

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

+ W.P.No.4894 OF 2002

% 30.07.2015

P.Manikya Rao alias P.Manikyam

..... Petitioner

AND

A.P.State Road Transport Corporation, represented by its Managing Director, Musheerabad, Hyderabad – 20 and another.

.....RESPONDENTS

! Counsel for the petitioner : Sri A.K.Jayaprakash Rao

^ Counsel for the respondents : Sri N.Vasudeva Reddy

< Gist:

> Head Note:

? Cases referred:

1. 2008 (5) ALD 128
2. 2011 (2) ALD 493
3. 1992(2) ALT 198
4. (2014) 6 Supreme Court Cases 434
5. 1995(3) ALD 51
6. (1995) 4 Supreme Court Cases 172
7. (2005) 12 Supreme Court Cases 201
8. (2010) 9 Supreme Court Cases 337
9. (2011) 9 Supreme Court Cases 664

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.4894 of 2002

Between:

P.Manikya Rao alias P.Manikyam

.. Petitioner

and

A.P.State Road Transport Corporation, rep.by its Managing Director,
Musheerabad, Hyderabad-20 and another.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 30.7.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.4894 of 2002

ORDER:

This writ petition is filed seeking to issue a writ of Mandamus to declare the Notification issued by respondent No.2 in proceedings No.P1/639(6)/2001-MDK, dated 9.11.2001, retiring the petitioner from service with effect from 30.4.2002 as illegal and arbitrary, and consequently, to grant all consequential benefits.

2. The brief facts that are necessary for disposal of the present writ

petition may be stated as follows:

The petitioner was selected by the Selection Committee for appointment to the post of Driver in Karimnagar Division by the respondent Corporation. After his selection, he was sent for medical examination and after medical check up, the Doctor only assessed his fitness, but no test was conducted for determining his age. In the application form itself, the petitioner specifically stated that his educational qualification was 7th class and since the respondent Corporation did not ask for production of the school certificate, he did not produce. Subsequently, he appeared for S.S.C. examination and passed in the year 1981 and produced the certificate before the respondent Corporation for consideration of his case for promotion as Driving Instructor. He submitted his certificate in the year 1985 itself. The petitioner filed W.P.No.1295 of 1988 before this Court for consideration of his case for promotion to the post of Driving Inspector in Medak Division as per Rules. This Court, by order, dated 29.4.1988, directed the respondent Corporation to consider his case for promotion. On receipt of the said order, the petitioner was issued show cause notice of removal, dated 17.5.1988, for having failed to submit the correct documents relating to his name and failed to produce his age certificate at the time of joining the Corporation and further alleging that he failed to produce educational qualification certificate and declare his qualification at the time of joining the service of the respondent Corporation. Thereafter, petitioner was removed from service by order, dated 30.11.1988, without giving any opportunity. Challenging the said order of removal, the petitioner filed W.P.No.18429 of 1998 and this Court suspended the order of removal by order, dated 30.12.1988, and accordingly, he continued in service and subsequently, his writ petition was allowed by judgment, dated 17.2.1992. Respondent No.2 issued notification, dated 9.11.2001, proposing to retire the petitioner from service on the afternoon of

30.4.2002 on attaining the age of superannuation. The respondent Corporation cannot issue the order of retirement by taking into account the date of birth as mentioned by the doctor at the time of medical examination as 17.4.1944. Even as per the school certificate, his date of birth is 12.3.1947. The respondent entered the date of birth contrary to the school certificate. Aggrieved by the same, the petitioner filed the present writ petition.

