, to make correction in the Transfer Certificate of the petitioner and accordingly, the Principal of the School also corrected the date of birth as 26.05.1957, in the Transfer Certificate, as well as, in the SSLC Certificate, issued on 29.04.1971.

3. According to the petitioner, he made several representations, enclosing the corrected Transfer Certificate and

Secondary School Leaving Certificate to the respondents, requesting them to carry out necessary alteration of date of birth, in his Service Register. But there was no reply. Therefore, the petitioner was constrained to send an application under RTI Act, 2008 and thereafter, he was supplied with documents, in which, the Additional Director of Agriculture (T&V) has stated that he had recommended the petition of the writ petitioner, in his Note, dated 21.01.2014 and that the same was also approved by the Director and Chief Secretary, Puducherry, by considering the explanation given by the petitioner. However, the Under Secretary (Law) has rejected the claim of the petitioner for correction of date of birth in the Service Book, on the ground of delay, by observing that the request for the above said correction of date of birth has been made at the verge of superannuation.

4. It is the contention of the petitioner that though he had made a representation, within 5 years from the date of entry into the Government service, and that the Additional Director of Agriculture has also accepted the bona fide mistake, in not considering the representation and further, recommended for alteration of Date of Birth, the same has not been considered in proper perspective. It is also his contention that that as per the Office Memorandum No.G.I. MHA OM No.55/3/54.Estt, dated 05.06.1954, one of the criteria for considering the alteration of date of birth in the Service Book is that, the last representation for alteration of such date of birth should be made within two years before the date of attaining the age of superannuation. For the abovesaid reasons, he has prayed for the following relief:

"to call for the records pertaining to impugned order of memorandum in Proceedings No.6362/AD(T&V)Estt/E5/2014 dated 18.09.2014 and 12.09.2014 on the file of Additional Director and I.D.Note No.10938 Ag/Estt/Al/2014 dated 19.08.2014, of Deputy Director of Agriculture and. Proceeding in I.D.No.157/Adv/2014 LD dated 01.08.2014 on the file of Under Secretary (Law) and set aside the same and direct the respondents to alter the date of birth of the applicant in his service book as 26.05.1957 instead of 10.08.1955 as per the entries found in the corrected SSLC Book and Transfer Certificate and award all consequential benefits."

5. The respondents, in their reply statement, have contended that in the latest representation, the petitioner has enclosed "Extrait Du Registre Des Actes De. Naissance" of Bahour Commune Panchayat, which was a Fresh Document issued during 2001(R-5).

Besides, he has enclosed the Birth Certificate issued by Bahour Commune Panchayat in English, which was dated 15.09.2009. According to the respondents, from the date, mentioned in the above document, it could be inferred that his Original representation, dated 08.07.1984, was not supported with any document and there was no authenticity for the receipt of the said letter, in the office. It is also submitted that earlier on three occasions, when the petitioner furnished the details of his family members in Form No.III, he has filled up his Date of Birth only as 10.08.1955 and not made any objection, for correction of date of birth. The respondents have submitted that the petitioner has taken efforts to correct the date of birth in the SSLC Transfer Certificate, only during November' 2013. For the reasons, stated supra, the respondents have prayed for dismissal of the Original Application.

6. Adverting to the rival contentions, the Central Administrative Tribunal, Madras Bench, has found that the Date of Birth, ie., 10.08.1955, has been entered in the service book, only based on the entries in the SSLC Transfer Certificate. Thus, when he entered in the Department of Agriculture, in the year 1981, he was aware of the date of birth. After a gap of nearly 28 years, during 2009-10, the petitioner had taken efforts to correct his date of birth, by stating that it was wrongly entered in his Service Book, as 10.08.1955, instead of 26.05.1957.

7. The Central Administrative Tribunal, Madras Bench, did not accept the contention of the petitioner that he had made a representation, within five years, for correction of date of birth. It is also observed in the impugned order that even after entry into service, while furnishing the details of family members in Form-III, during the years 1982, 1994 and 2004, the petitioner himself has mentioned his date of birth, as 10.08.1955 and not as 26.05.1957.

8. Though a reference has been made to the Office Memorandum G.I. MHA OM No.55/3/54.Estt, dated 05.06.1954, the Tribunal did not accede to the same, for the reason that the writ petitioner did not furnish sufficient records to act on his request. Thus, holding that there is no infirmity in the impugned Proceedings No.6362/AD(T&V) Estt/E5/2014 dated 18.09.2014 and 12.09.2014 on the file of Additional Director and I.D.Note No.10938 Ag/Estt/A1/2014 dated 19.08.2014, of Deputy Director of Agriculture and Proceeding in I.D.No.157/Adv/2014 LD dated 01.08.2014 on the file of Under Secretary (Law), the Central Administrative Tribunal, Madras, has dismissed the Original Application. Assailing the correctness of the same, the present writ petition has been filed.

9. Reiterating the averments made before the Central Administrative Tribunal, Madras Bench, Mr.M.S.Soundararajan, learned counsel for the petitioner submitted that within five years, from the date of entry into service, a representation, dated 08.07.1984, had been made, but the Department failed to conduct any enquiry and alter the date of birth from 10.08.1955 to 26.05.1957. He further submitted that though repeated representations, dated 17.03.2010, 07.09.2010 and 08.10.2010, have been made, for alteration of Date of Birth, by enclosing the corrected certificates, but the Department has failed to discharge its duties.

10. According to the learned counsel, when there was no reply, the petitioner was constrained to file a petition, under the Right to Information Act, 2005 and when the Additional Director of Agriculture, (T & V), has recommended the petition, in his Office Note, dated 21.01.2014 and when the same was also approved by the Director and Chief Secretary, Puducherry, rejection of the said recommendation, by the Under Secretary (Law), ought to have interfered with, by the Central Administrative Tribunal, Madras Bench. In this context, he also invited the attention of this Court to the Office Note of the Additional Director of Agriculture, (T & V), wherein, he has observed that though the representation, dated 08.07.1984 was not traceable, it has to be construed as a representation remaining undisposed of, and alive and in the backdrop of the above, learned counsel for the petitioner submitted that the reasonings of the Tribunal, in rejecting the prayer for alteration of date of birth, are not correct.

11. By referring to the Office Memorandum G.I. MHA OM No.55/3/54.Estt, dated 05.06.1954, learned counsel for the petitioner submitted that when a representation has been made, within two years, before the date of attaining the age of superannuation, the Tribunal ought to have considered that the writ petitioner had not only submitted a representation on 08.07.1984, within five years from the date of entry into service, but also submitted representations, dated 17.03.2010, 07.09.2010 and 08.10.2010 respectively, within the time provided for in the abovesaid Official Memorandum. For the reasons, stated supra, he sought for interference.

Heard the learned counsel for the parties and perused the materials available on record.

