

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.883 of 2012

and

M.P. No.1 of 2012 and C.M.P. No.1144 of 2016

1.The General Manager

Food Corporation of India
Regional Office, Greams Road
Chennai - 6

2.The Area Manager

Food Corporation of India
District Office, Chennai - 31

.... Appellants

versus

B.Ethirajulu

.... Respondent

Writ Appeal filed under Clause 15 of Letters Patent, against
the order, dated 31.01.2012, in W.P.No.23456 of 2011.

WP.NO.23456/2011:

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus direction in the form of writ to the respondent to alter petitioner correct date of birth as 12.5.1952 in Office Order No. ESST./14/CAT.III and IV/SUPERANNUATION/ AVD/ 2011/ dt 31.5.2011 quash the same and consequently direct the respondents to pass an order by extending the service of the petitioner for a period of one years from 31.5.2011.

For Appellants : Mr.M.Imthias

For Respondent : Mr.K.Govindan

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

Challenge in this writ appeal is to the order made in W.P.No.23456 of 2011, dated 31.01.2012, by which, the writ Court

has quashed the impugned orders of the appellants herein/respondents and directed them to reinstate the respondent/writ petitioner in service, by treating his date of birth to be 12th May 1952, with all consequential benefits.

2. Material on record discloses that, the writ petitioner was appointed as a Messenger on 24.02.1971, IRV Chennai, in Food Corporation of India and he was posted to the godowns of FCI at Thiruvallur, vide PRO No.A1 (5) / 70 dt. 20.02.1971 of the Regional Manager FCI, Chennai-600 018. According to him, at the time of his appointment, he had produced his Birth Certificate Registration No.527 dt.15.05.1952 in original and Transfer Certificate in original bearing Sl. No.8499 (Admission No.5768) Dt.10.06.1967, in proof of his date of birth (i.e.12.05.1952) and accordingly, his date of birth was noted as 12.05.1952 in the first page of his Service Register, immediately on appointment. However, he claims that his original transfer certificate was not returned to him.

3. In the year 1972, the District Manager, Food Corporation of India, Chennai - 17 vide letter Ref. No.A8(1)/72 dt.04.05.1972 re-designated the writ petitioner as Watchman. He was declared to have satisfactorily completed his probation in the post of Watchman on the afternoon of 23.02.1972 and he was confirmed in the post of Watchman with effect from 23.02.1972 A.N. vide confirmation letter dated 09.08.1972 of the District Manager, Food Corporation of India, Chennai-17. In the latter stage, his date of birth has been rounded off and in its place, a new date of birth has been shown as 12.05.1951. His claim is 12.05.1952.

4. Material on record further discloses that it is the claim of the writ petitioner that the above fact was brought to his knowledge only during the year 1996 when FCI Regional Management directed him to produce the relevant documentary proof in support of his date of birth vide Memorandum No.PF/IV/E.15/EII dt.16.08.1996 of SRM:FCI:RO Chennai and though he had submitted his birth certificate in original, the correct date has not been taken into account.

5. He further stated that his date of birth was not altered by the appellants, when he came across the seniority list on 30.06.2002 and he has reminded the FCI Regional Management, three or four times, for alteration of his date of birth in service records and other relevant records. But his genuine representation has not been considered and the appellants have pointed out that the request for alteration in the date of birth, has to be made within five years of his entry into Food Corporation of India and its subsequent alteration vide letter No.E1/5(1)/2009/CI IV dt.25.08.2009 of General Manager, FCI,

RC:Chennai-6 which was forwarded by the Area Manager vide Lr No.E1/3 (25)/2008/Cat IV dated 22.07.2010. These letters have been handed over to the writ petitioner only on 24.07.2010 by the Depot (IC) FSD, Avadi, with an endorsement No.E1/Misc/Cat IV/AVD/2010-11 dated 24.07.2010.

