

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.29030 of 2017

R.Arulprakasam

.. Petitioner

Vs

1. The Senior Divisional Manager,
Life Insurance Corporation of India,
Chennai Divisional Office-I,
8th Floor, LIC Building,
Anna Salai, Chennai-002.

2.The Marketing Manager,
Life Insurance Corporation of India,
Chennai Divisional Office-I,
8th Floor, LIC Building,
Anna Salai, Chennai-002.

3.The Senior Branch Manager,
Life Insurance Corporation of India,
City Branch No.IX, Jeevan Deep,
48, Pondy Bazaar,
Chennai-600 017.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to alter the date of birth of the petitioner as 01.02.1960 instead of 05.06.1958 in the service records of the petitioner.

For Petitioner : Mr.Balan Haridas
for M/s.G.Pugazhenth

For Respondents : Mr.R.S.Anandan, Standing Counsel

ORDER

The case of the petitioner is that he joined in the service of the respondent Life Insurance Corporation of India as a Development Officer on 24.07.1986 indicating his date of birth 05.06.1958 as it was in the SSLC of the petitioner. But during

the marriage of the petitioner solemnized thereafter, he came to know from the horoscope of him that he was born on 01.02.1960. He thereafter, also on enquiry came to know that his such date of birth has also been registered as 01.02.1960 with the Registrar of Birth and Death, Srimushnam, Government of Tamilnadu. The petitioner as such made a representation soon after coming to know about the same, i.e., on 09.05.1990 to the first respondent to correct his date of birth in his Service Record to be 01.02.1960 indicating the details to substantiate his claim. The second respondent, vide letter dated 25.09.1990 asked him to clarify some more details and also the proof and the petitioner accordingly clarified the same on 22.09.1990. Then the first respondent vide letter dated 04.02.1991, asked the petitioner to submit the original date of birth of his sister and brother to which the petitioner also complied vide letter dated 09.02.1991 and the same was responded with the reply that the same has been send for verification to the Branch Manager of LIC, Chidambaram but thereafter, the petitioner received no intimation. The petitioner also in all subsequent documents such as Adhar Card, PAN Card, Driving Licence and Pass Port has shown his date of birth to be 01.02.1960. But no action was taken to alter his date of birth. Hence, the petitioner has filed the present writ petition seeking a direction to the respondent to make the correction in his service record substituting his date of birth as 01.02.1960 instead of 05.06.1958.

2. In the Counter affidavit filed though it is not disputed that the petitioner had made such a representation for correction of his date of birth on 14.05.1990, but according to the respondent since his date of birth in the SSLC has been reflected as 05.06.1958, which the petitioner had also supplied while entering into the service and inspite of the asking of the respondents vide letter dated 04.05.1992 to the petitioner to get his date of birth corrected by the authority in the SSLC Certificate to do the needful, the petitioner did not comply with the same, now the petitioner's prayer in the writ petition after 25 years seeking the relief is devoid of merit moreso when the date of birth as stated to be date of birth of the petitioner would have made him ineligible to sit in the SSLC examination and get the Certificate inasmuch as he would have been under aged person if his date of birth is taken into consideration to be 01.02.1960 to sit in the examination. Therefore, according to the respondents, the writ petition filed by the petitioner seeking the relief at this belated stage is devoid of merit.

3. Learned counsel appearing for the petitioner during the course of hearing submits that since the petitioner had made a representation within a reasonable period and also complied with