12. Indisputably, the petitioner has entered the service, in the year 1981. As per the entry made in the SSLC Certificate and as declared, his date of birth has been entered in the Service Book, as 10.08.1955. Needless to state that ordinarily when a service register for any employee, is opened, after entering the details, such as, name, age, identification marks, etc., signature of the employee would be obtained. The said fact cannot be disputed. Thus, wayback in the year 1981, his date of birth in the service register, has been entered as 10.08.1955, with his knowledge and that he has also acknowledged the same.

13. Though the petitioner has contended that he had submitted a representation, dated 08.07.1984, in the Office of the Deputy Director (Inputs), Thattanchavadi, Puducherry, which was the Head Office, during that period, lateron, the said Office is stated to have been merged, with the Office of the Assistant Director of Agriculture (T & V) and it was the Head Office, at the time of filing the Original Application, before the Central Administrative Tribunal, Madras Bench.

14. According to the respondents, copy of the representation produced before the Tribunal, did not have any authentication or receipt by the Department. Representation, dated 08.07.1984, stated to have been submitted by the petitioner, is in Tamil language and the English translated version is extracted hereunder:

"I came to understand that my date of birth was entered in my service register as given by me as proof through SSLC Mark List as 10.08.1955. But as per the date of registration given by the Bagur Coimin Panchayat (enclosed herewith) my date of birth was mentioned as 26.05.1957 is my correct date of birth. Therefore, I humbly request you to correct my wrong date of birth in my service register as that of my birth certificate."

15. As rightly pointed out by the respondents, representation, dated 08.07.1984, stated to have been submitted to the Deputy Director of Agriculture, does not bear any Office seal, to substantiate that it was submitted and acknowledged. Even taking it for granted, for argument sake, that it was acknowledged by the Office of the Deputy Director of Agriculture (Inputs), Thattanchavadi, Puducherry, from 1984, till 2009, for nearly 15 years, there was no follow up action. Had the petitioner submitted his representation, dated 08.07.1984, why would he keep quiet for

nearly 15 years? There is no answer. If he was born on 22.06.1957, there is no reason, as to why, he had furnished the details of the family members in Form-III, on three occasions on 25.11.1992, 09.03.1994 and 12.01.2004 respectively, mentioning his date of birth as 10.08.1955 and why he has not asked for correction of date of birth in the service register?

16. As stated supra, though the petitioner has claimed to have submitted a representation, dated 08.07.1984, there was no authentication for receipt. Nevertheless, perusal of the representation, dated 08.07.1984, shows that no documentary evidence has been enclosed. After many years, from the opening of the Service Registrar, extract of the Register of the Deeds of Birth of the year 1957, has been obtained, from the Registrar, Bahour Commune Panchayat, Bahour, Pondicherry. Only in the year 2009, the petitioner has obtained a Certificate of Birth from the said Registrar, stating that he was born on 26.05.1957.

17. Thereafter, vide letter, dated 10.09.2009, the petitioner has requested the Education Department, for alteration of date of birth in the SSLC Transfer Certificate. Considering the said representation, the Joint Director, Directorate of School Education, Government of Puducherry, in his proceedings No.1009-1/DSE/HSW/A-1/AC/2009, dated 01.02.2010, has accorded permission to the Vice Principal, Bharathi Government Boys' Higher Secondary School, Bahour, Puducherry, to make correction in the Transfer Certificate of the petitioner and in the Admission Register. From the proceedings of the Joint Director of School Education, Government of Puducherry, dated 01.02.2010, it is evident that earlier, the entry made in Sl.No.4 of the Transfer Certificate, was 10.08.1955. Copy of the said proceedings of the Joint Director, has been marked to the Vice Principal, Bharathi Government Boys' Higher Secondary School, Bahour, Puducherry. Reply statement filed by the respondent reads that the petitioner had corrected the date of birth in the SSLC Transfer Certificate, only during November' 2013 (06.11.2013) and that the said document has been marked by the respondents as Ex.R.10. Thus, from the year 1981 to 2010, there were absolutely no supporting materials for alteration of date of birth.

18. Material on record further discloses that after obtaining a Birth Certificate, dated 15.09.2009 and effecting correction in the school records, a representation, dated 14.11.2013, is stated to have been submitted to the Additional Director of Agriculture, Thattanchavadi, Puducherry. After considering the Office Note of the Directorate of Agriculture, Puducherry and the decisions of the Apex

Court, the Additional Director of Agriculture (T & V), vide proceedings No.6362/ADA(T&V)Estt./E5/2014, dated 12.09.2014, has rejected to accede to the request of the petitioner, as hereunder:

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE ADDL. DIRECTOR OF AGRICULTURE (T & V)
THATTANCHAVADY, PUDUCHERRY.

No.6362/ADA(T&V)Estt./E5/2014

Puducherry

The 12th Sep. 2014

MEMORANDUM

Sub: Agriculture - Training and Visit - Establishment -
Representation submitted by
Thiru.V.Sundaramoorthy, Assistant Agricultural
Officer, requesting for alteration of Date of
Birth
in his Service Book - Reg.

Thiru.V.Sundaramoorthy, Assistant Agricultural Officer,
of his Office is hereby informed that the representation
submitted by him vide dated 14.11.2013 regarding alteration
of date of birth in his service book cannot be acceded as
per the direction issued from the Directorate of
Agriculture, Puducherry, vide I.D. Note
No.10938/Ag/Estt./A1/2014, dated 19.08.2014.

sd/-

(G.Ravipragasam)

Addl. Director of Agriculture (T & V).

To

Thiru.V.Sundaramoorthy,
Assistant Agricultural Officer,
O/o. The ADA (T&V), Thattanchavady,
Puducherry.

Copy to:

1. The Under Secretary to Government,
(Agriculture and Forests),
Chief Secretariat, Puducherry.

2. The Deputy Director (Admn),
Directorate of Agriculture,
Puducherry.

Copy submitted to:
The Director of Agriculture, Puducherry.

19. Contentions of the petitioner that he had sent repeated representations, but the respondents did not discharge their duties promptly, and that there was no delay on his part, for rejecting his grievance for alteration of date of birth, cannot be countenanced. Even taking it for granted that he had sent continuous representations, that would not render any assistance to the petitioner, if such representations are beyond the time provided for, for effecting change in the date of birth.

20. As observed earlier, from 1981 to 2009, no steps have been taken by the petitioner, to alter the date of birth. Receipt of the representation, dated 08.07.1984, is not authenticated. Nevertheless, the petitioner continued to state that his date of birth only as 10.08.1955, while filling up the details in Form-III, on three occasions on 25.11.1982, 09.03.1994 and 12.01.2004 respectively. Forms have been marked before the Central Administrative Tribunal, Madras Bench, as Exs.R7 and R8 respectively.