6.Writ petitioner further claims that he made another representation dated 09.08.2010 and the Area Manager FCI, District Office, Chennai-31, had forwarded the said representation to the GM (TNR) along with his letter dated 24.08.2009 for further action. The Assistant General Manager, FCI, Regional Office, Chennai-6, in his letter addressed to the Area Manager, FCI, District Office, Chennai-31, has stated that his request for issue of superannuation order relieving him with effect from 31.05.2012 instead of 31.05.2011, by rectifying/correcting his date of birth as 12.05.1952, was examined in detail by the competent authority and not agreed to at that juncture and that this fact may be informed to him.

7. Writ petitioner made another representation dated 14.02.2011 and the same was rejected by the Area Manager, FCI, District Office, Chennai - 31, Vide letter dated 26.02.2011, addressed to the Depot In charge, Food Corporation Department, FCI, Avadi, Chennai - 72. Material on record further discloses that the letters of the first appellant, dated 25.08.2009, 6.1.2011 and 7.4.2011 and the order of the second appellant, dated 26.02.2011, are not sustainable either in law or on facts. He further stated that FCI Management has committed mistake and without his knowledge and without giving him any information and without verifying the relevant records, the appellants, on 08.08.1999, on their own accord, altered his date of birth as 12.05.1951. He further stated that he was relieved from service on 31.05.2011 pursuant to the letter of the appellants. He further submitted that he has one more year of service and his name has been wrongly typed in that letter as B.Ethiraj instead of B.Ethirajulu.

8.Appellants herein/respondents have filed a counter affidavit stating that the allegation of the writ petitioner that he produced original school Transfer Certificate and original birth certificate at the time of his appointment and according to the same, his date of birth is 12.5.1952 and original Transfer Certificate was not returned to him are false and such an averment has been purposely made for filing the writ petition. As per the records maintained by the appellants-management, the date of birth entered in the writ petitioner's service book is 12.5.1951 and not 12.5.1952 as alleged. It is further stated in the counter affidavit that the petitioner himself has admitted that the discrepancy in the year of birth was known to him since 1996 onwards and in spite of that, he has

not approached the competent civil court, to rectify the mistake by filing a suit, but the petitioner has invoked Article 226 of the Constitution of India by filing the writ petition after his retirement from service, which is neither maintainable in law nor on facts. It is further stated that the petitioner has already retired from service on 31.05.2011 and filed the writ petition without any basis. Petitioner has availed all the benefits like promotions on the basis of seniority list prepared by the appellants-management, which clearly indicates the date of birth of the petitioner as only 12.5.1951 and he has pleaded that, without his consent or knowledge, his date of birth, has been altered by the appellants.

9. It is further stated in the counter affidavit that as per Central Government Establishment Rules, employee should make a request within five years of his entering into service regarding alteration of date of birth and in the case of the writ petitioner, he himself has admitted that he had the knowledge about the discrepancy in his date of birth during 1996, itself, but he has failed to approach the competent civil court within five years from the said date.

10. It is further averred in the counter affidavit that at the time of entering into service, his date of birth entered in the Service Register was 12.5.1951, and subsequent seniority list prepared was only based on the above stated date of birth i.e. 12.5.1951 and the petitioner was given promotion subsequently only on the said seniority list prepared taking into consideration the date of birth as 12.5.1951. It is further stated that the petitioner has not challenged the abovesaid seniority list till his retirement on 11.5.2011, but filed the present writ petition after his retirement from service and during his service, he has not taken any steps under the law to change the date of birth and that the attempt of the writ petitioner to change the date of birth from 12.5.1951 to 12.5.1952 is not maintainable and no merits in the writ petition.

11. In support of the above contention, arguments were advanced by the learned counsel for the parties. The writ court, after hearing both sides, allowed the writ petition vide order dated 31.01.2012 and directed the appellants herein to reinstate the petitioner in service by treating his date of birth to be 12th May 1952, with all consequential benefits.

12. Aggrieved by the above order, instant appeal has been filed on the grounds that respondent has approached the Court after four months of his retirement from service and also after receiving the retirement benefits questioning the date of birth recorded on the service book. Respondent, in the affidavit filed in support of the writ petition stated that he is aware of the

dispute about his date of birth as early as in 1996. But, the Writ Court has failed to note that every representation of the writ petitioner was not suitably replied then and there. Writ Court has not properly considered the counter affidavit of the appellants in the writ petition in proper perspective, which clearly states that the date of birth of the respondent registered in service book is only 12.5.1951.

