

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
07.02.2017	20.02.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.40 OF 2017 &
CMP No.567 of 2017

1.A.Somasundaram .. Appellant/Petitioner

-vs-

1.The Secretary to Government
Home Department,
Government of Tamil Nadu
Fort St.George, Chennai 9.

2.The Director General of Police
Tamil Nadu
Mylapore, Chennai 4.

3.The Inspector General of Police,
Intelligence,
Mylapaore, Chennai 4.

.. Respondents/Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 29.09.2016 rendered in W.P.No.31358 of 2014.Praying for issuance of Writ of Certioriarified mandamus calling for the respondent relating to the order passed by III Respondent in C.No.Estt.I(1)/SB/360/013726/2013, DATED 15.07.2014 and quash the same and correcte the petitioners dated of birth as 29.11.1960

For Appellant : Mr.M.Venkatachalapathy
Senior Counsel
for Mr.Louisal Ramesh

For Respondents : Mr.R.Prathap Kumar
Govt.Advocate

J U D G E M E N T

This Writ Appeal, under Clause 15 of the Letters Patent, has been preferred questioning the order pronounced by the learned Single Judge, on 29.09.2016, in W.P.No.31358 of 2014.

2.FACTUM OF THE CASE:

(a) The writ petitioner in his sworn affidavit has stated that he was born on 29.11.1960, in Purasaiwalkam Police Lane, Chennai and his date of birth had been registered with the Corporation of Chennai, as 01.12.1960. Accordingly, his parents prepared his horoscope, but, at the time of admitting the Writ Petitioner in the School, the parents of the petitioner informed his date of birth as 02.01.1959, instead of 29.11.1960.

(b) Mr.M.Venkatachalapathy, learned Senior counsel appearing for the appellant submits that the writ appellant studied 6th standard in the year 1972, passed out the S.S.L.C., during the year 1978-79 and Plus Two course in the year 1981. The petitioner completed his under graduation in Economics, in New College, Chennai-14, during the academic year 1983-86 and thereafter in September 1987, he joined the Police service in the cadre of Sub-Inspector of Police, by way of direct recruitment. Subsequently, through promotions, the writ petitioner is presently working as Deputy Superintendent of Police, under the control of the Inspector General of Police (Intelligence), Mylapore, Chennai-4.

(c) The contention of the learned Senior Counsel is that till the year 2005, the writ petitioner was under the impression that his correct date of birth was 02.01.1959, and the same was recorded in all his School Records. Further, he had no knowledge about the said entry with regard to his date of birth with the corporation of Chennai and the horoscope prepared by his parents. The father of the writ petitioner passed away on 7.12.2001 and after few years, when he found a box which was used by his father, traced out his horoscope, showing his date of birth as 29.11.1960. Subsequently, the writ petitioner approached the Corporation of Chennai and obtained a copy of his birth certificate. On receipt of the same, the writ petitioner approached the third respondent with a request for correction of his date of birth in all his service records, as 29.11.1960 instead of 02.01.1959. The third respondent rejected the request

made by the writ petitioner in proceedings No.A1/Sec/14790/355/2005 dated 09.06.2015, stating that the Application seeking alteration of date of birth cannot be entertained, after a lapse of five years from the date of appointment into service.

(d) Being dejected by the order of the third respondent, the writ petitioner filed a Civil Suit before the 8th Assistant City Civil Court, Chennai, in O.S.No.847 of 2006. The relief sought for in the Civil Suit is to declare the correct date of birth of the writ petitioner as 29.11.1960 and a consequential direction was also sought for to correct the said date in his School Records and also in the Service Records. The Civil Court framed the following issues :

"1.Whether the plaintiff is entitled to get declaration and injunction as prayed for ?

2.Whether the suit is barred by limitation ?

3.Whether the defendants 1 to 3 are not necessary parties to the suit as alleged by the defendants ?

4.To what relief the plaintiff is entitled to ? "

After considering the documents and evidence produced by the writ petitioner, the Civil Court decreed the Suit partly by declaring the correct date of birth of the plaintiff as 29.11.1960, and the other consequential relief of direction sought for by the writ petitioner was however not granted, as the question of altering the date of birth in the Service Records was left open to the respondents herein.