21. First of all, receipt of the representation, dated 08.07.1984, is not authenticated. Secondly, there is no reason, as to why, the petitioner has reiterated in Form-III, that his date of birth, was only 10.08.1955. Thirdly, when he himself had declared that his date of birth in Form-III as 10.08.1955, how could he resile from such declaration, in the absence of any valid explanation? Fourthly, even taking it for granted that he had declared his date of birth as 10.08.1955, in Form-III, erroneously, he had not sought for correction of date of birth or sent any representation immediately, after submitting Form-III, to effect correction, in the date of birth.

22. As per the Date of Birth, ie., 10.08.1955, on attaining the age of superannuation, ie., 58 years, he was due to retire on 31.08.2013. Had the representation of the petitioner, stated to have been submitted in the year 1984, within five years, from the date of entry into service, been acknowledged, the petitioner ought to have approached the Central Administrative Tribunal, Madras Bench, for appropriate orders. The petitioner had not done so, within a reasonable time, or within the time prescribed therefor.

23. Laches or reasonable time are not explained in any Statute or Rules. "Laches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the laches in one case might not constitute in another. The laches could be inferred from the conduct of the person, stated to be aggrieved. If there is passive inaction for a reasonable length of time, then laches on the part of the aggrieved person is the inevitable conclusion. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

24. The words "reasonable time", as explained in Veerayeeammal Vs. Seeniammal reported in 2002(1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

25. Further, as narrated supra, documents have been obtained only from 2009 onwards. From 1984 to 2009, for 15 years, there is no supporting material. Thus, when the petitioner is stated to have submitted a representation, dated 08.07.1984, there were absolutely

no supporting materials. Thus, only after obtaining the Birth Certificate, dated 15.09.2009 and after making changes in SSLC Transfer Certificate, the petitioner has approached the Department. The Official Memorandum of the Government of India, vide proceedings in MHA OM No.55/3/54.Estt, dated 05.06.1954, relied on by the petitioner, is as follows:

"the request for alteration of date of birth made within a year or two of the date of superannuation are not countenanced, however each request are not regarded as time barred, they should be supported by satisfactory documentary evidence (such as the Matriculation or equivalent certificate or the birth certificate) together with a satisfactory explanation of the circumstances in which the wrong date came to be entered and statement of any previous attempts made to have the record amended."

26. At this juncture, this Court deems it fit to consider the subsequent Official Memorandums, issued regarding the alteration of date of birth. Government of India's Official Memorandum in G.I., MHA, OM No.F.9/1/61-Ests(A), dated 17th November, 1962, is extracted hereunder:

"It has been decided that request from Government servants for alteration of the date of birth should not be entertained after the preparation of their Service Books and in any event not later than the completion of the probation period or declaration or quasi-permanency, whichever is earlier. The date of birth of a Government servant may, however, be altered at a late stage by a Department of the Central Government and Administrator or a Head of Department, if he is satisfied that a bona fide clerical mistake has been committed and that it should be rectified."

27. It is further stated in the abovesaid Official Memorandum that the date on which a Government servant attains the age of 58 years or 60 years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or an extract from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subjected to any alteration except as specified in the note. An alteration of date of birth of a Government servant can be made, with the sanction of Ministry or Department of the Central Government or the Controller and Auditor General in

regard to the persons serving in the Indian Audit and Accounts Department or an Administrator of a Union Territory under which the Government servants are serving, if-

(a) a request in this regard is made within 5 years of his entry into Government service.

(b) It is clearly established that a genuine bonafide mistake had occurred; and

(c)"

28. The Department of Personnel & Administrative Reforms, Ministry of Home Affairs, Government of India, has also issued an Official Memorandum in No.19017/7/79-Estt.(A), dated 30.11.1979, which is reproduced hereunder:

No.19017/7/79-Estt.(A)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Bharat Sarkar
Department of Personnel & Administrative Reforms
(Karmik Aur Prashasmik Sudhar Vibhag)

New Delhi, the 30th Nov., 1979

NOTIFICATION

S.O....3997. In exercise of the powers conferred by the proviso to Article 309 and clause (5) of article 148 of the Constitution and in consultation with the Comptroller and Auditor General of India in so far as persons serving in the Indian Audit and Accounts Departments are concerned, the President hereby makes the following rules further to amend the Fundamental Rules, namely:

1. (a) These rules may be called the Fundamental (Fourth Amendment) Rules, 1979.

(b) They shall come into force from the date of their publication in the official Gazette.

2. For the existing note 5 below Rule 56, the following note shall be substituted, namely: =

"Note 6 - The date on which a Government Servant attains the age of fifty eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of Birth so declared by the Government

servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the Sanction of a Ministry of Department of the Central Government, or the Comptroller & Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an administrator of an Union Territory under which the Government servant is serving, if

(a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine bonafide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any school or University or Union Public Service examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

Sd/-

(R.C.GUPTA)

Deputy Secretary to the Govt. of India

29. When there was no authentication for the receipt of the representation, dated 08.07.1984, yet the Officials seemed to have stated that the said representation was alive, and recommended for consideration. At this juncture, this Court deems it fit to pose a question to the authorities, as to how, they could respond to a representation, when there is no proof of acknowledgment?

30. Reading of the Office Note of the Chief Secretariat (Agri & Forests), enclosed in the typed set of papers, filed by the petitioner shows that earlier, an attempt has been made for alteration of date of birth in the service records, and that the same had been rejected by the then Director of Agriculture, but the Head Office had not communicated the same to the individual. Paragraph 31 of the Office Note, reads as follows:

"The then Director of Agriculture rejected his case as the date of birth cannot be altered on any account once it is entered in the Service Book (Page 49/corr). The Head of Office should have been communicated the same to the individual. Instead, he has taken efforts to trace out the earlier representation submitted in 1984 and come to a conclusion that on account of the fact that several administrative changes had taken place from time to time and

as such construed as the petition was undisposed and alive vide para 8 nf/ante and resubmitted the proposal for consideration. The same has also been considered by the present Director of Agriculture."

31. Fundamental Rules, 1979, has been amended in 1979, by incorporating Note '6' to Rule 56 of the said Rules and it has come into effect from the date of publication. It cannot be disputed that Fundamental Rules, are applicable to all the Central Government Employees.

32. In view of the subsequent notification issued, prescribing a period of limitation of five years, it is no longer open to the petitioner to contend that the notification issued in the year 1954, ought to have been considered. Needless to state that rules will prevail over any executive instruction. Probably, knowing fully that the Government of India has issued a notification, in the year 1979, the petitioner has claimed that he has submitted an application in the year 1984, ie., within five years.