a direction of the respondent by supplying the necessary documents as called for and it was intimated to the petitioner that his case is under enquiry, thereafter also in the Branch Office record maintained it has been recorded that the petitioner was born on 01.02.1960 and it is only after the communication of the second respondent to the third respondent to clarify the discrepancy with regard to the date of birth of the petitioner as maintained in the service record with the second respondent as 05.06.1958 and with the third respondent as 01.02.1960, he came to know that his has not been corrected in spite of his representation made dates back in the year 1990, he came to file this writ petition seeking the relief and as such the objection made for correction of his date of birth on the ground of delay by the respondents is without any substance. The respondents being guilty of inaction cannot take advantage of the same on the ground that the petitioner having not challenged such inaction within a reasonable period, has no case. Furthermore, when there is discrepancy in the records maintained by the respondent with regard to the date of birth more particularly when the petitioner had disputed his entry in the service record with regard to his date of birth to be 05.06.1958 on the foundation of the SSLC Certificate with all promptitude and also in another service record the date of birth which the petitioner claim to be 01.06.1960 has been reflected before accepting the date of birth of the petitioner to be 05.06.1958 and retiring the petitioner from service, the respondents should have given a chance to the petitioner for hearing inasmuch as the principle of audi alteram partem, a salutary principle of natural justice demands the same. The same having not been adhered to in the case of the petitioner, the decision of the respondents accepting the date of birth of the petitioner as 05.06.1958 and retiring the petitioner from service is liable to be quashed and the respondents be directed to reinstate the petitioner into service and allow him to continue till he attains the age of superannuation, recording his date of birth as 01.02.1960. To buttress the aforesaid submissions, reliance has been placed by the counsel for the petitioner, on a decision of the Apex Court in the case of State of Orissa Vs. Dr.(Miss) Binapani Dei & Others, reported in AIR 1967 (SC) page 1269. In the case of Binapani, she gave declaration of her date of birth while entering into the service, as 10.04.1910, which was recorded in her service record. Thereafter, on receipt of certain complaint that she has not provided her correct date of birth, an enquiry was conducted, wherein the respondent in the reported decision was asked to show cause and accordingly, she furnished her show cause indicating that her date of birth was correctly recorded in the service register. However, the Government held her date of birth given at the time of entry in the service to be incorrect and holding the same that her date of birth was

16.04.1907, in stead of 10.04.1910, as entered in the service register and accordingly, her service was reviewed on attending the age of 55 years on the basis of such corrected date of birth, as contemplated in the relevant service rule and she was compulsorily retired. The same being challenged before the Orissa High Court in a Writ petition, the High Court held such decision of the Government to be contrary to law inasmuch as even if the decision taken has visited the first respondent (the writ petitioner) no opportunity was given to her before taking such decisions. Therefore, the order being suffering from the vice of violative of principles of natural justice, cannot be sustained and as such quash such decision of correcting the date of birth and consequently, the order of compulsory retirement on the basis of review on attaining the age of 55 years made by the Government on such corrected date of birth. The same being challenged before the Apex Court by the State on the ground that the correction of date of birth being involving a disputed question of fact, the High Court could not have entered into an enquiry on such decision of the Government and thereby directed the restore the date of birth as recorded in the service register in exercise of writ jurisdiction so also the decision to compulsorily retire being an administrative one the same could not have been held to be bad on the ground of violation of principles of natural justice. The Apex Court in the decision cited supra, held as follows:

HELD : (i) Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on questions of fact raised by the petition. Where an enquiry into complicated questions of fact arises in a petition, the High Court may in appropriate cases decline to enter upon the enquiry and may refer the party claiming relief to a suit. But the question is one of discretion and not of the jurisdiction of the Court. No interference with the exercise of the discretion of the High Court in the present case was called for. [627 G]

(ii) Even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case of the State and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. In the present case no such steps were admittedly taken; the High Court was therefore right in setting aside the order of the State. [630 G]

(quoted from placitum)

4. Placing heavy reliance in the ratio laid down by the Apex Court in the case of Binapani, (cited supra) it is submitted by the counsel for the petitioner since more than one date of birth available in the service record maintained by the respondent with regard to the date of birth of the petitioner, before accepting the date of birth of the petitioner in the service roll at the time of entry into service and allowing superannuation, which visited the petitioner with civil consequences, the respondent should have given a chance of hearing to the petitioner to clarify which one of the same was correct, moreso when the petitioner had furnished documentary evidence in support of his claim as called for, indicating that his date of birth was 01.02.1960. Therefore, the order of superannuation made in the meanwhile, placing reliance on such date of birth of the petitioner entered at the time of his entry into service which admittedly, had disputed one, suffering from the vice of violative of the principles of natural justice i.e., the principle of Audi Alterem Partem cannot be sustained and as such, there being voluminous material indicating the fact that the petitioner was born on 01.02.1960, the writ petition be allowed with the relief sought for.