3. A counter-affidavit is filed by the respondent Corporation stating that the petitioner was appointed as Retainer Driver in the name of P.Manikyam, S/o.Yadaiah. His services were regularised as temporary driver with effect from 01.3.1971 and later, his probation was confirmed. He was removed from service on 19.11.1988 for having cheated the Corporation by producing incorrect documents and later, reinstated into service on 19.4.1989. It is also stated that at the time of joining the service of the Corporation in the year 1968, he gave his age as 24 years. Based on that, in medical certificate No.01 20716, dated 17.4.1968, his age was mentioned as 24 years. Basing on the same, the date of birth of the petitioner was entered in his service record as 17.4.1944. It remained the same till date. The petitioner never applied for correction of his date of birth till 03.12.2001. In the medical certificate, dated 21.8.1974, his age was given as 30 years, which shows that he was born in 1944. In the reference of the petitioner for medical examination, dated 20.8.1974, his age was given as 30 years. In the medical certificate, dated 30.11.1977, his age was given as 33 years and in the reference for medical test dated 28.11.1977, his age was given as 33 years. In the declaration and nomination forms, date of birth of the petitioner was not given. Column No.4 regarding date of birth of the petitioner is left blank. It is admitted that as per S.S.C. certificate produced by the petitioner, his date of birth was shown as 12.3.1947. In his affidavit, dated 23.3.1985, the petitioner gave his age as 38 years. In Column No.10 of the attestation form for

candidates for direct recruitment by selection, it was shown that the petitioner studied in Z.P.School, Ramayanpet, but Transfer Certificate No.765 produced in the writ petition shows that it was issued by Government High School, Ramayampet. As such, the said Transfer Certificate cannot be relied upon. It is further stated that the writ petition is filed after lapse of 43 years from the date of joining service indicating that the writ petition has to be dismissed on the ground of laches also.

4. Learned counsel for the petitioner submits that though the date of birth of the petitioner is shown as 12.3.1947 in the transfer certificate pertaining to his 7th class as well as in the S.S.C. certificate, the respondent authorities, without any basis, have entered the date of birth of the petitioner as 17.4.1944; that the petitioner was never aware of the same and he was never asked to produce any certificate and even the order, dated 30.11.1988, removing the petitioner from service was set aside by this Court in W.P.No.18429 of 1998 by order, dated 30.12.1988. It is also submitted that the petitioner produced the S.S.C. certificate along with affidavit, dated 23.3.1985, seeking promotion but the authorities never disputed the certificates; that since the petitioner was never aware of his wrong date of birth, he could not agitate the same and when the impugned notification retiring the petitioner was issued, the petitioner made a representation on 03.12.2001 to respondent No.1 for correction of his date of birth as per school records, but the same has not been considered by respondent No.1 in proper perspective. He relied upon the judgments reported in **Iqbal Hussain v. Central Power Distribution Company of A.P. Ltd., Hyderabad and another**^[1], **Boddu Laxmi Rajam v. Singareni Collieries Co. Ltd., Kothagudem, Khammam District and others**^[2], **B.Komaraiah v. The Singareni Collieries Co., Ltd., and another**^[3], **Iswarlal Mohanlal Thakkar v. Paschim Gujarat VIJ Company**

Limited and another^[4].

5. On the other hand, learned Standing Counsel for the respondent Corporation submits that the petitioner was issued charge sheet on 9.9.1987 wherein one of the charges is that though the date of birth of the petitioner was shown as 17.4.1944, the petitioner has not made any application then; that when the petitioner entered into service, since he has not produced any certificate, his date of birth was assessed and basing on the medical certificates, his date of birth was entered in the service records; that as per Regulation No.19 of the Andhra Pradesh State Road Transport Corporation Employees Service Regulations, 1964 (for short, "the Regulations"), once the date of birth of an employee is entered in the service register, as per Regulation No.19(3) of the Regulations, the same date shall be binding and no alteration of such date of birth shall be permitted subsequently. Petitioner is aware of his date of birth and only at the fag end of his service, he has made an application for correction of the date of birth. In support of his contentions, he relied upon the judgments reported in **K.Sridhar Reddy v. Government of A.P., rep.by its Secretary, Transport, Hyderabad and others^[5]**, **Burn Standard Co.Ltd. and others v. Dinabandhu Majumdar and another^[6]**, **Coal India Ltd. and another v. Ardhendu Bikas Bhattacharjee and others^[7]**, **State of Haryana v. Satish Kumar Mittal and another^[8]** and **State of Madhya Pradesh and others v. Premlal Shrivastava^[9]**.

6. Admittedly, the fact is that the petitioner did not produce any documents at the time of entry into service in the respondent Corporation though he has stated that he passed 7th class. Even when the petitioner was issued charge sheet on 9.9.1987 for not

producing the correct documents, age certificate, educational certificate etc., the petitioner has not produced any certificate. Charge No.2 in the charge sheet, dated 9.9.1987, reads as follows:

“For having failed to submit your age certificate, T.C. at the time of joining in RTC due to which your date of birth was assessed by the doctor in the Medical Examination as 17.4.1944”.

