

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No.444 OF 2017

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Appeal, under clause 15 of Letters Patent, is preferred against the dismissal order dated 20.03.2017 passed in Writ Petition No.34969 of 2016 by the learned Single Judge.

2. The parties hereinafter are referred to as arrayed in the Writ Petition.

3. The Writ Petition was filed under Article 226 of the Constitution of India seeking a direction in the nature of writ of *mandamus* declaring the action of respondent No.1 in issuing proceedings in Rc.No.473/UMC-2/2016 dated 26.09.2016 and the proceedings in Rc.No.12578/D2/2016 dated 04.10.2016 issued by respondent No.2 refusing to entertain the request of the appellant-writ petitioner for correction of his date of birth as per medical certificate date 11.09.1983 issued by the hospital and the date of birth certificate dated 03.09.2016 issued by the Registrar of Births and Deaths, Warangal Municipal Corporation, Warangal District and returning original SSC memo along with proposal for correction of date of birth, as arbitrary, void, illegal and in violation of Article 21 of the Constitution of India; and a consequential direction to the respondents to pass appropriate orders for correction of date of birth of the petitioner as per the said certificates.

4. The case of the petitioner is that he was born on 04.09.1982 to Sri V.Ch.Satyanarayana and Smt. Mumtaz Jahan Begum in Christian

Hospital, Hanamkonda, Warangal District, the Medical Officer gave a certificate on 11.09.1983 showing his date of birth as 04.09.1982, his date of birth was entered in the register of births maintained by the Warangal Municipal Corporation. The petitioner also obtained a certificate from the said Corporation on 03.09.2016 showing the same date of birth. His parents sent him to a private teacher for education and later on his father admitted him in III standard in St. Johns High School (English Medium) at Kazipet during the year 1989. However, his father mistakenly entered his date of birth as 04.05.1982 instead of 04.09.1982. He passed SSC in 1997, Intermediate in 1999, B.Sc. in 2002 and M.Sc. (Microbiology) in 2004 from Kakatiya University with the said date of birth. It is his case that his incorrect date of birth was continued in the academic records due to wrong entry made at the time of admission in the school. Now he states that he is preparing for Civil Services Examination for which the upper age limit is 35 years. He further states that he has submitted an application on 06.09.2016 to the Principal of St. Johns High School, Kazipet, for correction of his date of birth and the same was forwarded to the Deputy Educational Officer, Warangal, through letter dated 08.09.2016. The Deputy Educational Officer submitted a report to respondent No.2 on 15.09.2016 stating that the mistake occurred due to the entry made by the clerk at the time of admission on request of the parent and Principal from St. Johns High School, Kazipet, Warangal District. Respondent No.2, in turn, forwarded the said report to respondent No.1 through letter dated 19.09.2016. Respondent No.1 issued proceedings on 26.09.2016 communicating to respondent No.2, who in turn, communicated to the petitioner on 04.10.2016 rejecting the request for correction of date of birth, as the application for correction was made after lapse of 19 years and not within the stipulated time of three years as per the orders issued in G.O.Ms.No.430,

Education Department, dated 31.12.1992. Challenging the same, the petitioner preferred the writ petition.

5. Heard Sri J. Sudheer, learned counsel for the appellant-writ petitioner, and the learned Government Pleader for School Education for the State of Telangana, appearing on behalf of the respondents.

6. Learned counsel for the appellant-writ petitioner would submit that the statutory register maintained under the Births and Deaths Act has to be given credence over the date of birth mentioned in the school records; when there is a conflict between the date of birth as per the school records and the register maintained by the Registrar of Births and Deaths, credibility should be given to the date of birth register; the learned Single Judge dismissed the writ petition even without holding that the date of birth shown in the birth register of the writ petitioner is fake and the documents filed before the Court are fabricated one; the learned Single Judge failed to appreciate the judgment of the Hon'ble Supreme Court in **Mohd. Yunus Khan v. U.P. Power Corporation Limited and others**¹; by alteration of date of birth as per the birth register of the petitioner, the petitioner would gain just four months and may attend UPSC Civil Services Examination; the findings of the learned Single Judge are erroneous and not supported by the facts and circumstances of the case; and ultimately, prayed to set aside the impugned order and allow the writ petition as prayed.

