

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.8950 of 2010

Date : 04.04.2017

Between :

Puppala Venkata Subba Rao, s/o. late Seshaiah,
Aged 54 years, Occu: Employee, r/o. Dwaraka Tirumala,
Eluru District.

.... Petitioner

And

The Andhra Pradesh Mineral Development Corporation Ltd.,
rep.by its Vice-Chairman and Managing director,
Pancom Business Centre, II & III Floors, 8-3-945,
Ameerpet, Hyderabad and another.

.....Respondents



The Court made the following:

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ORDER:

Petitioner joins service of the respondent company as Daily Wage Worker/Mechanical Helper on 16.06.1974. His services were regularized on 12.06.1980. Petitioner earned promotions as Mine-mate, Foreman, General Foreman (Mine), Assistant Manager (Mine) and as Deputy Manager (Mine). He retired from service on attaining the age of superannuation on 31.12.2010 while working as Deputy Manager as per the date of birth recorded in the service record. According to petitioner, his actual date of birth is 28.07.1956, whereas erroneously it was recorded as 28.07.1952.

2. It appears, 32 other employees working in the respondent-company represented to their Union that their date of births were wrongly recorded in the service records and that has seriously impacted their Provident Fund claims. The Union espoused their cause. The Assistant Labour Commissioner acted as Arbitrator and passed award permitting 32 employees to change their date of births. The award of Assistant Labour Commissioner was approved by the Board of Directors of respondent-company in its meeting held on 27.07.2005 and it accorded permission to modify the date of birth of those employees. Having come to know about the said decision of the Board, petitioner submitted application pointing out that he studied upto 6th Class and Transfer Certificate issued by the School on 20.06.1967 would show date of birth of the petitioner as 28.07.1956. According to the petitioner, in Form-B, his date of birth was recoded as 01.07.1956 and the same was also reflected in the Identity Card issued to him. In the

Employees Provident Fund Application also, his date of birth was shown as 01.07.1956 and the same was continuously reflected in Provident Fund Register. Petitioner further asserts that his parents were blessed with four daughters and five sons. He is eighth child of his parents. His immediate elder sister was born on 01.07.1954. His younger brother was born in 1961. The relevant records of his family members would clearly disclose that there is wrong entry of date of birth insofar as he is concerned. The birth certificate issued on 28.07.2008, after conducting enquiry by the Mandal Revenue Officer, Bapatla, would also show that wrong date of birth was recorded in the service register. The request of the petitioner for alternation of date of birth was rejected by the Board of respondent company. Hence, this writ petition.

3. Heard Sri Krishna Mohan Sikharam, learned counsel for petitioner and Sri Y.Sudhakar, learned standing counsel for respondents.

4. Learned counsel for petitioner contended that when the request for correction of date of birth was entertained for 32 employees similarly situated to the petitioner, rejection of the request of petitioner amounts to arbitrary exercise of power. He would further submit that there are discrepancies in the entry of dates of birth in various certificates and, therefore, petitioner's case ought to have been considered positively and if necessary, case ought to have been referred to examination by Medical Board and could not have been rejected summarily. By referring to the dates of birth of the family members and entries made in the

various certificates, he, therefore, submitted that it is clear that wrong date of birth was entered in the service record.

5. Learned counsel for the petitioner submitted that in Mining Mate Certificate dated 31.12.1976, petitioner date of birth was shown as 27.08.1953. Further, the letter of the Assistant Commissioner of Provident Fund dated 12.02.2009 would show that in Provident Fund records, his age was recorded as 20 years as on i.e., 01.10.1976. By pointing out to various documents, learned counsel for petitioner contended that date of birth as recorded in the service record was erroneous and petitioner is entitled to same relief as extended to 32 other employees.

6. Learned standing counsel submitted that at the time of entry into service, on assessment of date of birth, the date of birth of the petitioner was recorded in the service record as born on 28.07.1952. Petitioner has attested the entries made in the service register. Petitioner did not protest on the entry made in the service register. Petitioner started agitating about entry of date of birth for the first time only in the year 2008.

7. He would submit that petitioner has never raised his grievance when other employees' claims were considered. He would submit that the claims of 32 employees were considered in the peculiar facts of those cases. There were discrepancies in the dates of birth recorded in the service records and in the Provident Fund Accounts and unless

discrepancy was resolved, the employees would suffer in receiving appropriate provident fund benefits. Therefore, Union espoused their cause and having considered the award passed by the Assistant Labour Commissioner, their claims were examined. This is not the grievance of the petitioner. Petitioner only sought to contend that his date of birth should be altered as was altered to other employees.

8. He would submit that reliance is placed on various documents to contend that there are discrepancies in the entry of date of birth. He would submit that in the Matriculation Certificate, his date of birth was recorded as 28.07.1952, which was reflected in the Mine Foreman's Certificate and the same is recorded in the service record. The entry made in Transfer Certificate from Primary School or in the Provident Fund records, or Mining Mate Certificate or in Identity Card, cannot be the basis to seek correction of date of birth. He further submitted that the details of family members of the petitioner cannot be the basis to correct the date of birth.