33. Some of the decisions in the matter of alteration of date of birth, are also considered.

(i) In Union of India v. Harnam Singh, reported in (1993) 2 SCC 162, the Supreme Court held as follows:

"It is a too simplistic way of looking at the issue, ignoring the ground realities and the intention of the rule-making authority to discourage stale claims and non-suit such Government servants who seek the alteration of their recorded date of birth belatedly and mostly on the eve of their superannuation. To say that the respondent, even though he signed the service-book at a number of places at different times and saw the seniority lists, may not have still come to know as to what his recorded date of birth was, is to ignore the normal human conduct and put premium on negligence. The observations of CAT quoted above are neither logical nor sound. Of course, Note 5 to FR 56 (m) was incorporated only in 1979 and it provides for request to be made for correction of date of birth within five years from the date of entry into service but what is necessary to be examined is the intention of the rule-making authority in providing the period of limitation for seeking the correction of the date of birth of the Government servant viz. to discourage stale claims and belated applications for alteration of date of birth

recorded in the service-book at the time of initial entry. It is the duty of the courts and tribunals to promote that intention by an intelligible and harmonious interpretation of the rule rather than choke its operation. The interpretation has to be the one which advances the intention and not the one which frustrates it. It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those Government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a Government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but the case of Government servant who applied for correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those Government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule-making authority.

The application for correction of date of birth, entered in the service-book in 1956 for the first time made in September 1991, was hopelessly belated. It had not been made even within the period of five years from the date of coming into force of Note 5 to FR 56(m) in 1979. His inaction for all this period of about thirty-five years from the date of joining service, therefore, precludes him from showing that the entry of his date of birth in service record was not correct. The Tribunal, therefore, fell in error in issuing the direction to correct his date of birth."

(ii) In Secretary and Commissioner, Home Department v. R.Kirubakaran reported in 1994 Supp (1) SCC 155, the Supreme Court, held as follows:

"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 officer, 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, than such application must be filed within the time, which can be held to be reasonable. The application 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."

(iii) In National Airport Authority v. M.A.Wahab reported in 1994 (4) SCC 439, the Supreme Court held that,

"9. Apart from the above infirmities in the impugned order, we find that the Tribunal failed to appreciate the other contentions raised on behalf of the appellant in opposing the application of the respondent. The appellant had contended before the Tribunal that the request made by the respondent in June 1990 for correcting the date of birth could not be entertained because till March 1990 the respondent had, in all matters connected with his service mentioned 1-1-1934 as the date of his birth. In support of this contention the appellant had relied upon the following documents executed by the respondent-

- (i) application filed by him on 11-1-1978 for withdrawal of provident fund;
- (ii) particulars furnished by him on 7-3-1980 for preparation of seniority list;
- (iii) declaration made by him on 20-2-1990 for family nomination and
- (iv) bio-data submitted by him on 8-3-1990 for claiming pension and terminal benefits.

10. The other contention raised by the appellant against entertainment of the request was that it was barred by time. In support of this contention they had relied upon Note 5 of Fundamental Rules 56(m) governing correction of date of birth in the service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt-A dated 30-11-1979 published as S.O. 3997 in the Government of India Gazette dated 15-12-1979. The said note reads as under:

"5. The date on which a government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the government servant and accepted by the appropriate authority shall not

be subject to any alteration except as specified in this note. An alteration of date of birth of a government servant can be made, with the sanction of a Ministry or Department of the Central Government or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an administrator of a Union Territory under which the government servant is serving if-

(a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine bona fide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any school or University or Union Public Service Commission Examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

11. In negating the above two contentions of the appellant, the Tribunal observed that the respondent gave his date of birth as 1-1-1934 in the above documents under compelling circumstances and that the above quoted note had no application to the case of the respondent as he was appointed long before the same came into effect. Both the grounds canvassed by the Tribunal to repudiate the contentions of the (sic respondent) cannot be sustained. There is nothing on record from which it can be said that the (sic respondent) had given his date of birth as 1-1-1934 under compelling circumstances. Indeed, the respondent did not raise any such plea even in the application. The Tribunal's finding that the above note is applicable only to persons employed after 15-12-1979, cannot be sustained in view of the judgment of this Court in Union of India v. Harnam Singh reported in 1993 (2) SCC 162, wherein this Court while interpreting the above-quoted note observed as follows: (SCC p. 171, para 12) "It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those government servants who had joined the service prior to 1979 but restrict it to the five-year period for those who enter service after 1979. Indeed, if a government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but the case of government servant who applied for

correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule-making authority."

(iv) In State of T.N., v. T.V.Venugopalan reported in 1994 (6) SCC 302, the Supreme Court, held as follows:

"It is true that a government servant has a right to seek correction of the date of birth as entered in the service record by placing unimpeachable evidence before the competent authority and the authority is enjoined to enquire into and pass appropriate orders in that behalf, but it must be in accordance with the rules and in the manner prescribed therein. It is well known that the service record would be opened after the government servant enters the service and normally the entry in the service record would be countersigned by the government servant. The date of birth as entered in the school record (Matriculation, Secondary School Leaving Certificate or HSC or Board Exams, whatever may be the name of the certificate from an institution in which the candidate had undergone course of study, be it in the primary or secondary educational institutions), is the source material for making entry in the service record. The object of the rule or statutory instructions issued under proviso to Article 309 or orders issued by the Government under Article 162, for the correction of the date of birth entered in the service record, is that the Government employee, if he has any grievance in respect of any error of entry of date of birth, will have an opportunity, at the earliest, to have it corrected. Its object also is that correction of the date of birth beyond a reasonable time should not be encouraged. Permission to reopen accepted date of birth of an employee, especially on the eve or shortly before the superannuation of the government employee, would be an impetus to produce fabricated record. The Government of Andhra Pradesh made statutory rules, namely, A.P. Public Employment (Recording and Alteration of Date of Birth)

Rules, 1984 and had given time to have the date of birth corrected within the stipulated period and on expiry thereof, the civil court was prohibited to entertain any suit or proceedings for correction of the date of birth. When an application was made to the Administrative Tribunal for correction of the date of birth based on entries maintained under Births, Deaths and Marriages Registration Act."

(v) In *Union of India v. Kantilal Hematram Pandya*, reported in (1995) 3 SCC 17, a railway servant, who entered the service in 1955, mentioned in various documents in 1960 and 1980, the same date of birth, as recorded in his service book. An opportunity was given in 1972 by the Railway Board for correction of date of birth by 31.07.1973. He made representations for the same, in the years 1985 and 1987, without adducing any reliable evidence and without explaining inordinate delay on his part. According to him, his correct date of birth was 04.09.1934 and not 06.09.1930. He filed a Original Application before the Central Administrative Tribunal, Ahmadabad. It was decided in his favour. The matter was challenged before the Apex Court. Upon perusal of the documents, the Hon'ble Supreme Court at paragraph 9 held as follows:-