(e) The writ petitioner based upon the Civil Court decree, approached the third respondent through his representations dated 22.10.2007 and 18.02.2008. However, the Deputy Inspector General of Police, CID, Intelligence, Chennai-4, in his proceedings in RC No.A1/Sec/3851/718/2010, dated 29.10.2010, rejected the request of the writ petitioner, as detailed below:

ENDORSEMENT

"You have filed O.S.No.847 of 2006, before the City Civil Court, Chennai for changing the date of birth as 29.11.1960.

The following judgment was pronounced on 24.07.2007 in the above suit.

'The suit is partly decreed by declaring that the date of birth of plaintiff is only 29.11.1960 and not on 02.01.1959. The other reliefs of direction to defendants to decide on their administrative side.'

Though your date of birth has been partly decreed by declaring as 20.11.1960, your request for changing date of birth in this departmental records is not feasible, as you had applied for the same after a lapse 17 years of service which there is no provisions in the rule."

Upset with the rejection order issued by the Deputy Inspector General of Police, CID (Intelligence), Chennai, the petitioner approached the Director General of Police through his representation dated 29.02.2012 and the same was disposed of by the Director General of Police in his proceedings Rc.No.41856/NGB.V(1)/2012 dated 31.03.2012, by assigning the reasons, as extracted below:

ENDORSEMENT

"As per Ruling 49(b) of TNPSS, it is clear that an application to alter date of birth shall be entertained only if such application is made within five years of entry into service. Rule 49 (c) further lays down that an application received after 5 years shall be summarily rejected.

2) Rule 49(d) which has been quoted by the petitioner applies to cases where alteration of birth is permitted viz., when an application is received within 5 years. The provision is Rule 49 (d) has to be read along with 49(b) and 49(c). The petitioner request cannot, therefore, be conceded."

After exhausting the appeal remedy before the Director General of Police, the petitioner again filed a Petition before the Inspector General of Police (Intelligence), Chennai-4, who by proceedings C.No.Estt.I(1)/SB/360/013726/2013, dated 15.10.2014, rejected the claim made by the petitioner. The said order dated 15.07.2014, is extracted hereunder:

ENDOERSEMENT

"You have submitted a grievance petition to the Inspector General of Police (Intelligence) requesting to alter your date of birth as 29.11.1960, instead of 02.01.1959. Though your date of birth has been partly decreed by declaring as 29.11.1960, your request for changing date of birth in his departmental record is not feasible, as you had applied for the same alter a lapse of 25 years of service which there is no provisions in the rule. This fact was already informed to you as per this office endorsement Rc.No.Estt I (1)/SB/47/005371/2012 dated 17.04.2012."

Thereafter, the writ petitioner filed the writ petition in W.P.No.31358 of 2014, challenging the order passed by the third respondent on 15.07.2014, and for a consequential direction to correct the date of birth in his Service Register as 29.11.1960, instead of 02.01.1959.

(f) The third respondent filed a counter affidavit in the Writ Petition, narrating the facts and contended that the writ petitioner was appointed as Reserve Sub-Inspector of Police on 28.09.1987, by direct recruitment and at the time of entering into service his date of birth was recorded as 02.01.1959, as per the School Records and he was promoted to the post of Deputy Superintendent of Police and as such working in that capacity and after a lapse of 27 years of his service, has chosen to alter his date of birth based on record, which cannot be accepted. The third respondent further contended that the request for alteration of date of birth ought to have been submitted within a period of five years from the date of appointment to the service, as per Rule 49(b) of General Rules (Part II) for the Tamil Nadu State and Subordinate Service Rules. The rejection order was originally passed in Endorsement No.A1/Sec/14790/355/2005 dated 09.06.2005. Further the Suit filed by the writ petitioner in O.S.No.847 of 2006 was partly decreed, by declaring the correct date of birth of the plaintiff as 29.11.1960. However, no other direction as sought for by the writ petitioner was granted, as it is for the Department to act on the basis of the declaration made in the Suit. Pursuant to the decree of the Civil Court, the second respondent namely the Director General of Police, Mylapore, Chennai-4, in his Memorandum in R.C.No.13724/NGB V(1)/2010 dated 08.10.2010, instructed the Deputy Inspector of Police, CID Intelligence to

issue an endorsement to the writ petitioner that his request for alteration of his date of birth is not feasible, since the Application to change the date of birth was submitted after a lapse of 17 years from the date of joining the service and there was no provision for such alteration of date of birth.