13. Writ Court has failed to note that the writ petitioner has not challenged the seniority list while he was in service in which his date of birth was noted as 12.5.1951 and availed all the benefits out of the said seniority list and for the first time, approached this Court and invoked the writ jurisdiction for correction of his date of birth stating that his date of birth is 12.5.1952 and not 12.5.1951, by producing a duplicate copy of School Transfer Certificate after his retirement and action of the writ petitioner has been accepted by the writ court, which is quite contrary to the judgment of this Court and also the judgment of the Hon'ble Supreme Court.

14. Writ Court has failed to note that the allegation of the writ petitioner that the appellants have changed the original date of birth from the Service Register from 12.5.1952 to 12.5.1951 on the basis of xerox copy of the alleged proforma of Service book produced by the writ petitioner is misconceived and in the original Service book itself his date of birth at the time of his joining service was entered only as 12.5.1951 and xerox copy produced by the writ petitioner is xerox copy of an internal correction, which was carried out in the Service Book Volume 2 to correct the mistaken entry made in Service Book Volume No.2. Writ Court has not granted time to the appellants to produce the entire service register to clarify the actual position. Writ Court has erred in giving much importance to the xerox copy of birth certificate produced by the respondents which is inadmissible under the Evidence Act.

15. The Appellants have further submitted that after judgment of the writ Court, they have received the xerox copy of the original Transfer Certificate produced by the writ petitioner in 1967 from the Muthialpet High School, Chennai - 1, which clearly indicates that the documents produced by the writ petitioner, namely the duplicate copy of the School Transfer Certificate along with the writ petition, is a forged one and the date of birth recorded in the original School Transfer Certificate is only 12.5.1951 as recorded in the Service Book of the respondent in the appellants' office. For the above said reasons appellants have prayed for setting aside the order of the learned single Judge.

16. We heard the learned counsel for the Appellants/Corporation and the learned counsel for the 1st respondent/employee. We have also perused the typed set of papers, submitted on either side.

17. Materials on record reveal that the 1st respondent's father, namely K. Baboo, was working as a Typist in the Appellants Corporation. He died in harness in 1955. At that time, the 1st respondent was only four years old. However, the 1st respondent, on attaining majority, nearly after 15 years from the date of death of his father, made a representation to the Appellants Corporation on 05.01.1971 seeking appointment on compassionate grounds. Though such a claim for appointment on compassionate grounds was belated, the Appellants Corporation considered the request of the 1st respondent and appointed him as a Peon on 24.02.1971. After a long years of service, he retired from service on 31.05.2011 as Senior Roneo Operator. The above facts are not in dispute.

18. The dispute is with regard to the date of birth of the 1st respondent. It is the claim of the 1st respondent that at the time of his appointment, in proof of his date of birth, he produced Birth Certificate and School Transfer Certificate, in original, bearing his date of birth as 15.05.1952, and accordingly his date of birth was noted as 15.05.1952 in his Service Register. It is his further claim that at a later stage, when another volume of his Service Register was annexed to his original Service Register, his original date of birth had been rounded off and in its place a new date of birth has been shown as 12.05.1951 instead of 12.05.1952. He also claims that the above fact was brought to his notice only in 1996, when the Appellants Corporation directed him to produce relevant documentary proof in support of his date of birth. He also claims that though he produced Birth Certificate in original, the same was not taken into account and this fact came to his knowledge only when the Appellants Corporation published THE Seniority List on 10.06.2002. He further claims that though he met the Regional Manager on more than three occasions, there was no response and finally vide letter No.E1/5(1)/2009/CI IV, dated 25.08.2009 of the General Manager, Food Corporation of India, Chennai-6, he was informed that any request for alteration of date of birth ought to have been made within five years from the date of entry into service and this letter was handed over to him only on 24.07.2010. He has claimed that immediately he made another representation on 09.08.2010, for which it was replied that the request for issue of superannuation order, relieving him with effect from 31.05.2012 instead of 31.05.2011 cannot be considered. His further representation dated 14.02.2011 has also been rejected and he was issued with retirement order, retiring him from service with

effect from 31.05.2011.

