

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

WRIT PETITION No.34969 of 2016

Between:

Ch.Chinnakishore Venukoti.

....Petitioner

and

The State of Telangana,
Rep.by its Commissioner & Director of School Education,
Beside Telephone Bhavan,
Lakdi-ka-pool,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 20.03.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ WRIT PETITION No.34969 of 2016

% 20.03.2017

Ch.Chinnakishore Venukoti.

...Petitioner

vs.

\$ The State of Telangana,
Rep.by its Commissioner & Director of School Education,
Beside Telephone Bhavan,
Lakdi-ka-pool,
And others.

... Respondents

!Counsel for the Petitioner : Sri J.Sudheer

^Counsel for the Respondents : GP for Revenue
GP for School Education

<Gist :

>Head Note :

? Cases referred

1. (1994) 6 SCC 302
2. (1995) 2 SCC 82 : 1995 (29) ATC 196
3. (2003) 12 SCC 408 : 2003 (10) SCALE 892
4. (1980) 3 SCC 393
5. (1980) 3 SCC 402
6. 1988 (Supp) SCC 269
7. 1989 Supp (1) SCC 393
8. (2008) 5 SCC 328
9. (2009) 7 SCC 283
10. (2009) 1 SCC 80
11. 2010 (4) ALD 16 (DB)
12. 2013 AIR CC 2642
13. 2015 (3) ALD 530

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.34969 of 2016

ORDER:

Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

The petitioner states that he was born to his parents on 04.09.1982 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. He 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 the second respondent 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. The second respondent, in turn, forwarded the said report to the first respondent through letter dated 19.09.2016. The first respondent issued proceedings on 26.09.2016 communicating to the second respondent, 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 3 years as per the orders issued in G.O.Ms.No.430, Education Department, dated 31.12.1992. Challenging the same, the present Writ Petition is filed.

A counter affidavit is filed on behalf of the respondents stating that as per G.O.Ms.No.430, dated 31.12.1992, the Director of School Education is empowered to entertain and effect correction or alterations in respect of applications for correction or alteration of date of birth in the completed certificates of SSLC/HSC/HS(MP)/SSC. But, the said request cannot be entertained after a period of three years from the date of completion of the course. The registration of births and deaths is governed by the Registration of Births and Deaths Act and it has nothing to do with the correction of dates of birth

entered in the certificates. In G.O.Ms.No.383, dated 16.11.1993, it was clearly stated that in respect any proceedings before the Government or any Court, Tribunal or other authority for any alteration of date of birth in the service records, the decree of the Civil Court in regard to alteration of date of birth in the School or the University records or the contents in the judgments leading to such decree or the effect of its implementation shall not be taken into consideration in derogation to the rules. It is also stated that the Supreme Court in **State of Tamil Nadu v. T.V.Venugopalan**¹ held that the administrative decision cannot be overruled by the Tribunal. In **Chief Medical Officer v. Khadeer Khadri**² 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**³ it was held that three years period provided in the Regulations is a reasonable period. Since the petitioner failed to apply for correction within the specified period, his request was not considered.

A reply affidavit was filed by the petitioner stating that the principles applicable to the service law with regard to alteration of date of birth are not applicable to the instant case. It is also stated that the Government retains its power to relax in spite of stipulation of period and the clinching and irrevocable evidence cannot be thrown away on technical grounds. It is further

¹ (1994) 6 SCC 302

² (1995) 2 SCC 82 : 1995 (29) ATC 196

³ (2003) 12 SCC 408 : 2003 (10) SCALE 892

stated that when there is a conflict between the school records and statutory records, the statutory records should prevail, and in the instant case, the birth extract is a statutory record.

Learned Counsel for the petitioner submitted that the rules shall not stand in the way of the Government considering the request of the petitioner based on the birth certificate issued by the competent authority. He further submitted that the period of three years should be reckoned from the date of knowledge and the petitioner came to know of the same only when he applied for the date of birth certificate, which was issued to him on 03.09.2016. He relied on **Shri Amrik Singh v. Union of India**⁴, **R.R.Verma v. Union of India**⁵, **K.Prasad v. Union of India**⁶, **State of Maharashtra v. Jagannath Achyut Karandikar**⁷, **State of Karnataka v. R.Vivekananda Swamy**⁸, **CIDCO v. Vasudha Gorakhnath Mandevlekar**⁹, **Mohd.Yunus Khan v. U.P.Power Corporation Limited**¹⁰, **C.Thimmaiah v. State of Andhra Pradesh**¹¹, **Parveen Malik v. Central Board of Secondary Education**¹² and **Gogineni Gnana Jyothi @ Gogineni Gnana Jothieswar v. State of Andhra Pradesh**¹³.

