IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2016

DELIVERED ON : 06.07.2016

CORAM :

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

W.P.No.40578 of 2015
& M.P.No.1 of 2015

M. Vaithialingam .. Petitioner

Vs.

1. Union of India,
rep.by the Director General
Department of Posts
Dak Bhavan, New Delhi

2. Chief Postmaster General
Tamil Nadu Circle
Chennai 600 002

3. Postmaster General
Southern Region
Madurai

4. Senior Superintendent of Post Offices
Tirunelveli Division
Tirunelveli

5. Asst.Superintendent of Post Offices
Palayamkottai Sub Division
Tirunelveli

6. The Registrar
Central Administrative Tribunal
Chennai Bench,
Chennai 600 104 .. Respondents

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Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the Central Administrative Tribunal, Chennai Bench (6th respondent herein) in O.A.No.1530 of 2010 dated 12.7.2011 and to quash the same as being illegal and consequently direct the respondents 1 to 5 to refix the date of birth as 1.1.1947 and to treat the petitioner as having superannuated on 31.12.2006 and to pay all monetary benefits for the

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period from 1.1.2006 to 31.12.2006 including the consequential retiral benefits within a time frame.

For Petitioner : Mr.K.M.Ramesh
For Respondents : Mr.V.T.Balaji
Central Government
Standing Counsel for R1 to R5
R6 - Tribunal

ORDER
(Order of the Court was made by A.SELVAM, J.)

This writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the Central Administrative Tribunal, Chennai Bench in Original Application No.1530 of 2010 dated 12.7.2011 and quash the same.

2. It is averred in the writ petition that the original name of the petitioner is M.Rajapandian and he passed SSLC on 16.10.1964. In the Transfer Certificate, his date of birth has been mentioned as 1.1.1947. The petitioner has subsequently changed his name as Vaithilingam and necessary Gazette Notification has been issued on 10.6.1970. The petitioner has been appointed as EDDA, Mavadi Post Office in the year 1968. The petitioner has duly informed to the fourth respondent about the change of his name. The petitioner has passed LGO Examination in the year 1990 and promoted as Postal Assistant, Vallanad Post Office, Tirunelveli District. The petitioner has received an order dated 18.3.2005, wherein it is stated that he is going to retire by superannuation on 1.1.2006. The petitioner has applied to the third respondent on 8.4.2005, whereby requested to change his date of birth as 1.1.1947. In the meanwhile, the fourth respondent has sent a reply dated 28.4.2005 stating that the request of the petitioner is rejected and in order to set aside the order passed by the fourth respondent, the petitioner, as applicant, has filed Original Application No.517 of 2005 on the file of the Central Administrative Tribunal, Chennai Bench. The Central Administrative Tribunal has remanded the matter with a specific direction to the first respondent to dispose of his representation dated 16.5.2005 in accordance with law. The representation of the petitioner has been disposed of by the first respondent on 19.9.2006 and thereby rejected the claim of the petitioner. The petitioner has again filed Original Application No.1530 of 2010 on the file of the Central Administrative Tribunal. The Central Administrative Tribunal has dismissed the Original Application No.1530 of 2010 on 12.7.2011 by way of passing the impugned order and in order to quash the same, present petition has been filed.

3. The learned counsel appearing for the petitioner has repeatedly contended that the original name of the petitioner is

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M.Rajapandian and he got birth on 1.1.1947 and to that effect, necessary entry has been made in SSLC book as well as Transfer Certificate. At the time of entry into service, his date of birth has been erroneously mentioned as 1.1.1946. Under such circumstances, a representation has been given by the petitioner and the same has been rejected and due to that, Original Application No.1530 of 2010 has been filed on the file of the Central Administrative Tribunal, Chennai Bench, but the Central Administrative Tribunal has erroneously dismissed the same by way of passing the impugned order and therefore, the impugned order passed by the Central Administrative Tribunal, Chennai Bench is liable to be quashed.

4. The learned Central Government Standing Counsel has befittingly contended that in the instant case, the date of birth of the petitioner has been mentioned as 1.1.1946 in the Service Register and the same is final, until it is changed subsequently within a reasonable period. In the instant case, the petitioner has not done it and the Central Administrative Tribunal, after considering the rival contentions raised on either side, has rightly dismissed the Original Application No.1530 of 2010 and therefore, the order passed in Original Application No.1530 of 2010 is not liable to be interfered with.

5. On the side of respondents 1 to 5, the Service Register of the petitioner has been filed, wherein it is stated to the effect that the name of the petitioner is M.Vaithialingam and he got birth on 1.1.1946. In the Service Register, the petitioner has put his signature. On the basis of the date of birth mentioned in the Service Register, the first and fourth respondents have rejected the representations given by the petitioner.

6. The only point that comes up for consideration in the present writ petition is as to whether the relief sought therein can be granted.

7. It is true that on the side of the writ petitioner, certain documents have been filed, wherein it has been clearly mentioned to the effect that he got birth on 1.1.1947.

8. The Central Administrative Tribunal, Chennai Bench, has mainly rejected the contentions put forth on the side of the petitioner on the basis of a decision reported in 1993 (2) SCC 162 = 1993 (2) SLR 42 SC (Union of India v. Harnam Singh), wherein the Hon'ble Supreme Court has observed as follows:

> "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

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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 state claims, generally applied by the courts and tribunals. It is nonetheless competent if the Government to fix a time limit, in the service rules, after which the 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 as the courts or tribunals cannot come to the aid of those who sleep over the 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...

17. 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."

9. From a mere perusal of the observations made by the Hon'ble Supreme Court, it is made clear that if there is any lapse on the part of a Government servant with regard to correction of his actual date of birth, his alleged date of birth cannot be corrected at the

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fag end of his career. In the instant case, as noted earlier, the date of birth of the petitioner has been mentioned in the service register as 1.1.1946, wherein he has also put his signature. A primordial duty is cast upon the petitioner to verify all the entries made thereon before putting his signature, but he has not done it and further only at the fag end of his career and that too, after receipt of communication, he made a representation and the authorities have rightly rejected the same.

10. Even at the risk of repetition, the Court would like to point out that as per the dictum given by the Hon'ble Supreme Court referred to supra, this Court is of the considered view that if there is inordinate delay on the part of the petitioner, his claim cannot be entertained.

11. The Central Administrative Tribunal, Chennai Bench, after considering the rival contentions put forth on either side, has rightly dismissed the Original Application No.1530 of 2010. In view of the discussions made earlier, this Court has not found any acceptable contention raised on the side of the petitioner and therefore, the present Writ Petition deserves to be dismissed.

In fine, this Writ Petition is dismissed, without cost. The order dated 12.7.2011 passed in Original Application No.1530 of 2010 by the Central Administrative Tribunal is confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To
1. The Director General
Union of India,
Department of Posts
Dak Bhavan, New Delhi

2. Chief Postmaster General
Tamil Nadu Circle
Chennai 600 002

3. Postmaster General
Southern Region
Madurai

4. Senior Superintendent of Post Offices
Tirunelveli Division
Tirunelveli

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5. Assistant Superintendent of Post Offices
Palayamkottai Sub Division
Tirunelveli

6. The Registrar
Central Administrative Tribunal
Chennai Bench,
Chennai 600 104

+1 cc to Mr.K.M.Ramesh, advocate,sr.37920

+1 cc to Mr.V.T.Balaji, CGSC, sr.38111.

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