

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.38111 of 2016

Order: *(per V.Ramasubramanian, J.)*

Aggrieved by an order of the Andhra Pradesh Administrative Tribunal refusing to direct the respondents to make necessary corrections in the service records relating to his date of birth, the petitioner has come up with the above writ petition.

2. Heard Mr. C.V. Mohan Reddy, learned senior counsel appearing for the petitioners and the learned Government Pleader for Services (AP) for respondents.

3. The petitioner was selected and appointed as Divisional Accounts Officer in the Finance Department of the State of Andhra Pradesh and he joined service on 10-07-1987. He was promoted as Divisional Accounts Officer Grade-I on 21-07-1997 and as Assistant Pay and Accounts Officer with effect from 29-08-2006. He was later promoted as Pay and Accounts Officer with effect from 25-04-2008 and as joint Director of Works Accounts with effect from 10-05-2010.

4. At the time of the petitioner's entry into service, his date of birth was entered in the Service Record as 18-12-1956, on the basis of the entry found in the Secondary School Leaving Certificate (SSLC). It appears that the petitioner made a representation on 04-08-1987, within one month of his entry into service, seeking the correction of the entry relating to his date of birth from 18-12-1956 to 18-12-1957, on the ground that as per the Birth Register Extract, his

correct date of birth was 18-12-1957 and that even in the records relating to his elementary education, his date of birth was correctly entered, but while issuing a transfer certificate, the clerk of the 7th respondent School made a wrong entry, which resulted in the SSLC certificate reflecting a wrong date of birth. According to the petitioner, the said representation made on 04-08-1987 was not disposed of for nearly 27 years, forcing him to make one more representation on 22-01-2014. The petitioner claims that on the said representation, the 2nd respondent called for a report from the 7th respondent on 22-04-2014. But no action was taken, but by memo dated 10-03-2015, the 1st respondent informed the 2nd respondent that the alleged mistake was not a mistake committed in the Service Record but a mistake that took place at the School. Therefore, the 1st respondent opined that the representation of the petitioner did not merit consideration.

5. Aggrieved by the stand taken by the 1st respondent, the petitioner filed an application in O.A.No.1178 of 2016 on the file of Andhra Pradesh Administrative Tribunal. The Tribunal dismissed the application by a final order dated 22-09-2016. Therefore, the petitioner has come up with the above writ petition.

6. Mr. C.V. Mohan Reddy, learned senior counsel appearing for the petitioner contended,-

- a) that the rejection of the claim of the petitioner both by the official respondents as well as by the A.P. Administrative Tribunal on the ground that the mistake in the entry relating to

the petitioner's date of birth was beyond correction, as it had happened in School, was completely contrary to law;

- b) that in as much as the claim made by the petitioner was within the parameters stipulated by the statutory rules, the respondents ought to have been examined the same on merits without adopting a pedantic approach;
- c) that the non-examination of the claim of the petitioner as prescribed by the statutory rules, was a serious error of law committed by the respondents;
- d) that after having invited a report from the School and after obtaining a report from the 7th respondent School, the respondents ought to have carried the same to its logical end.

7. In support of his contention that bona fide mistakes in the Service Register have to be corrected, Mr. C.V. Mohan Reddy, learned senior counsel for the petitioner relied upon a decision of the Division Bench of this Court in *C. Thimmaiah v. State of Andhra Pradesh and others*¹ and the decision of the Supreme Court in *Bharat Coking Coal Limited and others v. Chhota Birsra Uranw*².

8. We have carefully considered the above submissions.

9. As seen from the sequence of events pleaded by the very petitioner himself, his date of birth was entered as 18-12-1957 when he joined the 7th respondent School. It appears that the petitioner studied in the 7th respondent School up to 3rd class. He later shifted to the 6th respondent School where he pursued 4th standard and 5th standard. As per the extract from the Admission and Withdrawal

¹ 2010 (4) ALD 16 (DB)

² (2014) 12 SCC 570

Register issued by the 6th respondent School, the petitioner joined the 4th standard in the 6th respondent School on 29-06-1965 and left the 6th respondent School on 01-06-1967 after completing 4th and 5th standards. The Extract of Admission and Withdrawal Register issued by the 6th respondent School filed by the petitioner himself shows that even the 6th respondent School entered his date of birth as 18.12.1956. In other words, the alleged mistake as to the date of birth of the petitioner crept in, way back on 29-06-1965, at the time of admission to the 6th respondent School. This mistake was carried throughout his High School from 7th class to 10th class and even thereafter.