(g) As per Rule 49 (c) of the Tamil Nadu State and Subordinate Services Rules, the time limit prescribed for submission of an application to alter the date of birth of the Government employee is five years from the date of entry into service. Therefore, as the writ petitioner joined the service on 28.4.1987 and filed the application seeking alteration of date of birth after a lapse of 17 years, cannot be entertained as per the Rules stated supra.

(h) Citing the above reasons, an endorsement in Rc.No.Estt ((1)/SB/47/05371/2012 dated 17.04.2012, was also issued to the writ petitioner on 18.04.2012. Even after receipt of those orders of rejection issued earlier, the writ petitioner, had made a further representation on 15.10.2013. The same was rejected by order dated 15.07.2014, which was challenged in W.P.No.31358 of 2014.

3. The core issue to be considered in the present Writ Appeal is as to whether the Writ Appellant is entitled for alteration of date of birth in his service record on the basis of Civil Court decree. The Writ Appellant admittedly had recorded his date of birth as 02.01.1959, in all his Service Records right from his initial appointment in the Department on 28.09.1987 and that the application seeking alteration of date of birth was made at the first instance by the Writ Appellant only in the year 2005. The rejection order issued by the Deputy Inspector General of Police on 09.06.2005, and 17.04.2012, were not challenged by the Writ Appellant in any Writ Petition. Contrarily, he has chosen to challenge only the last rejection order dated 15.07.2014, issued by the third respondent, despite the fact that all the three rejection orders, including that of the order of the Director General of Police relating to the very same relief sought for by the Writ Petitioner were available.

4. Further, the Writ Petitioner has challenged the order passed by the third respondent who is subordinate to the second respondent. When the second respondent-Director General of Police rejected the Application seeking alteration of date of birth through his instruction dated 08.10.2010, the challenge to

the last rejection order of the third respondent in the Writ Petition is wholly untenable. It implies acceptance of the rejection order dated 08.10.2010, passed by the Director General of Police and by allowing it to become final.

5. Mr.M.Venkatachalapathy, learned Senior Counsel elaborately argued that the writ petitioner was actually born on 29.11.1960 and further the date of birth in his School Records were wrongly entered by his parents, which he had no knowledge till the year 2005 and only after the demise of his father in the year 2007, he was able to trace out the records, including the horoscope. Further, the learned Senior Counsel submitted that mere prescription of five years period of limitation cannot be a ground nor will it preclude the writ petitioner from approaching the authorities, seeking alteration of date of birth, and the authorities ought not to have rejected the genuine request of the writ appellant on technical grounds. The further contention is that the respondents have failed to consider the case of the writ appellant on merits and in accordance with the decree granted by the Civil Court in O.S.No.847 of 2016. Contrarily, the respondents have rejected the claim of the writ appellant repeatedly, on the ground that the period of limitation of five years prescribed under Rule 49 (c) of the Tamil Nadu State and Subordinate Service Rules and the writ appellant approached the Department after a lapse of 25 year from the date of entry into service. The respondents failed to travel beyond that point, by verifying the genuinity of the records produced by the writ appellant showing that his date of birth was 29.11.1960.

6. The learned Senior Counsel appearing for the appellant in support of his contentions relied upon the decision of the Hon'ble Supreme Court in HIGH COURT OF ANDHRA PRADESH v. N.SANYASI RAO [(2012) 1 SCC 674], in which the Hon'ble Supreme Court has elucidated the principles in paragraph Nos. 14,15, 19 & 20. For better appreciation, the said paragraphs are quoted herein below:

"14. Strangely, in the present case, no determination of the Judicial Officer's date of birth was made as contemplated and required in Rule 2 of the 1984 Rules. The District Judge, Vishakhapatnam on opening the service register of the Judicial Officer mentioned both the dates namely; March 29, 1953 based on the decree and also July 1, 1949 based on the Secondary School