7. After considering the explanation of the petitioner and after holding enquiry, basing on the enquiry report, the petitioner was removed from service. In respect of charge No.2, the statement of the petitioner is recorded as follows:

“During the course of enquiry the driver has stated that at the time of recruitment in APSRTC nobody has asked him to enclose his educational qualification certificate. He was only asked to write some words in Telugu as dictated by the Selection Committee which he has written. Basing on the literacy test passed by him he got a job in RTC. He admitted that by the time of recruitment in RTC he has studied upto old VII class in Ramayanpet High School and also obtained Educational Certificate. However, he stated that he lost this certificate while working at Nagarjuna Sagar Dam which resulted him for not producing the same at the time of appointment in RTC. He also stated that in the declaration form he has clearly mentioned about his education as VII Class. At that time of medical Examination he was not aware of date of birth as per School records. Hence the doctor assessed his date of birth as 17-4-1944 which itself is loss to him since his actual date of birth as per school records was 12-3-1947 which he came to know later on.”

This statement goes to show that at least by the time of giving statement in the enquiry conducted in pursuance of the charge sheet, dated 9.9.1987, the petitioner is aware that his date of birth is 12.3.1947. The petitioner himself states that he has not produced any certificate regarding his date of birth. The same was assessed by the Doctor as 17.4.1944. Though the order of removal is set aside by this Court in W.P.No.18429 of 1998 on the ground that charges are trivial

in nature, the fact remains that the petitioner is aware about his date of birth as assessed by the Doctor i.e., 17.4.1944, but he has kept quiet without making any application. The petitioner claims to have submitted an application seeking promotion. In the said application, petitioner has not asked for change of date of birth. It also discloses that he has filed only hall ticket of the S.S.C. examination. Only when the impugned notification was issued for retiring the petitioner, he made an application on 3.12.2001 seeking change of his date of birth basing on the school records.

8. Regulation No.19(2)(b) of the Regulations reads as follows:

"Where the person concerned is unable to furnish satisfactory evidence of his age, it should be assessed or the age as declared by the person, whichever is more, shall be accepted as final and the employee shall be assumed to have completed that age on the date of attestation by the Medical Officer."

9. Admittedly, the petitioner has not produced any certificates. As per Regulation No.19(3) of the Regulations, once the date of birth of an employee is entered in service register, the same is held to be binding and no alteration of such date shall be permitted subsequently. So, once the regulations are binding on the petitioner as well as the respondent Corporation, it cannot be said that basing on the petitioner's representation, dated 3.12.2001, the respondent Corporation has not altered his date of birth as per school records. The respondent Corporation cannot be faulted on this aspect since it is petitioner's own admission that he has not produced the certificates at the time of entry into service or even at the time of enquiry conducted against him or subsequently. The judgment cited by the learned counsel for the petitioner in **Iswarlal Mohanlal Thakkar's** case (4 supra) was rendered in a different context wherein the respondent Corporation in that case issued a circular asking the employees for changing the date of birth by furnishing necessary certificates, but in the present case, it is not so. The Regulations of the respondent

Corporation clearly says that once the date of birth of an employee is entered in the service register, it is binding. The said judgment has no application to the facts of the present case.

10. The judgment in **B.Komaraiah**'s case (3 supra) cannot come to the rescue of the petitioner since the application for change of date of birth in the present case is made after impugned notification was issued. The judgment reported in **Boddu Laxmi Rajam**'s case (2 supra) also shows that the age of the petitioner in that case has been entered as 21 years in 'B' Register, but later, at the fag end, the employer disputed the same. In those circumstances, relief was granted. The decision in **Iqbal Hussain**'s case (1 supra) is also not applicable to the case of the petitioner. The facts in that case and the facts in the present case are different. Regulation No.19 of the Regulations is binding on both the petitioner and the respondent Corporation.

11. In **State of Madhya Pradesh**'s case (9 supra), it is held at para Nos. 8, 9, 10 and 11 as under:

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

9. In Home Department Vs. R. Kirubakaran, indicating the factors

relevant in disposal of an application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus :

"An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose 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. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove 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."