9. Basic facts are not in dispute. Petitioner entered service as Daily Wage Worker in 1974 and his services were regularized in the year 1980. At the time of regularization of his services, service book was opened. In service book, his date of birth was entered as 28.07.1952. Petitioner authenticated the entry made in the service book. Even

according to the averments made in the affidavit filed in support of the writ petition, it is not the case of petitioner that he has objected to the entry made in the service register soon after the service register was opened or immediately thereafter and even according to the reckoning of the petitioner, though date is not specifically mentioned on which representation was made, it appears to have been made in the year 2008, which is just two years before his retirement. This representation was examined by the Board and rejected the request of the petitioner.

10. It appears from the reading of the affidavit filed in support of the writ petition as well as the counter-affidavit that there is no consistent entry of date of birth in the various documents relied upon by the petitioner to support his contention. The main reliance by the petitioner is on certificate issued by the Revenue Divisional Officer dated 23.07.2008 holding the date of birth of the petitioner as 28.07.1956 and birth certificate issued by the Municipality on 28.07.2008 showing the date of birth as 28.07.1956. It is thus clear that just about two years before his retirement, petitioner obtained the birth certificate to show as if he was born on 28.07.1956 and made the claim for alternation of date of birth. Earlier, this Court called for B-Register of the petitioner and on perusal, the Court recorded in its order dated 30.03.2016 that B-register showed the age of the

petitioner as 41 years as on 29.06.1993, which correspondence to the date of birth as recorded in the service register.

11. Facts as noted above disclose that petitioner for the first time started making claim for alteration of date of birth at the fag end of his service. It is also relevant to note that though petitioner joined as Daily Wage employee, he progressed upwards and by the time he retired from service, he was working in the cadre of Deputy Manager. Even according to the petitioner's own admission, he obtained Matriculation Certificate from Andhra University in March, 1983, where under his date of birth was recorded as 28.07.1952. Petitioner sought to contend that he was forced to declare his date of birth as 28.07.1952, while applying to the University in view of the entry of date of birth in service record. Even assuming what is contended by the petitioner is right, at least in the year 1983, petitioner was aware that his date of birth was shown in the service register as 28.07.1952 and he ought to have applied then for correction of date of birth if, according to him, wrong entry was made in the service record. These facts mitigate against the claim of the petitioner for alteration of date of birth.

12. Learned counsel for petitioner placed heavy reliance on the decision of this Court in WP No.9977 of 2008. The said decision do not come to his aid. The facts as recorded in the

said judgment would disclose that there was an alteration of date of birth in the service record of the employee concerned. The original date of birth recorded as 12.09.1956 was later altered to 01.07.1950, subsequently amended to 12.08.1951. This alteration was held illegal by the Court. This is not a case of alteration of date of birth by the employer, but petitioner seeks such alteration.

13. It is settled principle of law that even if an employee has a valid service grievance and employer has denied the service benefit to which employee is legally entitled, he cannot sleep over such right and make a belated claim. The delay and laches, more particularly in matters concerning alteration of date of birth is fatal to a claim. No claim for such alteration can be made proximate to date of retirement.

14. In **State of Madhya Pradesh Vs. Premlal Shrivastava¹**, Supreme Court found upon entertaining belated claims to correction of entry of date of birth in service record. Supreme Court held:

“10. In *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] 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

¹ (2011) 9 SCC 664

at the time of the 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 Ikrarnama" 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.

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."

(emphasis supplied)

15. In **Eastern Coalfields Limited Vs. Bajrangi Rabidas**²

Supreme Court held as under:

".....It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised "to reach injustice wherever it is found". In *Sangram Singh v. Election Tribunal* [AIR 1955 SC 425 : (1955) 2 SCR 1] , it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well-known principle that one of the ends of equity is to promote honesty and fair play..... (paragraph 19"

² (2014) 13 SCC 681

16. In **Sundilla Lingaiah v. Singareni Collieries Company Limited**³, the issue of belated claim for correction of date of birth was considered. It was also a belated claim and writ petition was filed one year after the notice of retirement was issued and just about the time of retirement. This Court considered the precedent decisions on the subject of correction of entry of date of birth in service record, and rejected the claim for correction of date of birth. This Court held that petitioner could not have waited for one year after notice of retirement was served to file writ petition.

17. I am in agreement with the view taken by learned single Judge of this Court in **Sundilla Lingaiah**.

18. No case is made out to issue direction to correct the date of birth entry in the service record of petitioner. The claim in the writ petition is also hit by delay and laches. I see no merit in the writ petition. For all the aforesaid reasons, writ petition fails. It is accordingly dismissed.

Miscellaneous petitions, if any pending, are stand closed.

There shall be no order as to costs.

JUSTICE P NAVEEN RAO

Date: 04.04.2017

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³ 2016 (4) ALT 407

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