7. On the other hand, learned Government Pleader for School Education, would submit that an application is filed to change the date of birth with a delay of 19 years; as per the G.O.Ms.No.430, dated 31.12.1992, the

¹ (2009) 1 SCC 80

applicant is required to make an application within three years for any change or alteration and there are number of decisions of the Hon'ble Supreme Court not to accept the request of belated applicants. He would further submit that the Hon'ble Supreme Court in **State of Tamil Nadu v. T.V.Venugopalan**² held that the administrative decision cannot be overruled by the Tribunal; in **Chief Medical Officer v. Khadeer Khadri**³, it was held that the request for change of date of birth can be considered only if it is filed within the statutory period; in **Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman**⁴, it was held that three years period provided in the Regulations is a reasonable period; and since the petitioner failed to apply for correction within the specified period, his request could not be considered.

8. The learned Single Judge, having examined the decisions cited on behalf of both sides, held that in the instant case, the petitioner completed Post Graduation on the basis of the date of birth mentioned in the school records at the time of admission; he cannot attribute lack of knowledge; this writ petition was filed only when he realized that he would be crossing the maximum age prescribed by the UPSC for attending Civil Services examination; based on the date of birth recorded in the school records, the petitioner has taken several steps; therefore, no direction can be given in the instant case, based on those birth certificates, after lapse of 19 years; it is well known that the law will come to the rescue of the diligent but not an indolent; and ultimately, dismissed the writ petition, vide the order dated 20.03.2017.

² (1994) 6 SCC 302

³ (1995) 2 SCC 82 : 1995 (29) ATC 196

⁴ (2003) 12 SCC 408 : 2003 (10) SCALE 892

9. The point for determination is, whether the petitioner is entitled to correct his date of birth as 04.09.1982 from 04.05.1982?

10. The contention of the petitioner is that his father has wrongly got entered his date of birth at the time of his admission into school as 04.05.1982 instead of 04.09.1982. Admittedly, the petitioner had given the said date of birth, i.e., 04.05.1982, from the day one of his joining school till completion of his Post Graduation. He made an application to correct his date of birth to the school authorities in the year 2016, he has not made any application prior to that to correct his date of birth. The contention of the writ petitioner is that the decision rendered in **Mohd. Yunus Khan's** case (supra 1) is squarely applies to the case on hand. In the said case, two employees were having same names, the younger employee is shown as older and the older employee is shown as younger and that there is record to show that the mistake occurred as the two employees were of same name and that the petitioner therein having come to know the same immediately, filed departmental representation for correction of date of birth and that there was also evidence to show their documents were mixed up and due to that, another person's date of birth was recorded in the writ petitioner's service register and that was allowed to be corrected by the Hon'ble Supreme Court. These facts and circumstances are distinct to the present case and the said decision has no application to the case on hand.

11. Admittedly, the petitioner had born in the year 1982. Till the year 2016, he has not taken any steps to correct his date of birth from 04.09.1982 to 04.05.1982. He passed SSC in the year 1997, he repeatedly given his date of birth as '04.09.1982' till an application is made in the year 2016 for correction of his date of birth. As per G.O.Ms. No.430, dated 31.12.1992, the

period allowed to file an application to change or alter the date of birth is three years. The petitioner did not avail the benefit envisaged under the said G.O. His contention is that his father had given wrong date of birth at the time of his admission into the school. First time, he has raised the same in the year 2016. As seen from the decisions relied on by the learned Government Pleader for School Education, when there is a statutory period to correct the date of birth, the said period is required to be availed by the aggrieved person. The application made by the writ petitioner is not in tune with the decisions rendered above. Even in the copy of medical certificate dated 11.09.1983 issued by the Medical Officer, Christian Hospital, Hanamkonda, Warangal District, wherein it is mentioned that one Smt. Mumtaz Jahan Begum, daughter of Mr. Hymad, was admitted in that hospital on 04.09.1982 and was discharged on 11.09.1982, during that period, she delivered a live male baby on 04.09.1982 at about 1-40 a.m. In the said certificate, the father's name of petitioner is not mentioned and the address of Smt. Mumtaz Jahan Begum is also not mentioned. There is no explanation as to why the said certificate was dated 11.09.1983, though Smt. Mumtaz Jahan Begum was admitted in the said hospital on 04.09.1982 and discharged from the hospital on 11.09.1982. Therefore, it is not safe to accept the said certificate dated 11.09.1983. Moreover, there is enormous delay in filing the application to correct the date of birth. The learned Single Judge has given a categorical finding, elaborating all the aspects and the said finding is based on the material available on record and no different opinion can be substituted. In an intra-Court Appeal, under Clause 15 of the Letter Patent, interference is justified only if the order under appeal suffers from a patent illegality. There are no merits in the appeal and the same fails. Accordingly, this point is answered against the appellant-writ petitioner.

12. In the result, the Writ Appeal is dismissed confirming the order under appeal, dated 20.03.2017 passed in W.P. No.34969 of 2016.

13. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: 20-04-2017
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