Learned Government Pleader submitted that in view of the existing rules which provide for correction of date of birth in the

⁴ (1980) 3 SCC 393

⁵ (1980) 3 SCC 402

⁶ 1988 (Supp) SCC 269

⁷ 1989 Supp (1) SCC 393

⁸ (2008) 5 SCC 328

⁹ (2009) 7 SCC 283

¹⁰ (2009) 1 SCC 80

¹¹ 2010 (4) ALD 16 (DB)

¹² 2013 AIR CC 2642

¹³ 2015 (3) ALD 530

certificates within three years of passing the concerned examination, the authorities have no jurisdiction to make necessary correction even if the certificate produced by the petitioner is genuine.

In the instant case, the petitioner was directly admitted to third standard in St. Johns High School (English Medium) at Kazipet during the year 1989. At the time of admission his date of birth was shown as 04.05.1982 instead of 04.09.1982. On the basis of the said date of birth he completed M.Sc. (Microbiology) in April 2004. Now he wanted to appear for Civil Services Examination where the upper age limit is 35 years. He initiated the process for correction of date of birth by applying to the Principal, St. Johns High School, Kazipet, on 06.09.2016 based on the date of birth certificate obtained by him on 03.09.2016. His request was forwarded by the Principal of the School to the Deputy Educational Officer on 08.09.2016 along with necessary enclosures and the Deputy Educational Officer in turn forwarded the record to the District Educational Officer on 15.09.2016. The District Educational Officer recommended the case of the petitioner on 19.09.2016 to the Director of School Education stating that the mistake occurred because of the act of the parent. The Director of School Education issued proceedings on 26.09.2016 returning the proposals stating that the correction cannot be carried out after lapse of 19 years. Consequential order was passed by the District Educational Officer on 04.10.2016 directing the Deputy Educational Officer,

Warangal, to handover the proposals along with the original certificates.

The only point that arises for consideration in the present case is whether the request of the petitioner for correction of the date of birth in the educational certificates issued by the competent authorities can be directed to be corrected after a period of 19 years?

G.O.Ms.No.1263, Education Department, dated 06.05.1961, deals with correction of date of birth in completed Secondary School Leaving Certificates, Higher Secondary Certificates and Higher Secondary (Multipurpose) Certificates. The said Rules are applicable for making correction of the date of birth in the said certificates. The said Rules were amended from time to time by G.O.Ms.No.1130, dated 28.09.1981, and G.O.Ms.No.1348, dated 15.12.1981. But, the Rule relating to limitation for applying for alteration of date of birth has not been changed. No power of relaxation is contained in the said Rules. Rule 11 of the said Rules reads as follows:

“The Director of School Education is empowered to entertain and effect corrections or alterations in respect of the applications for the corrections or alterations of the date of birth in a completed Secondary School Leaving Certificate, Higher Secondary Certificate, Higher Secondary (Multipurpose) Certificate, S.S.C. However, no application for such corrections/alterations of Date of Birth in the said completed certificates shall be entertained after a period of three years from the date of completion of the said course.”

In Rule 12 it is specifically stated that in respect of persons already in Government service those rules are not

applicable and they have to follow the procedure prescribed in G.O.Ms.No.50, Finance and Planning (F.R.I) Department, dated 10.02.1976. This clearly shows that the rules are applicable to the persons who are not in Government service and it prohibits entertainment of applications after a period of three years from the date of completion of the course. No one can claim consideration of his case without challenging the said rule. On this ground alone, the present Writ Petition is liable to be dismissed.

The case in **Shri Amrik Singh** (supra) deals with power of relaxation contained in Rule 3 of the All India Services (Conditions of Service – Residuary Matters) Rules, 1960. Hence, it is not applicable to the facts of this case. Similarly, **R.R.Verma's** case (supra) also deals with the same aspect. In the said decision, the justifiability of placing such a rule of relaxation was considered. Those decisions were considered in the latter decision of **K.Prasad's** case (supra). The cases of **Jagannath Achyut Karandikar** (supra) and **R.Vivekananda Swamy** (supra) are also cases of relaxation of Rules.

