

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.1679 of 2016

G.Jayaraman

Petitioner

Vs

The Managing Director (HR),
Head Office,
NLC Limited, Block I, Neyveli 607801
Cuddalore.

Respondent

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondent to consider the representation of the Petitioner, dated 17.12.2015.

For Petitioner : Mr.D.Balachandran

For Respondent : Mr.N.Nithiyanandam

ORDER

In this Writ Petition, the Petitioner seeks for issuance of a Writ of Mandamus, directing the Respondent to consider his representation, dated 17.12.2015.

2. This Court heard and considered the submissions made by the learned counsel on either side and also perused the materials on record.

3. The Petitioner joined as a Society Labour in the Respondent Corporation in the year 1990 and thereafter, he was appointed as a Service Worker Grade III (cleaner) in the year 2006 and he was made to retire on 30.6.2015. It is the specific case of the Petitioner that his original date of birth is 19.12.1962 and without considering his original date of birth, but changing his date of birth wrongly as 01.07.1955, he was made to retire on 30.06.2015 and that therefore, the Petitioner made a representation dated 17.12.2015, seeking for rectification of the said defect relating to his date of birth, which is not considered so far and hence, this Writ Petition has been filed.

4. On the other hand, the learned counsel for the Respondent has submitted that in case of any discrepancy in the date of birth, it can only be sought to be rectified within five years from the date of appointment and in support of his contention, relied on the decision of the Honourable Supreme Court reported in 2010 9 SCC 337 (State of Haryana Vs. Satish Kumar Mittal and another).

5. In 2010 9 SCC 337 (State of Haryana Vs. Satish Kumar Mittal and another), it has been held as follows:-

"17. In the circumstances in our view, the High Court as well as the courts below clearly erred in entertaining the claim of Respondent No.1 for correction in his date of birth at a belated stage. In such a matter, we are concerned with the correction in the date of birth for the purpose of service record and not for any other purpose. The observation of this Court in para 7 of the Union of India vs. Harnam Singh [1993 (2) SCC 162] in this behalf are quite apt.

"7. A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. 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. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no

application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age."

18. This being so, the courts should not have entertained the claim of the first respondent belatedly and beyond the period provided in the rules. The rules, in the instant case, all throughout required such application to be made within two years. Therefore, the courts clearly erred in finding fault with the appellant for allegedly applying the Notification of 13.8.2001 retrospectively which was not the case over here.

18. In the circumstances, we allow this appeal and set aside the orders passed by the High Court as well as by the courts below. The suit filed by the first respondent will stand dismissed."

6. As rightly pointed out by the learned counsel for the Respondent, in the case on hand, the Petitioner sought for modification of his date of birth belatedly and beyond the prescribed period and it cannot be entertained, in view of the decision of the Honourable Supreme Court cited supra. Hence, this Writ Petition is dismissed. No costs.

s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To:

The Managing Director (HR), Head Office, NLC Limited, Block I, Neyveli 607801, Cuddalore District.

+ 1 cc to mr.D.Balachandran, Advocate SR 29307
+ 1 cc to N.Nithianandam, Advocate SR 29413

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