19. Aggrieved by the above order, the 1st respondent filed a writ petition before this Court in W.P.No.23456 of 2011, seeking for a direction to the Appellants Corporation to alter his date of birth as 12.05.1952 in Office Order No.Estt./14/CAT.III & IV/Superannuation/AVD/2011, dated 31.05.2011 and consequently to pass orders extending his services for a period of one year from 31.05.2011. The Appellants Corporation filed a counter affidavit denying the claim of the 1st respondent. Upon hearing the parties on either side, the writ Court had allowed the writ petition filed by the 1st respondent, by order dated 31.01.2012 and directed the Appellants Corporation to reinstate the 1st respondent in service, by treating his date of birth to be 12th May 1952 with all consequential benefits. Aggrieved by the same, the Appellants Corporation is before this Court with this appeal.

20. Regarding the delay in making the request to correct the date of birth, it is submitted by the learned counsel for the 1st respondent that at the time of entry into service the date of birth of the 1st respondent was entered correctly as 12.05.1952 and only at a later stage it was changed as 12.05.1951 and this fact was brought to the notice of the 1st respondent only when he was asked to produce relevant documentary proof in support of his date of birth as 12.05.1952, vide appellants' Corporation Memorandum, dated 16.08.1996. Therefore, it is the contention of the learned counsel for the 1st respondent that there is no question of the 1st respondent in not applying for correction of date of birth within a period of five years from the date of entering into service, as claimed by the appellants Corporation.

21. Per contra, it is contended by the learned counsel for the Appellants Corporation that even at the time when the Service Records were opened for the 1st respondent, his date of birth was entered only as 15.05.1951, as per the transfer certificate produced by the 1st respondent and this date alone was reflected in the Seniority Lists published by the appellants Corporation i.e. Seniority List dated 31.12.1985 - Sl.No. of the 1st respondent at 38, Seniority List dated 31.12.1995 - Sl.No. of the 1st respondent at 18, Seniority List dated 31.12.1996 - Sl.No. of the 1st respondent at 16 and the Combined Seniority List dated 30.06.2002 - Sl.No. of the 1st respondent at 05.

22. Learned counsel for the Appellants Corporation further contended that when the 1st respondent was awarded selection grade vide the proceedings of the appellants Corporation, dated 12.04.1993, date of birth of the 1st respondent has been shown as 15.05.1951. Therefore, it is submitted by the learned counsel for the appellants corporation that the 1st respondent was very well aware of the fact that his correct date of birth was only

15.05.1951 and hence his claim that he came to know that his date of birth was corrected from 15.05.1952 to 15.05.1951 only in 1996 is without any basis. It is his further contention that only when there was some correction found in his Service Register (Volume-II), correcting the date of birth as 15.05.1952, the 1st respondent was asked to produce relevant documentary proof for verification and since he was not able to produce any convincing document and his claim for correction of date of birth was beyond the period of five years, his request was rejected and he was superannuated on 31.05.2011.