9. A bare or cursory look at the above document shows that the certificate was issued on 19-9-1988, just a few days prior to the date of superannuation of the respondent on the basis of his recorded date of birth and appeared to be a document brought into existence for the benefit of the pending proceedings. The CPO, therefore, rightly did not place reliance on the said certificate. The copy of the certificate, as already noticed had been issued in 1988. The Tribunal, as a matter of indulgence, directed the respondent on 15-2-1993 to obtain an affidavit from the Headmaster of the school disclosing the date on which the original certificate was issued as also why the copy was issued in 1988, but no such affidavit was produced for reasons best known to the respondent. In spite of this lacuna, the Tribunal erroneously relied upon the said certificate, the correctness and genuineness of which was not free from doubt to grant relief to the respondent. The material on the record established that after filing the option forms declaring his date of birth as 6-9-1930, in 1960, and after the filing of the Provident Fund withdrawal form on 20-2-1980, the respondent made his representation for correction of date of birth in 1985 and 1987 but failed to substantiate his claim through any reliable and

trustworthy documentary evidence. He allowed the matter to rest till he neared the age of superannuation. The respondent slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only. The law laid down by this Court in Harnam Singh case, reported in 1993 (2) SCC 162 was, thus, fully applicable to the facts and circumstances of the case of the respondent and the Tribunal failed to follow the same without even pointing out any distinguishing features on facts. Stale claims and belated applications for alteration of the date of birth recorded in the service-book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement, need to be scrutinised carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual. On facts, the respondent was not entitled to the relief which the Tribunal granted to him. The order of the Tribunal is erroneous and the directions issued by it cannot be sustained. We, accordingly, set aside the order of the Tribunal and allow this appeal. No costs.

(vi) In Chief Medical Officer vs. Khadeer Khadri, reported in 1995 (2) SCC 82, the respondent therein joined the service on 15.11.1951. He had given his date of birth as 14.01.1933. In 1991, he made a representation to the corporation for alteration of date of birth as 15.07.1934. His request was turned down. He filed Original Application before the Andhra Pradesh Administrative Tribunal, Hyderabad. The Tribunal allowed the petition and directed to make correction. An appeal was filed to the Supreme Court. Referring to sub rule 5 of rule 2 of the Andhra Pradesh Public Employees (Recording and Alteration of Date of Birth) Rules, 1984, which provides power for correction of the bona fide mistake in recording the date of birth, the Hon'ble Supreme Court observed as follows:-

"This is only a ruse to get over the bar of limitation to have the date of birth entered in the service record corrected. The rules prescribe the procedure for laying the application within three years from the date of entering into service. In 1976, executive instructions were issued for correction of date of birth which were replaced by statutory rules issued in 1984. The latter also prescribes the procedure. He did not avail of the opportunity when, twice, it was available to him to have it corrected. It would clearly show that subsequent belated attempt is not a bona fide one but to have the correction made to his

advantage after the bar of limitation created by the rules. The Tribunal has not properly considered the matter in this perspective. The appeal is allowed."

(vii) In *Burn Standard Co. Ltd. v. Dinabandhu Majumdar*, reported in (1995) 4 SCC 172, the Hon'ble Supreme Court at paragraph 10, held as follows:-

"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 their 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 employers, placing reliance on the so-called newly-found material. The fact that an employee of Government or its instrumentality who has been 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 their 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."

(viii) In *Union of India v. Saroj Bala* reported in AIR 1996 SC 1000, the Supreme Court, held as follows:

"4. We are wholly unable to appreciate the stand of the respondent. The respondent's parents are not illiterate. She is a well educated one. She competed in All India Civil Services Examination. Her date of birth was registered in the University to be 4-4-1949. On the basis, she appeared for the examination, sought selection and accordingly she was selected. The said date has been entered in the service record and remained undisputed for 18-1/2 years. Subsequently it appears that she discovered in a talk with her sister that her date of birth is incorrect. Then enquiries were made and birth certificate obtained which mentioned the birth of the child and the parentage of the respondent. Horoscope was also sought to be set up to corroborate those circumstances.

5. It is unthinkable that having been born in an educated family and having remained in service for 18 years she discovered that her date of birth is wrong. Under these circumstances, the Tribunal was wholly unjustified and obviously illegal in allowing the application and directing correction of the date of birth. Though Mr. Suri sought to bring to our notice that she made her representation in the year 1981, it is of little importance for disposal of the matter on merits."

(ix) In *Government of Tamil Nadu vs. Thirupathy*, reported in 1997 (3) L.W. 688, the plaintiff therein who was recruited as a Police Constable in 1941 and after becoming a Sub Inspector of Police, prayed for a declaration that the alteration made by the District Police Office in the date of birth of the plaintiff in the Service Register from 01.04.1925 to 01.04.1921 was without notice to him. He sought for a permanent prohibitory injunction, restraining the defendants therein, from retiring the plaintiff from service on the basis of alteration of date of birth. According to him, the date of birth issued by the School Headmaster was 01.04.1925 and that the same was also entered into Service Register. He filed a suit in the

year 1962. It was contended by the defendants namely, the Government and others, that on the date, when he was recruited as a Police Constable, he had given a solemn declaration that his date of birth was 01.06.1921 and that the same binds him. The Village Karnam has issued a certificate that the date of birth was 01.06.1921. It was also contended that if the date of birth was 1925 as claimed, the plaintiff would not have been enlisted as a constable and that he would have been rejected for enlistment as under-aged. The defendants also contended that the suit was hopelessly barred. The trial court dismissed the suit. The substantial question of law raised by the High Court was "whether the suit for declaration for alteration of date of birth is barred by limitation, when the plaintiff has not filed the suit within five years from the date of entry into service as per G.O.Ms.No.1288, Public (Services) dated 21.04.1975". Another substantial questions of law framed is not relevant for the present case. After considering the plea and evidence, a learned Judge of this Court, at paragraph 10 held as follows:-

"10. As per G.O.Ms.No.1288 Public (Services) dated 21-4-1975, any correction to the date of birth must be made within five years from the date of entry. On the basis of that Rule, it can be said that atleast plaintiff will be getting five years from the date of the Rule and the suit must have been filed before the expiry of the period, therefore, a reasonable interpretation will have to be given for the Rule. Those persons who are due to retire on that date, cannot wait for another period of five years to get the date corrected. The intention of the Rule is that if at all any correction is to be made in the Service Register, that must be done within a reasonable time after they entered the service."

