

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
WRIT PETITION No.26727 of 2016

ORDER:

The petitioner is working as Reader in Physics in the third respondent college, which is a private aided college. The date of birth was mentioned in the service records and all educational records as 30.08.1956. Now he states that his parents are uneducated and his date of birth was wrongly mentioned on the basis of statement made by them at the time of entry in school. He came to know about the wrong date of birth during discussions with his close relatives. After coming to know the same he applied for the certified copy of the date of birth from the Municipal Corporation, Visakhapatnam, which states that his date of birth is 06.09.1959. After obtaining the said certificate he submitted a representation on 18.02.2016 to the second respondent and the second respondent passed an order on 30.06.2016 rejecting his representation stating that the date of birth mentioned on the basis of the school records or any proof produced at the time of entering into service and entered in the service record shall be final by relying on G.O.Ms.No.94, Finance and Planning (FW.F.R.I) Department, dated 15.03.1994. Challenging the same, the present Writ Petition is filed.

Learned Counsel for the petitioner submits that the correct date of birth of the petitioner is 06.09.1959 as recorded in the municipal records at the time of his birth and the second respondent erred in rejecting the representation of the petitioner. He relied on **Madan Mohan Singh v. Rajni Kant**^[1] followed in **Dipak Ranjan Sarkar v. National Insurance Co. Ltd.**^[2].

I am not satisfied with the submissions of the learned Counsel for the petitioner for the following reasons:

- (i) The petitioner is well educated person and he is working as a Reader in Physics. One cannot believe that the petitioner does not know

his correct date of birth till the fag end of his service.

(ii) The birth certificate issued by the Municipal Corporation on 28.01.2016 contains the name of the petitioner, which normally does not contain. In view of the same, it is for the petitioner to authenticate the said document in terms of the provisions of the Evidence Act as held by the Supreme Court in the following words in **Madan Mohan Singh's** case (supra).

“If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 and 61, etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein. (Vide: **Updesh Kumar v. Prithvi Singh** ((2001) 2 SCC 524); and **State of Punjab v. Mohinder Singh** (AIR 2005 SC 1868).”

(iii) The petitioner did not challenge G.O.Ms.No.94, Finance and Planning (FW.F.R.I) Department, dated 15.03.1994, on the basis of which the impugned order dated 30.06.2016 is passed. Since the impugned order was passed by the second respondent on the basis of the Government Order and in the absence of the challenge to the said Government Order, it cannot be said that the impugned order is bad in law.

In view of the above, the Writ Petition is dismissed at the admission stage. However, this will not prevent the third respondent from engaging the services of the petitioner, if they so choose, without claiming any aid from the Government.

(A.RAMALINGESWARA RAO, J)

09.08.2016
vs

[\[1\]](#) (2010) 9 SCC 209

[\[2\]](#) 2015 (3) SLR 437 (Cal.)