10. It is not the case of the petitioner that he ever made an attempt to have his school records corrected, either when he was in School or when he was in College. The first ever attempt appears to have been made by the petitioner, on 20-07-1984, when he joined service in the Bharat Heavy Electricals Limited (BHEL). It appears that after a brief stint with BHEL, the petitioner appeared for selection through Andhra Pradesh Public Service Commission for appointment to the post of Divisional Accounts Officer and joined service on 10-07-1987.

11. It may be true that the petitioner made an application within a month of joining service, on 04-08-1987 itself. But we do not think that the same would be of any help to the petitioner, since there was no way the department could have corrected the date of birth in the Service Record, without a correction of the entry in the school records. The date of birth of an employee, as indicated in the

Service Register, cannot be in conflict with the date of birth as entered in the school records. The correction of the entry in the school records was absolutely necessary before the petitioner could seek a correction in his Service Register. This is in view of the fact that if the correct date of birth of the petitioner was 15-12-1987, he would have completed only 14 years and 3 months of age in March, 1972, when he appeared for the SSLC examination. There are some States, which stipulate an age of 15 years for a person to be eligible to take the SSLC examination. We are not suggesting for a moment that the petitioner's date of birth could not be 18-12-1957. All that we are pointing out is that in the background of this fact, it was necessary that the petitioner took recourse to legal remedies for correction of the entry relating to the date of birth in the School records first before seeking alteration of the entry in the Service Register.

12. Another flaw in the case of the petitioner is that after making a representation on 04-08-1987 (within a month of entry into service), the petitioner admittedly did not do anything up to January, 2014. There is no explanation on the part of the petitioner for his inaction for a period of about 27 years. This delay is of vital significance, in view of the fact that the petitioner is occupying a post of higher status and responsibilities and any acceptance on the part of the department of his claim after such a long time would certainly have an impact upon the career prospects of others. As per the law laid down by the Supreme Court, the Government has to keep this fact also in mind while dealing with stale claims, kept in cold storage

for a long time. Merely because a person made a claim within a month of entry into service, it cannot be said that the claim was not belated. While the failure to make a claim at the earliest point of time will make the claim a stale one, the inaction on the part of a person to pursue a claim for 27 years will also make it one that was kept in cold storage to rot.

13. Coming to the contention of the learned senior counsel with reference to the Rules, it is seen that the claims relating to alteration of date of birth are governed by a set of statutory rules known as Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rules 2 and 3 of these Rules deal with the procedure for recording the date of birth of an employee. Rule 4 deals with the procedure for alteration of date of birth in past cases. These Rules came into effect on 21-04-1984. Since the petitioner entered service on 10-07-1987, there is no doubt that Rule 2 will apply.

Rule 2 of the Rules reads as follows:

- “i) Every Government employee shall, within one month from the date on which he joins duty, make a declaration as to his date of birth.
- ii) On receipt of the declaration made under sub-rule (1), the Head of Office or any other officer who maintains the service records in respect of such Government employee shall, after making such enquiry as may be deemed fit, with regard to the declaration and after taking into consideration such evidence, if any, as may be adduced in respect of the said declaration, make an order within four months from the date on which the Government employee joins service, determining the date of his birth.

Provided that in cases where the date of birth as determined under this sub rule is different from the one declared by the Government employee concerned under sub-rule (1), he shall be given an opportunity of making a representation, before final order is made.

3) Where a Government employee fails to make a declaration within the time specified in sub-rule (1), the Head of Office or the officer who maintains the service records shall, after taking into consideration such evidence as may be available and after giving an opportunity of making a representation to the Government employee concerned, determine the date of birth of the employee within six months from the date on which the Government employee joins service.

4) The date of birth determined under this rule shall be entered in the service record of the employee concerned duly attested by the Head of the Office or the officer who maintains the service records and the date of birth so entered shall be final and binding and the Government employee shall be stopped from disputing Ac. Correctness of such date of birth.

5) The date of birth as determined and entered in the service record shall not be altered except in the case of confide clerical error, under the orders of Government Procedure in recording date of birth of employees appointed before the commencement of these rules.....”

14. It is contended by Mr. C.V. Mohan Reddy, learned senior counsel for the petitioner that under Rule 2, there are obligations cast upon an employee as well as the Head of Office. In the first part of Rule 2, an obligation is cast upon the Government employee to make a declaration as to his date of birth within one month of joining duty and a corresponding obligation is imposed upon the Head of Office to make an enquiry after giving an opportunity of making a representation before a final order is made. In the second part of Rule 2, an obligation is imposed upon the Head of Office or the Officer who maintains the Service Records, to determine the date of birth of the employee, within six months of entry into service, in cases where an employee fails to make a declaration as per the first part of Rule-2.