(x) In G.M.Bharat Coking Coal Ltd., v. Shib Kumar Dushad, reported in 2000 (8) SCC 696, the Supreme Court considered the scope of judicial review in matters relating to alteration of Date of Birth. After analysing various decisions on this point, the Hon'ble Apex Court held that where the question regarding correctness of date of birth as entered in service record is raised by the employee long after his joining the service and the employer has decided the question, following the procedure prescribed by statute, statutory rules or instructions, and in the absence of any arithmetical or typographical error apparent on the face of the record, the High Court should not interfere with such decision of the employer in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

(xi) In K.V.Kaliappan vs University of Madras, reported in 2000 (4) LLN 635, the petitioner was a Supervisor of the abovesaid University. His date of birth entered in the Service Register was 23.07.1940, on the basis of the entry in the SSLC Book. He obtained an extract of birth register from the Sub Registrar, Dharapuram, on 09.02.1977. According to him, his correct date of birth was 29.10.1942 and his parents had furnished his date of birth, as 23.07.1940 by mistake. The entry in the birth register was that a male child born to his parents on 29.10.1942. The name of the child was not given. Hence, he filed a suit in O.S.No.660 of 1980 on the file of the learned District Munsif, Dharapuram, praying for a declaration that he is the only son of his parents and to correct his date of birth as 29.10.1942. The District Munsif granted a declaratory decree on 07.09.1981. Thereafter, he approached the University in 1993, seeking for correction of his date of birth, in the Service Book. There was no provision in the service rules of the University, about the procedure to be followed, in correcting the date of birth of a teacher till 1995. Since his application for correction of date of birth was pending with the University, he sent a letter dated 13.11.1995, requesting the University to correct his date of birth, in accordance with the rule adopted by the University. The University directed him to approach the Director of School Education, Chennai, to correct his SSLC book. Contending inter alia that, as the procedure for correction of date of birth, has been provided under the Statutes and Ordinances issued by the University, the writ petitioner, has filed a Writ of Mandamus. Though the University adopted rules 49 and 49A of the Tamil Nadu State and Subordinate Service Rules, only in the year 1995, since he had entered the service of the University, even in the year 1974 and even after obtaining a decree in the year 1981, he did not care to effect correction in the service book, it was contended on behalf of the University that the writ petitioner himself had admitted that the Director of School Education, Chennai, has rejected the request for correction of date of birth, in his SSLC book and in such circumstances, the petitioner is not entitled to get his date of birth altered in the service book. A contention has been made by the learned Senior Counsel for the writ petitioner that, it is open to the petitioner to get his date of birth corrected, within five years from the date of coming into force of the rules. Reliance has also been placed on a decision in Burn Standard Company vs. Dinabandhu Majumdar, reported in 1996 (1) LLN 96, Commissioner of Police, Bombay, vs. Bhagwan v.Lahane, reported in 1997 (2) LLN 974, Director of Technical Education vs. Smt.K.Sitadevi, reported in 1991 (1) LLN 578, Secretary and Commissioner, Home Department vs. R.Kirubakaran,

reported in 1994 (2) LLN 1007 and State of Tamil Nadu vs. T.V.Venugopalan, reported in 1994 (6) SCC 302. While advertizing to the said contentions, Hon'ble Mr.Justice P.Sathasivam, at paragraph 15 held as follows:-

In the light of the catena of decisions of the Hon'ble Supreme Court and in view of the admitted factual position that the petitioner entered the service of the University in the year 1974 and obtained declaratory decree in the year 1981 and in the absence of any valid reason for delay in making petition for correction of date of birth in the service register till 1993, the request of the petitioner cannot be complied with.

(xii) In Government of Tamil Nadu vs. J.Ramasamy, reported in 2002 (2) CTC 577, the respondent therein, joined the Government Service on 06.05.1965. He had given his date of birth as 19.04.1942. After 34 years, he sought for correction of his date of birth, stating that, his correct date of birth was 18.03.1944 and he relied on the extract from the Birth Register of the Municipality. The application was summarily rejected by the state, on the ground that it was filed beyond the time permissible under rule 49(b) of the rules. Being aggrieved by the same, the Government Servant approached the Tribunal. After referring to the provisions, the Tribunal held that Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules is an exception to rule 49(b) of the rules and that applications for correction of date of birth filed after a period of five years, are permissible and the Tribunal concluded the issue by directing alteration of date of birth of the applicant. The correctness of the said direction was tested before the High Court. After considering the decision in State of Tamil Nadu vs. T.V.Venugopalan, reported in 1994 (6) SCC 302, a Division Bench at paragraphs 7 to 9, held as follows:-

"7. In this case, the facts stare one in the eye. The official gave his date of birth as 19.4.1942 when he joined service and when he was to retire after his date of superannuation was computed with reference to the birth date given by him, he sought change in the birth date itself. He was certainly a person who had failed to make an application within five years after his entering service with regard to any correction that may have been warranted in his date of birth. He was clearly disentitled from making such application after the end of the five year period.

8. The Tribunal has chosen to regard Sub Clause (c) of Rule 49 as an exception to Rule 49(b). That view of the

Tribunal is patently incorrect. Sub Clause (c) refers to applications received five years after entry into service. All such applications are to be summarily rejected. It also refers to applications which are not supported by S.S.L.C., School, College or University records, birth extract from records of local bodies or military discharge certificates. All such applications are also to be summarily rejected. Sub Clause (c), therefore, deals with the applications which are to be summarily rejected. It does not deal with extending the period of limitation. Application which is filed within the period of limitation should be supported by anyone of the documents mentioned in Sub Clause (c). Failure to furnish such documents in support of the application would result in the summary rejection of such application. Applications filed after the period of five years from the date of entry into the service are to be rejected on the sole ground that they have been filed beyond a period of five years. No other reason need be given.

9. The misreading of the Rule by the Tribunal has prompted it to treat the application filed thirty four years after the official had entered into service as a valid application. Surprisingly, it has gone further and has chosen to hold an enquiry into that application and has made an order altering the date of birth. This was clearly an impermissible exercise which the Tribunal should not have indulged in. Counsel for the official submitted that the Tribunal has powers to call for the records. That power is not meant to be used in a case where it's use was not appropriate. Claims such as the one made before the Tribunal which should not have been entertained at all, cannot be given life by summoning documents from the custody of other Government Departments, then hold that contents of those documents justify the claim, and thereafter proceed to alter the date of birth, even when the very application seeking such alteration had been lawfully rejected by the Government in exercise of statutory power properly vested in it. Even if the State had erred in rejecting the application, the Tribunal could only have directed it to entertain the application and hold an enquiry, and no more.

(xiii) In Commissioner and Director of Survey and Settlement v. C.V. Varadharajan, reported in (2004) 1 LW 279, the petitioner therein, who joined the Government Service on 23.07.1969, with his

date of birth entered as 01.04.1942, sought for a change in the year 1997 and filed a suit against the Director of School Education, Chennai, for a declaration that his date of birth was 20.04.1944. The suit was dismissed. He filed an appeal. Instead of waiting for the final verdict in the civil court, the Commissioner and Director, Chennai, informed the petitioner, by a communication, dated 13.03.2000 that his superannuation would be on 31.03.2000. The Government Servant moved the Tamil Nadu Administrative Tribunal. The Tribunal took the view that the Certificate issued by Vellore Municipality, and the document evidencing the betrothal ceremony on 17.06.1942, would clearly show that the Government Servant was born on 20.04.1944. Interpreting rule 49 of the Tamil Nadu State and Subordinate Service Rules, the Tribunal took the view that an application for alteration of date of birth can be filed even beyond five years and also only when the application has been filed without necessary documents, it has to be summarily rejected. Being aggrieved by the order of the Tribunal, the Commissioner and the Director of Survey and settlement, Chennai, filed a writ petition before the High Court. After examining Rules 49(b) and Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules, this Court, at paragraphs 9 and 10, held as follows:-