5. In response, the learned counsel appearing for the respondents, submits that the petitioner had supplied the date of birth in his application form while entering into the service which is also admittedly, the date of birth of the petitioner in the SSLC certificate furnished with regard to the proof of the date of birth. Basing on the same, after the entry of the petitioner in the service, the service record was prepared. The service record was maintained with the second respondent. No doubt the petitioner made representation for correction of the same within a reasonable period of entering into the service but he having been asked to furnish concrete materials i.e., by correction of the date of birth entered in the SSLC Certificate for the same and the same having not been done, no action was taken on the representation of the petitioner. The petitioner thereafter also did not come forward to challenge such non-correction of his date of birth entered in the service record with any promptitude but in the verge of his retirement, he has sought for correction of the same by filing the present writ petition. Therefore, on the ground of delay and laches, the petitioner's writ petition seeking the relief liable to be dismissed, inasmuch as in respect of correction of date of birth this Court has always deprecated the practice of approaching the Court at a belated stage even if no limitation is provided in the service rule seeking such correction and refused to grant the relief in such facts and situation. So far as the contention of the petitioner that there being two disputed entries in the

service record, before accepting one entry and directing the petitioner to superannuate on the basis of such one of such disputed entry with regard to the date of birth, the same is bad being violative of the principles of natural justice, it is submitted by the counsel for the respondents that the same is without any substance for the reasons that there were no contesting/disputed entries in the service record of the petitioners. There was only one entry which was also based on the declaration of the petitioner supported by the documents furnished by the petitioner which was all along been accepted by his respondent employer in record maintained in this regard. So far as the entry in the office of third respondent is concerned, the same being based on no documents or proof or ever acted upon by the employer, the petitioner cannot be heard of saying that the superannuation of the petitioner on a disputed entry of date of birth, without adhering to the principles of natural justice, was illegal and arbitrary. The petitioner being superannuated on the basis of his undisputed service record, the same cannot be found fault with on the aforesaid ground. So far as the jurisdiction of the Court on disputed fact is concerned, it is submitted that no doubt this Court has the jurisdiction to entertain a writ petition even if the same involves some disputed question of fact and all the disputed question of facts are no bar to entertain a writ petition but when the disputed question of fact requires through enquiry for which evidence is required to be laid, this Court has always loath in entertaining writ petition in the same to grant the relief on the ground of disputed question of fact and has asked the parties to settle their claim in appropriate forum competent to decide the same, appreciating the evidence to be adduced to determine such dispute. Admittedly, in this case, there being no categorical material which can be stated to be conclusive an authentic one with regard to the date of birth of the petitioner as claimed by him, this Court in exercise of writ jurisdiction should not entertain the same. The ratio laid down in the case of Binapani cited supra, which was rendered in different fact situation, therefore, is of no assistance to the petitioner. Hence, the writ petition is liable to be dismissed, submits the counsel for the respondents.

6. Before appreciating the contention raised by the counsel for the parties, with regard to the merit of the prayer made for correction of date of birth, it would be opposite to mention here that this Court is conscious of the settled position of law as held in the case of Binapani that High Court is not deprived of its jurisdiction to entertain a petition under the writ jurisdiction merely in considering the petitioner's right to relief, is based on determination of a question of facts inasmuch as the High Court under Article 226 has the jurisdiction to try the issues of law and facts, it is

only when such a petition raises, a complex question of fact which may, for their determination require over all evidence to be taken and evidence is required to be brought to the record in accordance with the law, the High Court is of the view that since the disputed fact may not be appropriately tried in the writ petition, the parties may get their disputes redressed in a suit in the appropriate forum. Therefore, considering the aforesaid when the case in hand is addressed it appears to this Court that the petitioner on his own made the declaration basing on the SSLC Certificate, his date of birth to be 05.06.1958. On the basis of the same, his service roll was prepared. The petitioner thereafter, placing reliance on entry stated to have made at the time of his birth with the Register of the Birth and Death made an application to correct the same as 01.02.1960. So also in this regard, he has placed reliance in the horoscope of him. The respondent thereafter, asked the petitioner to get his date of birth entered in the SSLC Certificate, basing on which his service roll was prepared, corrected by the appropriate authority. For effecting such correction, the petitioner has not complied with the same as such in his service record, his date of birth continued to be 05.06.1958. However, the petitioner impressed upon this Court to direct the respondent to accept his date of birth on the ground that his birth certificate indicates his date of birth to be 01.02.1960, which has been disputed by the respondents to be relatable to the petitioner pointing some discrepancies. In the aforesaid facts and situation, this Court cannot come to a logical conclusion that the date of birth furnished by the petitioner to be 01.02.1960 to be correct one inasmuch as it is required to be proved by the petitioner by leading evidence that the aforesaid entry in the date of birth register relatable to him and as such his date of birth to be declared as 01.02.1960. The aforesaid therefore, involving a complicated question of fact, this Court is of the view that this is not appropriate case to exercise the writ jurisdiction to decide the aforesaid disputed question of fact. Furthermore, in this case also it appears that the petitioner even if asks to furnish a corrected SSLC Certificate for correction of his date of birth in the year 1992, for consideration of his representation, the petitioner without complying with the same remain silent till recent past. He had not challenged such action of the respondent directing him to correct his date of birth entered in SSLC Certificate by the appropriate authority for more than 25 years but in the verge of his retirement, he came to challenge the same. It would not be out of place to mention here that the Apex Court of India has castigated the practice of raising the dispute by a public servant about incorrect recording of the date of birth in the service book on the eve of their retirement even if no time limit is provided in the service rule for correction of such date of birth. The petitioner however, submits that there was