Leaving Certificate. Nothing has been shown to us by the learned counsel for the appellant about the firm date of birth recorded in the service record of the Judicial Officer. As a matter of fact, there has been no determination of the date of birth of the Judicial Officer at all and, therefore, the Division Bench, in the impugned order observed and, in our view rightly, that the judicial officer had not asked for any alteration in the date of birth but his prayer had been for recording correct date of birth in the relevant service record. Curiously, the Judicial Officer has placed on record two half yearly lists of the members of the Andhra Pradesh Higher Judicial Service, corrected up to July 1, 2003 and July 1, 2004. The Judicial Officer had already become member of the Higher Judicial Service by that time and in both these lists published by the High Court of Andhra Pradesh, the Judicial Officer's date of birth has been shown as March 29, 1953. In the impugned resolution rejecting the representation of the Judicial Officer, no reasons have been stated. It is a non-speaking order on its face. For about nine years, the High Court on the administrative side, sat over the representation made by the Judicial Officer. Treating the Judicial Officer's date of birth as July 1, 1949, the High Court on the administrative side issued an order on June 8, 2009 that the Judicial Officer would retire from the service on attaining the age of superannuation of 60 years on June 30, 2009 and, accordingly, the Judicial Officer has been made to retire on that date.

15. In M. Vijaya Bhaskara Reddy (supra), this Court was concerned with a case where the Judicial Officer-M. Vijaya Bhaskara Reddy was appointed as District Munsif on August 16, 1976. He made a declaration that his date of birth was June 15, 1948. M. Vijaya Bhaskara Reddy then applied for change of his date of birth to August 15, 1949. When nothing was done after giving the notice under Section 80 of the Code of Civil Procedure, 1908, he filed a suit which was decreed on March 31, 1982. He then made a representation for implementation of the decree. His representation came to be rejected which was challenged by him in a Writ Petition. The High Court by an order dated September 3, 1987 directed the State Government to

consider the representation made by him and when nothing was done within a reasonable time, he filed yet another Writ Petition before the High Court. That Writ Petition was allowed by the Single Judge of the High Court vide order dated April 13, 1993 and a direction was given that the decree of the Court has got to be honoured and entries in the service register of M. Vijaya Bhaskara Reddy have got to be made accordingly.

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19. In our view, the resolution in respect of the present Judicial Officer also suffers from all the three fundamental infirmities which have been noticed by this Court in M. Vijaya Bhaskara Reddy. However, having regard to the peculiar facts and circumstances of the present case, we feel it appropriate that the High Court must determine on the administrative side the Judicial Officer's date of birth. This has become unavoidable as nothing has been shown to us that there has been determination of the Judicial Officer's date of birth as contemplated and required in Rule 2(2) of the 1984 Rules.

20. Certain materials have been placed on record by the High Court on the administrative side in this appeal. One of such materials is that the Judicial Officer got admitted in 6th standard in 1961-62 and it was not possible that somebody born on March 29, 1953 would be in 6th standard in 1961-62 as at that time, he would hardly be 8-9 years old. We do not want to comment on such material. However, we strongly feel that the High Court on the administrative side must objectively determine the Judicial Officer's age in accordance with the statutory provisions which is not shown to have been done at any point of time, after giving an opportunity to the Judicial Officer."

7. On plain reading of the above paragraphs of the Hon'ble Supreme Court, it is unambiguous that the case referred by the learned Senior Counsel has no application either on facts or on law, in respect of the case on hand. Hence, the ratio of the Judgment referred to above cannot be applied to the facts and

circumstances of the case of the writ appellant.

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8. In order to consider the arguments advanced by the learned Senior Counsel, this Court was anxious to look into the documents produced by the writ appellant in the typed set of papers filed along with the writ appeal. The Legal Heirship Certificate dated 20th February, 2002, shows that the writ appellant's parents are blessed with two sons and one daughter. The Birth Certificate issued by the Corporation of Chennai enclosed at page 7 of the typed set of papers portrays that the date of birth of the appellant was registered on 01.12.1960 and his name was shown as Somasundaram. In page No.14 of the typed set of papers, the Birth Certificate of the elder brother of the writ appellant Mr. Thanigavel was enclosed, which was issued by the Corporation of Chennai, in Sl.No.CAB 241411 dated 26.06.2007 and his date of birth is mentioned as 22.03.1955. Similarly, the Birth Certificate found in page No.15, issued by the Corporation of Chennai in Sl.No.CAB 241409 shows that a female baby was born on 01.08.1957 and that certificate was again issued on 26.06.2007, without mentioning the name of the child. So also in Certificate No.Sl.No.CAB 241407, the name of the male child was not mentioned and only the date of birth was entered as 03.01.1959. In Sl.No.241372, the name of the male child was shown as A.Gubera Krishnan, and the date of birth was mentioned as 18.03.1963. And in the Birth Certificate in Sl.No.CAB 241374, the name of female child R.Rubalya Devi was mentioned and the date of birth was stated as 15.01.1966.