"9. First of all, it has to be remembered that Rule 49 (b) and Rule 49(c) have to be read as a whole and the different provisions have to be harmonised (vide (2001) 1 SCC 284). If the contention of the learned counsel for the respondent is to be accepted, then the Rule making authority could have omitted the words 'or, any application' and in which event, the wordings of the rule will be 'any application received after five years after entering into service which is not supported '. This submission cannot be accepted for the following reasons, (a) in Rule 49(b) the word 'only' finds a place, and (b) the courts cannot ignore or omit certain words found in the Act/Rule on the ground that they are inapposite surplusage or otiose or superfluous. The Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the Statute should have effect. The legislature is deemed not to waste its words or to say anything in vain (vide:- AIR 1976 Madras 55=88 L.W. 641 - Bright Brothers (P) Ltd. v. J.K. Sayani and (2003) 3 SCC 309 (Mithilesh Singh v. Union of India)

On consideration of entire matter, we are of the view that the word 'or' occurring in Rule 49(c) has to be read as 'and'. Further, the word 'any application' employed

after the word 'or' in Rule 49(c) would only refer to the application mentioned in Rule 49(b).

It is settled law that to have a harmonious construction of provisions of the Act, or to achieve the purpose and object of the Act, if the word 'or' has to be read and understood as 'and' then necessarily it has to be read and understood so and vice-versa (Refer: AIR 1968 SC 1450 (Ishwar Singh v. State of U.P. ; AIR 1980 SC 360 (Delhi Municipality v. TEK Chand); AIR 1991 SC 433 (Gopinder Singh v. Forest Department of Himachal Pradesh); 2001 Writ Law Reporter 791 (P.P. Senniappa Chettiar and Sons v. Regional Provident Fund Commissioner, Royapettah & another).

10. Hence, the legal position is to the following effect:

(a) Any application for altering the date of birth shall be entertained only if filed within five years of entry into service And if such application is supported by document/documents referred in Rule 49(c).

(b) Any application filed within five years and not supported by document/documents referred in Rule 49(c) so also any application filed after five years after entry into service shall be summarily rejected.

At paragraph 11, this Court considered a decision in State of Orissa & others v. Brahamarbar Senapathi, reported in (1994) 2 SCC 491, which is reproduced hereunder:-

11. In (1994) 2 SCC 491 (State of Orissa & others v. Brahamarbar Senapathi), the case related to a person who was promoted as Disinfector and Senior Helper. The Orissa General Financial Rules provided for a period of five years for getting the date of birth corrected on their entering into Government service. While interpreting the Rule, their Lordships said thus:-

" Long delay in making such an application is fatal.."

In that case, the person concerned, as per the service. Records, was to retire on 31.5.1989. A few days before his retirement, i.e. , on 24.4.1989, he filed an application for correction of his date of birth. The administrative Tribunal passed an order in favour of the Officer and prohibited the Government from retiring the Officer concerned. The matter was taken to the Supreme Court. After extracting the relevant Rule, their lordships further held thus:-

".From what has been stated in paragraph 7 of the order of the Tribunal, it would appear that the respondent became

aware of the entry in the service register in the year 1970. Admittedly, no action has been taken within five years thereafter. Under those circumstances, Rule 65 as referred to above is clear that his claim for alteration shall be summarily rejected without any further inquiry.."

From the above it is clear that the date of knowledge is also relevant consideration and even after knowing that the date of birth has been wrongly entered, if the officer concerned did not take any effective legal steps, the claim should not be entertained by Court.

Ultimately, this Court held that the suit was hopelessly barred.

(xiv) In U.P.Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri reported in 2005 (11) SCC 465, the Supreme Court held as follows:

"It is thus seen from the above quoted judgments that this Court has consistently taken the view that correction in entries made in Government records on the basis of which the Government servant got the service cannot be allowed to be changed just a few years before retirement or at the fag end of his retirement."

(xv) In State of Uttaranchal vs. Pitamber Dutt Semwal, reported in 2005 (11) SCC 477, the respondent therein was employed as a Class IV employee by the Collector, Uttar Kasi in 1964. The date of birth recorded in the service book was 10.04.1936. Notice dated 30.01.1996 was given to him to the effect that he would complete 60 years of age as on 30.04.1996 and that he would superannuate on that date. Thereafter, he made a representation to the effect that his date of birth has been wrongly mentioned in the service book and that as per the certificate issued by the school his date of birth was 06.07.1942. He was unsuccessful before the Collector, and hence filed a writ petition, which was dismissed. Appeal filed was allowed. The decision made in the appeal was tested before the Supreme Court. After considering rule 2 of the U.P. Recruitment to Services (Determination of the Date of Birth) Rules, 1974, the Supreme Court, at paragraph 6, held as follows:-

6. These Rules, the validity of which have not been challenged, clearly stipulate that no application or representation shall be entertained for correcting any date or age record and the entry made in the service-book shall be deemed to be the correct date of birth. Be that as it may, even dehors the said rule, we are of the opinion that the plea of the respondent that the date of birth was wrongly recorded was highly belated. He joined service in 1964, the service-book was prepared in 1965 and according

to the appellant he has signed the said service-book at least on three occasions. In any case, the plea of the wrong recording of the age in the service-book has been taken nearly thirty years after the service-book was prepared. In our opinion, the Division Bench was in error in ignoring the provisions of the said Rule 2 and even otherwise, in the facts of this case, there was no occasion for the High Court to have interfered with the decision of the appellant.

(xvi) In State of Gujarat v. Vali Mohmed Dosabhai Sindhi, reported in (2007) 1 LW 121, the Supreme Court tested the correctness of a judgment of the Hon'ble Division Bench of Gujarat High Court, dismissing the appeal filed by the appellant. He was a Police Constable appointed on 03.10.1947. His date of birth, at the time of appointment was 1923. He was due to retire on attaining the age of 58 years on 01.11.1981. Accordingly, an order was passed on 16.02.1981 by the concerned authority, indicating that he would retire from service with effect from 01.11.1981. On receiving the order, he submitted an application for making change of his date of birth, in the service record. He contended that he was born in the year 1928 and not 1923. As the prayer was not accepted, he filed a writ petition and sought for an interim direction, which was not granted. However, the writ petition was allowed and that a direction was given for payment of arrears from 01.11.1981 to 01.11.1986, taking the date of his retirement as 1986, as per the revised date of birth. The Writ Court held that the School Leaving Certificate deserves acceptance. The Government preferred an appeal, which was dismissed. Before the Supreme Court, a contention was raised by the Government that as per Rule 17 of the Bombay Civil Services Rules, request made for alteration of date of birth should not be entertained, after the preparation of the service book of a Government Servant and in any event, not after the completion of the probation period or after five years of continuous service whichever is earlier. The rule also states that once an entry of age or date of birth has been made in the service book, no alteration of the entry afterwards should be allowed, unless it is shown that the entry was due to want of care on the part of some person other than individual in question or is an obvious clerical error. After considering various decisions, the Hon'ble Supreme Court, set aside the judgments of both the single and Division Bench of Gujarat High Court, and at paragraphs 9 and 10, has held as follows:-