CIDCO (supra) is a case relating to the entry of date of birth in the service records. On the facts of that case, the Supreme Court held that the organization is bound by the date of birth shown in the official records. In the said decision, though it was held that deaths and births register maintained by the statutory authorities raises a presumption of correctness,

such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act and would prevail over an entry made in the school register. The aid of such observations cannot be taken in the present case, which is initiated after 19 years.

In **Mohd.Yunus Khan's** case (supra) the Supreme Court noticed that no time frame was prescribed by the Rules and as it found that there was still four more years of service left to the employee and the employee having applied for correction immediately after coming to know of the mistake, it was held that the case of the employee requires to be considered. The relevant observations are as follows:

“No material has been placed before us in regard to existence of a statutory rule fixing a time-frame for filing an application for correction of the date of birth in the service record. Even if there was such a provision, the same, in our opinion, would not be of much significance as the respondents had not shown that the mistake in the matter of recording of date of birth in the service record was known to the appellant at any earlier point of time. If the appellant's contention is correct that he came to learn about it only in April 1988 whereafter he filed a representation, it must be held that there was no delay on his part in this behalf. An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer.”

In **C.Thimmaiah's** case (supra) a Division Bench of this Court considered **CIDCO's** case (supra) and on the given facts of that case directed the District Collector to consider the representation of the petitioner therein. The period of limitation for correcting the date of birth did not come up for consideration in the said case.

Similarly, in **Parveen Malik's** case (supra) the learned single Judge of Punjab and Haryana High Court discussed the effect of by-law 69.2 (iv) of the respondent board which contains the period of two years provided under the rules for applying for correction of date of birth.

The case of **Gogineni Gnana Jyothi** (supra) relates to the correction of clerical/typographical mistake. In the said case the date of birth was correctly mentioned in various school records, but only in the case of Secondary School Certificate it was wrongly printed. In those circumstances, the Writ Petition was allowed by directing the respondents to verify the school records from primary level to Class X and for correction of SSC records including the SSC certificate by showing the correct date of birth. The facts in the present case are thus different.

The Supreme Court in **T.V.Venugopalan** and **Khadeer Khadri** cases (surpa) upheld the orders of the Government rejecting the request for correction of dates of birth long after the expiry of the prescribed period specified in the rules. In **Mohd.Sarifuz Zaman's** case (supra), the Supreme Court upheld the prescription of three year period in the regulations for correction of date of birth. In the said case, the student applied for correction of his date of birth within 8 years of passing the matriculation examination. The relevant observations of the Supreme Court are found in the following paras:

“10. Nobody can claim a right to have an entry corrected in a certificate solemnly issued by an educational institution, that too the one enjoying the

status of a statutory Board under the Act. The right of the applicant to have an error or mistake corrected is accompanied by a duty or obligation on the part of the Board to correct its records and the certificate issued by it. Not only it is a corresponding duty or obligation, it has also to be perceived as a power exercisable by the Board to correct an entry appearing in the certificate issued by it. People, institutions and government departments etc. - all attach a very high degree of reliability, near finality, to the entries made in the certificates issued by the Board. The frequent exercise of power to correct entries in certificates and that too without any limitation on exercise of such power would render the power itself arbitrary and may result in eroding the credibility of certificates issued by the Board. We, therefore, find it difficult to uphold the contention that the applicants seeking correction of entries in such certificates have any such right or vested right.

11. Lastly, the submission cannot also be countenanced that the regulatory measure engrafted into the Regulations on the subject of correction of errors in the certificates is absolute in nature. The Regulation permits correction but subject only to reasonable restrictions.

12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled and uncertainty is lost. Regulation 8 confers a right on the applicant and a power coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through the Inspector of Schools who would verify the school records and submit report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass order for correction is vested on a high functionary like Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of certificate.

13. Three years period provided by the Regulation, is a very reasonable period. On the very date of issuance of the certificate the concerned student is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The

student would realize within no time that the date of birth as entered in the certificate is not correct, if that be so, once the certificate is placed in his hands. Based on the certificate the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down of a dividing line before which the power of the Board to make correction ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be received, may open a Pandora's box. Records may not be available and evidence may have been lost. Such evidence - even convenient evidence - may be brought into existence as may defy scrutiny. The prescription of three years' bar takes care of all such situations. The provision is neither illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution."

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 might have taken several steps during the past years and though there cannot be any dispute with regard to the birth certificate issued by the proper authority supported by evidence of the hospital authorities, no direction can be given in the instant case based on those 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.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

20.03.2017
vs