9. The whole analysis of the above certificates portrays that all the above Birth Certificates were issued by the Corporation on the same day i.e. 26.05.2007, and it is peculiar to note that only in certain Birth Certificates, they have mentioned the name of the child, while the others did not carry any name. Thus, the Birth Certificates of the brothers and sister obtained by the writ appellant after many years, cannot be entertained or taken as a reliable document, so as to alter the date of birth of the writ appellant in his Service Records. Therefore, the contention of the learned Senior Counsel that the documents are not considered, deserves no consideration at this length of time, in view of the fact that those documents were considered even in the Civil Suit by the Civil Court, while passing the decree and the Civil Court refused to grant the consequential relief sought for by the writ appellant, rightly so and therefore, this Court is not inclined to appreciate the arguments advanced by the learned Senior Counsel in respect of

non-consideration of the documents by the respondents while rejecting the Application seeking alteration of date of birth.

10. The learned Government Pleader, appearing for the respondents vehemently opposed the contentions raised by the learned Senior Counsel that the writ appellant had not challenged the original rejection orders passed by the second and third respondents. Further, the writ appellant entered into the Police Service in the year 1987 and he has not chosen to alter his date of birth within a period of five years from the date of entry into service and therefore, his petition was summarily rejected under Rule 49(c) of the Tamil Nadu State of Subordinate Service Rules. The learned Government Advocate also contended that the appellant has filed the writ appeal only with a view to gain some more period of service, which cannot be entertained by the respondents, after a period of 25 years and as per the Rules cited supra.

11. The writ appellant has not made out a case either factually or on legal principle. Primarily, the application seeking alteration of date of birth itself was barred by limitation, as contemplated under Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules. Though the Civil Court decreed the Suit filed by the writ appellant, declared the date of birth of the writ appellant as 29.11.1960, but had not granted the consequential relief of altering the same in the Service Records and the Civil Court had rightly done so. The Civil Court cannot issue such a consequential relief to correct the said date in the School Leaving Certificate and in the Service Records, which is governed by the Service Rules of the respondent-State.

12. The Hon'ble Apex Court and the High Courts empathetically ruled the principles on the subject of alteration of date of birth of the employees of the Union of India and the States and few Judgments on the subject are extracted hereunder:

(i) The Hon'ble Supreme Court in UNION OF INDIA v. HARNAM SING [1993 AIR 1367], stated as follows:

"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 dispersed 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 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 the 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 to 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."

(ii) In UNION OF INDIA & ORS v. KANTILAL HEMATRAM PANDYA [1995 SCC (3) 17], the Hon'ble Supreme Court as held as follows:

"9.....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 scrutinized 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. "

(iii) In SECRETARY & COMMISSIONER, HOME... v. R.KIRUBAKARAN [AIR 1993 SC 2647], the Hon'ble Apex Court emphatically stated as follows:

"4. 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 and for calculating the date 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 dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not.

5. 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.....

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... "

सत्यमेव जयते

(iv) In STATE OF U.P. AND ORS v. SMT.GULAICHI [2003 (6) 483], the Hon'ble Supreme Court held as follows:

Usually, no interference is called for when findings of fact are recorded by the Trial/Appellate Court and the High Court, more so, when the issue is decided in Second Appeal. But where the Courts below loose sight of statutory provisions or act on irrelevant or inadmissible materials, and ignore relevant materials, interference is not impermissible.

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. 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.....

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.

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

loose 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....."

(v) In STATE OF PUNJAB v. ORS. v. S.C.CHADHA [2004 (3) SCC 394], the Hon'ble Supreme Court has stated as follows:

"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 loose 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. "

(vi) In THE REGISTRAR GENERAL, HIGH COURT OF MADRAS v. M.MANICKAM AND ORS [2011 (9) SCC 245], it has been stated as follows:

17. This Court has time and again cautioned the civil courts and the High Courts against entertaining and accepting the claim made by the employees long after entering into service for correction of the recorded date of birth. In Union of India v. Harnam Singh this Court considered the question whether the employer was justified in declining the respondent's request for correction of the date of birth made after thirty-five years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the original application filed by him. While reversing the order of the Tribunal, this Court observed: (SCC pp. 167-68, para 7)

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.....”