15. In other words, the contention of the learned senior counsel for the petitioner is that if the petitioner is deemed to have made a declaration on 04-08-1987, when he made a representation

to enter the correct date of birth, then the Head of Office ought to have followed the procedure prescribed under the proviso to Rule 2 (ii). In case the respondents did not consider the representation of the petitioner dated 04-08-1987 as a declaration within the meaning of Rule 2 (i), then the Head of Office was under an obligation to determine the date of birth under the latter part of Rule 2 after an opportunity of hearing. Since the Head of Office did not do both, it is contended by Mr. C.V. Mohan Reddy, learned senior counsel that there was a total infraction of the Rules.

16. But we do not think so. Admittedly, the petitioner was selected by the Andhra Pradesh Public Service Commission after subjecting him to a process of selection. The selection was based upon the particulars furnished by the petitioner in his application form submitted to the Public Service Commission. Since selection to any post is based upon several facts including the date of birth, qualifications, roster point relating to reservation etc., the particulars furnished in the application should be taken to be the declaration made by an employee. Thereafter, any claim made by him for alteration of date of birth, should be treated only as a dispute. Since the dispute was not with reference to anything done by the employer but something that had happened at the school level, the petitioner cannot rest his claim upon the procedure prescribed in Rule 2.

17. In the course of hearing of the writ petition, the learned Government Pleader for Services (A.P.) produced a true copy of the application form submitted on 15-07-1968 by the father of the petitioner to Zilla Parishad High School, for admission of the

petitioner to the 7th standard. *Prima facie*, it appears that the application form was filled up by the father of the petitioner in his own handwriting. Interestingly, the petitioner's father was himself a teacher of Zilla Parishad High School. He had declared in the said admission form, the date of birth of the petitioner to be 18-12-1956. We do not know why the petitioner's father indicated the date of birth of the petitioner to be 18-12-1956, at the time when he admitted the petitioner to the 7th standard. We do not know whether the same was done by the petitioner's father, to legalise the admission of the petitioner into the 7th standard, by showing the petitioner to have attained 12 years of age in July, 1968. Though we do not wish to enter into conjectures and surmises, we would like to point out that the mistake was not on the part of the School Authorities of the 7th respondent School while issuing a Transfer Certificate. The petitioner's father himself has done this when admitting the petitioner to the 7th standard on 15-07-1968.

18. Drawing our attention to the Pupils' Admission Form where the name of the petitioner was entered at S.No.307, it was contended by the learned senior counsel for the petitioner that the mistake was on the part of the clerk who mixed up the details of the petitioner with the student at S.No.308. But unfortunately for the petitioner, the petitioner's father himself has reaffirmed this mistake, on 15-07-1968 when he filled up the form for admission into the 7th standard in his own handwriting.

19. Coming to the decisions relied upon by the learned senior counsel, it is seen from the decision in *C. Thimmaiah's case* that the

Division Bench of this Court proceeded mainly on the basis of the presumption available in respect of the entries made in the Register of Births and Deaths. As seen from paragraph 9 of the decision of the Division Bench, the petitioner before the Division Bench claimed that his parents were illiterates. But in the case on hand, the petitioner's father was himself a teacher in the same School in which he admitted him for the 7th standard. More over the Division Bench of this Court had not taken note of in *C. Thimmaiah's case*, several decisions of the Apex Court cautioning the Tribunal as well as the High Courts from entertaining claims for alteration of date of births towards the fag end of the career. Therefore, the decision in *C. Thimmaiah's case* is of no assistance to the petitioner.

20. The decision of the Supreme Court in *Bharat Coking Coal Limited* arose under very peculiar circumstances. In the said case, the date of birth of the employee was recorded at the time of his first entry into service as 06-02-1950, on the basis of the SSLC. But while transferring him to another Project, his date of birth was recorded as 15-02-1947. Thus there were 2 sets of records in conflict with each other. More over the employee was a workman category employee covered by the National Coal Wage Agreement-III. Therefore, the Court held that it was the company's omission and not the inaction of the employee that led to the dispute being raised at a belated stage. Therefore, the said decision cannot be of any assistance to the petitioner.

21. As a matter of fact, the Supreme Court reiterated in *Bharat Coking Coal Limited*, the views expressed in *Home Department v. R.*

Kirubakaram (1994 Supp (1) SCC 155) to the effect that the application for correction of the date of birth should not be dealt with keeping in view only in public service concerned. Therefore, we do not think that the Tribunal committed any mistake in refusing to grant relief to the petitioner.

22. Therefore, we are of the considered view that the order of the Tribunal does not call for any interference. Hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

G.SHYAM PRASAD, J

Date: 02-01-2017

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