10. In State of U.P. & Anr. Vs. Shiv Narain Upadhyaya, while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

11. Viewed in this perspective, we are of the opinion that the High

Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1-6-1942 and not 30-6-1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27-9-1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1-6-1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikramnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting the respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated."

In **Coal India Ltd.**'s case (7 supra), it is held at para No.8 as under:

"Thereafter, in the year 1995 he applied to the Company to change the date of birth on the basis of duplicate matriculation certificate obtained by him. It is well settled that an employee will not be permitted to apply for change of date of birth at the fag end of his service career. In the instant case we do not know on what basis after 38 years the Secondary Education Board in Bangladesh corrected the matriculation certificate. This is essentially a question of fact, and in any case the High Court ought not to have exercised its writ jurisdiction to determine the real date of birth. We are of the view that the High Court was in error in allowing the writ petition filed by the respondent and directing Coal India Limited, the appellant herein, to change the date of birth of the respondent from 31-12-1938 to 26-1-1943. We, accordingly, set aside the impugned order of the High Court of Calcutta."

In **State of Haryana**'s case (8 supra), it is held at para Nos.14, 15 and 16 as under:

"14. The import of such a provision has been clarified by this court from time to time. Thus, in para 7 of Home Department vs. R.Kirubakaran, this 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 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. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable."

The Court has, thereafter stated that burden in such cases lies on the applicant and noted that in many of such cases, the employees approach the Court on the eve of retirement. The Courts and Tribunals must be slow in granting any interim relief in such cases. The same principle has been reiterated in [State of UP vs. Gulaichi](#) [2003 (6) SCC 483]; [State of Punjab vs. S C Chadha](#) [2004 (3) SCC 394]; and [State of Gujarat vs. Vali Mohmed Dosabhai Sindhi](#) [2006 (6) SCC 537].

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 department concerned 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.

16. It is also seen that such applications are made very often, almost at the end of the service of the employee or in any case, belatedly. Whatever may be the reason, the fact remains that in the present case, the application was made after some nine years of joining into service. Even assuming that the first respondent came to know in

June 2001 that there was an error in his date of birth entered in the matriculation certificate, as claimed by him, he took more than three years to issue the notice under Section 80 CPC and then to file the suit. Whether the suit was time barred or not, the claim was in any case belated. It has to be filed within the time provided or within a reasonable time and it is not to be entertained merely on the basis of plausible material as held in Kirbukaran (supra). As observed by this Court in [State of UP vs. Shiv Narayan Upadhyaya](#)[2005 (6) SCC 49]:

".....As such, unless a clear case on the basis of clinching 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."

In **K.Sridhar Reddy's** case (5 supra), it is held at para No.3 as under:

"Sub-regulation (3) of Regulation 19 makes it very clear that the date of birth as determined after going through the procedure contemplated in Sub-regulation (1) and (2) shall be recorded in the Service Register of an employee and the date so recorded shall be held to be binding and no alteration of such date shall be permitted subsequently. (Emphasis is supplied by the Court). However, Sub-regulation (3) itself empowers the Board as well as the Managing Director to consider the case of any employee under their respective control and alter the date of birth of such employee only under two circumstances:

(i) where in his opinion it has been falsely stated by the employee to obtain advantage otherwise inadmissible, provided that such alteration shall not result in the employee being retained in service longer than if the alteration had not been made; or

(ii) Where in the case of illiterate staff, the Managing Director is satisfied that a clerical error has occurred."

12. In view of the aforementioned judgments cited by the learned Standing Counsel for the respondent Corporation, the Apex Court held that application for change of date of birth of an employee cannot be entertained at the fag end of his service. The petitioner, on his own admission, stated that he has not made an application seeking change of date of birth initially and so, now at the fag end of his service, he cannot blame the respondent Corporation. Accordingly, the petitioner is disentitled for the relief claimed. There are no merits in the writ

petition and the writ petition is liable to be dismissed.

13. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.RAJASHEKER REDDY

Date: 30.7.2015
AMD

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144

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION No.4894 of 2002

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DATE: 30.7.2015

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[\[1\]](#) 2008 (5) ALD 128
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