“30. In State of Punjab Vs. Mohinder Singh reported in (2005) 3 SCC 702, this Court had occasion to deal with the evidentiary value of horoscope as proof of date of birth. It was held in that decision that a horoscope is very weak piece of material to prove age of a person and in most of the cases the maker may not be available to prove that it was prepared immediately after the birth and therefore a heavy onus lies on the person who wants to press it to prove its authenticity. It was further held that in fact a horoscope to be treated as evidence in terms of Section 32(5) of Evidence Act, 1872, it must be proved to have been made by a person having special means of knowledge as regards authenticity of the date, time etc. mentioned therein. In that context horoscopes have been held to be inadmissible in proof of age.”

(vii) In STATE OF M.P. & ORS. v. PREMLAL SHRIVAS [2011 (9) SCC 664], the Hon'ble Supreme Court in paragraph No.9, has stated as follows:

“9. 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 1 (2010) 6 SCC 482 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. "

(viii) In an unreported Judgement of the Hon'ble Supreme Court in HINDUSTAN LEVER v. S.M.JADHAV & ANOTHER [(Civil Appeal 1720 OF 1999 DATED 21.03.2001)], it has been held as follows:

"We have heard the parties. It is settled law that at the fag end of career, a party cannot be allowed to raise a dispute regarding his date of birth. The case of the 1st Respondent that he had intimated the Company in 1953 itself is not believable. In the application, which had been filed by the 1st Respondent he himself had given his date of birth as 12th of June, 1927 and also mentioned that his age as 25 years. On the basis of this application and the Matriculation Certificate the Manager had issued a certificate. Thereafter his service record, Provident Fund Booklet and even the Annual Reports contained the 1st Respondent's date of birth as 12th June, 1927. It is impossible to believe that for all these years the 1st Respondent was not aware of the date of birth in his service record or the Provident Fund Booklet. It is impossible to believe that he has not read a single Annual Report in all these years. If, as claimed by him, he had informed the Company in 1953, he would surely have made some enquiry whether the service record was corrected. This would have been done, if not earlier, at least at the time when the settlement took place between the Union and the Company. That was the time when other employees were getting their age corrected and therefore it is impossible to believe that the 1st Respondent would not have at that time ascertained what his date of birth was in the service record. "

(ix) In STATE OF TAMIL NADU v. T.V.VENUGOPALAN [1994] SCC (6) 302], it has been held as follows:

"4.Rule 49 and 49-A of the Rules provide the procedure and limitation for seeking correction of

the date of birth by the government employees. Rule 49(b) provides that after a person has entered in service, an application to alter his date of birth, as entered in the official records, "shall be entertained only if such an application is made within five years after entering in service..... If any such application has been made earlier or before the expiry of five years from the date of the entry into the service, it is incumbent upon the authorities to enquire into the claim for correction of the date of birth mentioned in the service record and to pass appropriate order in that behalf. 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.

5.....

6.....

7. As held by this Court in Harnam case², Rule

49 Is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force, i.e., 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth....."

(x) In BURN STANDARD CO. LTD., & ORS v. SHRI DINABANDHU MAJUMDAR & ANR [1995 SCC (4) 172], paras 10 & 11, the Hon'ble Supreme Court has stated as follows:

"10. Entertaining 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 entertaining 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 his 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. Extra-ordinary 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 will be 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 its 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.

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following: When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the

service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases Interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."

(xi) In G.M.BHARAT COKING COAL LTD., v. SHIB KUMAR DUSHAD & ORS [2000 (8) SCC 696], the Hon'ble Supreme Court has stated as follows:

"Before entering into the question of validity and sustainability of the judgment passed by the single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy

over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer..... The date of birth of an employee is not only important for employee but for the employer also. On the length of III service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained in due course of administration should not generally be accepted....."