no delay inasmuch as it is only on the verge of retirement, he came to know that no correction was made pursuant to his representation in his service record with regard to the date of birth as in the record maintained by the third respondent and also in the Identity Card it was shown as 01.02.1960. It goes without saying that such entry by the third respondent for which there was no basis, does not entitle to the petitioner to approach at a belated stage which can also be visualised from the fact that the petitioner in the writ petition filed had also not taken such a ground but by way of additional affidavit taken such a ground. It was never intimated to the petitioner that his date of birth on the basis of his representation has been corrected irrespective of the fact that he did not comply with the direction of the second respondent to furnish a corrected SSLC Certificate. Therefore, the petitioner is not entitled to the relief sought for on the ground that he has approached this Court in such a belated stage, which comes in his way to resurrect his dead and stale claim of correction of date of birth in exercise of writ jurisdiction.

7. So far as adherence to the principles of natural justice is concerned, it appears that in the case of Binapani, it being an admitted fact that in the service record, the declaration of the respondent Binapani, her date of birth to be 10.4.1910 while entering into service was accepted to be correct by the employer, State of Orissa thereafter, when basing on certain Vigilance enquiry, the same was antedated which was basing on certain documents even though the first respondent was given a show cause but the High Court holding that before arriving into the conclusion for the correction of date of birth to the disadvantage of the petitioner, the petitioner ought to have been given a chance by regular enquiry to met with the allegation that she had not furnished the correct date of birth and the date of birth as accepted by the employer to be correct one, the Court quash such decision being violative of the principles of natural justice even if the decision was administrative in nature and consequently, quash the compulsory retirement given to the petitioner on the basis of such corrected date of birth on her attaining the age of review of her service. Here in the present case, admittedly, no decision has been taken to the disadvantage of the petitioner by altering his date of birth as provided by him at the time of his entry into service. The petitioner admittedly, attained the age of superannuation, on the basis of such date of birth. Hence, the ratio laid down in the case of Binapani is of no assistance to the petitioner to question the decision on the ground that the said decision since visited the petitioner with civil consequence, he ought to have been given a chance of hearing before superannuating him on the basis of the entry in the date of birth which he disputes. Other wise also it cannot be lost

sight that the petitioner's claim his date of birth to be 1.02.1960 would have made him ineligible to sit in the SSLC examination on the date he took up the said examination and obtained the qualification which was a passport to him to obtain higher qualification and also entered into the service in question, inasmuch as the petitioner would have been an under aged person on the basis of said date of birth to took up such examination and disqualified one. However, as the petitioner's date of birth as reflected in the SSLC Certificate made his eligible to sit in the examination. Hence the petitioner has taken advantage of such date of birth to acquire the qualification for entry into the service. It is never brought to the notice of the Court such date of birth as claimed by the petitioner was not a disqualification to sit in the examination in question. In such premises, when the petitioner has taken advantage of such date of birth as recorded in the SSLC Certificate now he is estoppe from questioning the same. For the said reasons also the claim of the petitioner not entertainable.

8. Therefore, viewed from any angle, the petitioner appears to have no case for grant of the relief sought for, accordingly, this writ petition filed by the petitioner is devoid of merit and stands dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Senior Divisional Manager,
Life Insurance Corporation of India,
Chennai Divisional Office-I,
8th Floor, LIC Building,
Anna Salai, Chennai-002.
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+1cc to Mr.G.Pugazhenthithi, Advocate, S.R.No.47865

+1cc to Mr.R.S.Anandan, Advocate, S.R.No.47710

W.P.No.29030 of 2017

SR(CO)
GSP(19/09/2018)



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