9. 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, 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 concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

10. 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. In the case of *State of Assam v. Daksha Prasad Deka* (1970 (3) SCC 624), this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure." In the case of *Government of Andhra Pradesh v. M. Hayagreev Sarma* (1990 (2) SCC 682) the A.P. Public Employment (Recording and alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was inter alia observed by this Court:

"The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of

his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

In *Executive Engineer, Bhadrak (R&B) Division, Orissa and Ors. v. Rangadhar Mallik* (1993 Supp. (1) SCC 763), Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the Order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor made any representation for correcting his date of birth till September 9, 1986. In case of *Union of India v. Harnam Singh* (1993 (2) SCC 162) the position in law was again reiterated and it was observed:

"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."

An application for correction of the date of birth should not be dealt with by the Courts, 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. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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 within at least a reasonable time. 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 date 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 or 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 thereby caused injustice to his immediate junior.

Paragraphs 12 and 13 of the abovesaid judgment are also worth reproduction:-

12. As observed by this Court in *State of Tamil Nadu v. T.V. Venugopalan* (1994 (6) SCC 302 = 1995 1 L.W. 13 S.N.) and *State of Orissa and Ors. v. Ramanath Patnaik* (1997 (5) SCC 181) when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran's* case (supra) was adopted.

13. The above position was also noticed in *State of U.P. and Others v. Gulaichi (Smt.)* (2003 (6) SCC 483).

(xvii) In *Punjab & Haryana High Court v. Megh Raj Garg* reported in 2010 (6) SCC 482, the Hon'ble Supreme Court observed as follows:

"15. The High Court or for that reason the State Government did not have the power, jurisdiction or authority to entertain the representation made by respondent No.1 after more than twelve years of his entering into service. Therefore, neither of them committed any illegality by refusing to accept the prayer made by respondent No.1 on the basis of change effected by the University in the date of birth recorded in his matriculation certificate. Unfortunately, the trial Court, the lower appellate Court and the learned Single Judge of the High Court totally misdirected themselves in appreciating the true scope of the embargo contained in the relevant rule against the entertaining of an application for correction of date of birth after two years of the government servant's entry into service and all of them committed grave error by nullifying the decision taken by the State Government in consultation with the High Court not to accept the representation made by respondent No.1 for change of date of birth recorded in his service book.

16. All the courts overlooked the stark reality that respondent No.1 had made application for change of date of birth recorded in the matriculation certificate after more than ten years of his entry into government service and the decision taken by the Syndicate to accept his request did not give him any cause for filing application or making representation for change of the date of birth recorded in the service book.

(xviii) In State of Haryana v. Sathish Kumar Mittal reported in 2010 (9) SCC 337, the Hon'ble Supreme Court, at Paragraph 15, held as follows:

"15. As recorded above, it has been held time and again that the application for correction of date of birth is also to be looked into from the point of view of the concerned department and the employees engaged therein. The other employees have expectations of promotion based on seniority and suddenly if such change is permitted; it causes prejudice and disturbance in the working of the department. It is, therefore, quite correct for the State to insist that such application must be made within the time provided in the rules, say, two years, as in the present case."

34. For the reasons, stated supra, we are of the view that there is no manifest irregularity in the impugned order. Hence, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

skm

To

1. The Chief Secretary,
Union of India,
Government of Puducherry,
Puducherry.
2. The Under Secretary (Law),
Government of Puducherry,
Puducherry.
3. The Director of Agriculture,
Puducherry.
4. The Additional Director of Agriculture,
Government of Puducherry,
Puducherry.

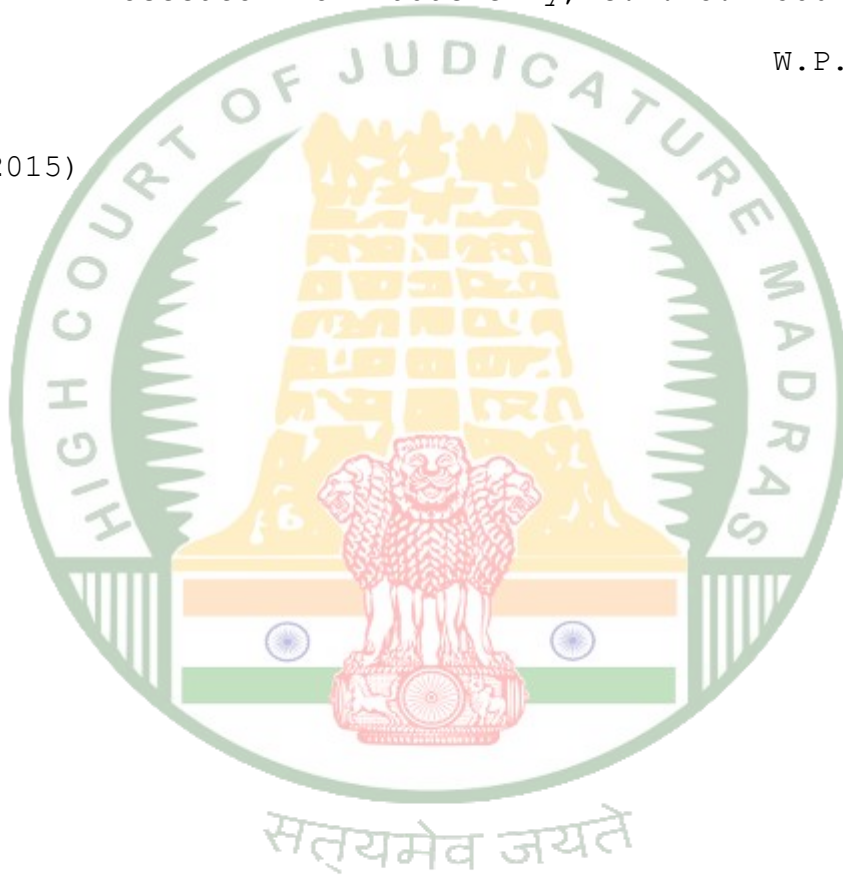
5. The Deputy Director of Agriculture,
Puducherry.

6. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.

+1cc to M/s.M.S.Soundararajan, Advocate, S.R.No.42537
+2cc's to the Senior Government Pleader -Cum- Senior Public
Prosecutor for Puducherry, S.R.No.42580

W.P.No.24989 of 2015

VD(CO)
CA(09/09/2015)



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