(xii) Further, in CHIEF MEDICAL OFFICER v. KHADEER KHADRI [1995 SCC (2) 82], the Hon'ble Supreme Court has held as follows:

"4."No doubt, sub-rule (5) of the Rule 2 of the Andra Pradesh Public Employees (Recording and Alteration of Date of Birth) Rules, 1984, provides power for correction of the bonafide mistake in recording the date of birth. It can not be said that it is clerical mistake. The date of birth having been given and recorded in the service register as early as in 1951, it was a bonafide mistake. The respondent claimed that he discovered the mistake in 1991 that his date of birth instead is July 16, 1934, but it was recorded as November 14, 1933. 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 bonafide one but to have the corrections 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. O.A. stands dismissed. No costs."

13. Further, in the unreported Division Bench Judgement of this Court in SUNDARAMURTHY v. THE CHIEF SECRETARY [W.P.No.24989 of 2015 dated 13.08.2015], the Division Bench has elaborately dealt with all these aspects relating to the alteration of date of birth and the line of cases decided by the Hon'ble Apex Court in this regard and 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 Applicationx must be made within the time provided in the rules, say, as five years, as in the present case.

14. In the case on hand, the Rule stipulates five years of period from the date of initial appointment and therefore, the writ appellant has miserably failed to adduce any valid or cogent reasons for such enormous delay in approaching the competent authorities, seeking alteration of date of his birth.

15. For all the reasons enumerated above, the Writ Appellant has not made out any legally acceptable ground for interference by this Court. Accordingly, the order passed by the learned single Judge in W.P.No.31358 of 2014 dated 21.09.2016, is confirmed and the Writ Appeal stands dismissed, as devoid of merits. There will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Secretary to Government
Home Department,
Government of Tamil Nadu
Fort St.George, Chennai 9.

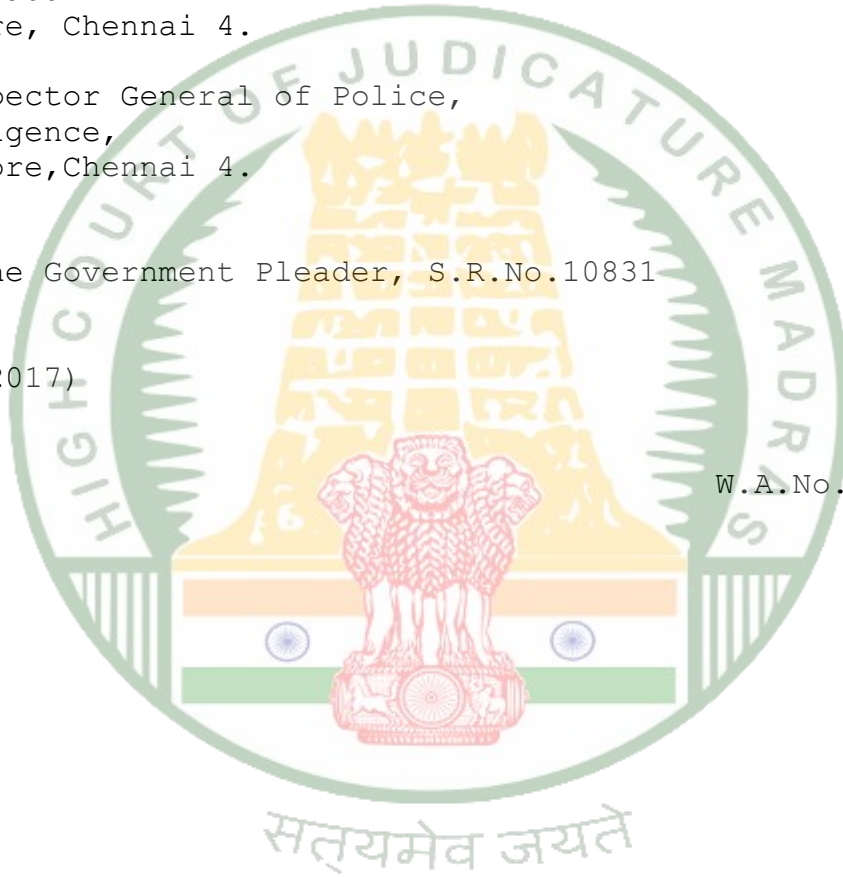
2.The Director General of Police
Tamil Nadu
Mylapore, Chennai 4.

3.The Inspector General of Police,
Intelligence,
Mylapaore, Chennai 4.

+1cc to the Government Pleader, S.R.No.10831

SSI (CO)
RS (18/04/2017)

W.A.No.40 OF 2017



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