23. We see force in the submissions of the learned counsel for the appellants Corporation. The Seniority Lists annexed in the typed-set of papers filed along with the Memorandum of Grounds of Appeal reflect the details, as pointed out by the learned counsel for the appellants corporation. In those lists, the date of birth of the 1st respondent has been mentioned only as 15.05.1951. In particular, the seniority Lists dated 31.12.1985 and 31.12.1995 and the proceedings of the appellants Corporation dated 12.04.1993 (Awarding Selection Grade to the 1st respondent) were all prior to 1996. Therefore, the claim of the 1st respondent that at the time of opening of the Service Register his date of birth was entered as 15.05.1952 and only at a later stage it has been corrected as 15.05.1951 and this fact came to his knowledge only on 16.08.1996, when he was asked to produce relevant documentary proof as to his date of birth for verification cannot be accepted. Further, a perusal of the History Card pertained to the 1st respondent, produced by the Corporation shows that there were some manipulation in it. At more than five places, educational qualification has been erased and this fact has been noted by the competent authority and by showing the correction with 'X' mark, the authority has noted that 'X' has been erased. This recording has been made on 23.09.1995. Further perusal of the History Card of the 1st respondent would show that at the time of opening of the History Card, no entry could have been made as against the column "Date of birth" and this column could have been filled at a later stage, by some body, and not by the same person who opened the History Card for the 1st respondent at the time of entry into service. Because, except Date of birth column, all other columns have been filled with "ink pen", whereas date of birth column has been filled with ballpoint pen. Therefore, upon seeing this manipulation, the competent authority has asked the 1st respondent to produce relevant documentary evidence in respect of his date of birth and after verification, there is a recording as "Correct Date of Birth as per Seniority List as on 30.06.78, since confirmed by C1 IV Cell is 12.5.191."

23.It is the next contention of the learned counsel for the appellants corporation that the writ Court has come to the conclusion that the correct date of birth of the 1st respondent is 15.05.1951, relying on the Birth Certificate Extract produced by the 1st respondent, issued by the Corporation of Chennai, dated 13.01.2011. Referring to the said certificate, learned counsel for the appellants Corporation contended that in the affidavit filed in support of the writ petition, in paragraph No.5, the 1st respondent himself has stated that at the time of his appointment, he had produced his Birth Certificate Registration No.527, dated 15.05.1952, whereas in the certificate produced before the writ Court, the Registration Number has been stated as 727 (1952/HQ/003/000727) and in view of the above variation as to the registration of birth, no importance could be attached to said certificate.

24.During the course of hearing of the writ appeal, the appellants produced xerox copy of the original Transfer Certificate, produced by the writ petitioner in 1967, issued by Muthialpet High School, Chennai - 1 and contended that the School Transfer Certificate only reflects the date of birth of respondent as 12.05.1951, as recorded in the Service Register at the time of his entry into the services of the appellants Corporation. Learned counsel for the appellants further submitted that the Hon'ble Supreme Court in a catena of judgments has held that in preference to all other certificates, School Certificate is to be accepted as genuine, as to the proof of date of birth and in support of his contention, he relied on the judgment of the Hon'ble Supreme Court in State of Punjab vs. Mohinder Singh, reported in 2005 (2) CTC 828, wherein the Hon'ble Apex Court has observed as follows:

"13.As observed by this Court in Umesh Chandra v. State of Rajasthan MANU/SC/0125/1982 : [1982] 3 SCR 583, ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a

public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case, the entries in the school register were made ante litem motam.

14. Therefore, the school records have more probative value than a horoscope. Where no other material is available, the horoscope may be considered but subject to its authenticity being established. These aspects were not considered by the first appellate Court and the High Court.

15. The High Court was, therefore, not justified in dismissing the Second Appeal by observing that there was no substantial question of law involved."

25. We see every force in the contention of the learned counsel for the appellants Corporation. Though it is stated in the Birth Extract issued by the Corporation that such certificate has been issued under Section 12/17 of Registration of Birth and Death Act, 1969 and such information were taken from the original record of birth of the Corporation of Chennai of the State of Tamil Nadu, India, in view of the above discrepancy as to the number of Registration, we would like to prefer the school certificate, as held by the Hon'ble Apex Court in the judgment relied on by the learned counsel for the appellants. In this has, as held by the Hon'ble Supreme Court, the entries in the school register were ante litem motam and such entry alone reflected in the Service Register opened at the time of joining in service.

In the result, writ appeal is allowed and the order of the learned single Judge dated 31.01.2012 made in W.P. No.23456 of 2011 is set aside. However, there shall be no order as to costs. Consequently, the miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

asr

TO:

1.The General Manager
Food Corporation of India
Regional Office, Greams Road
Chennai - 6

2.The Area Manager
Food Corporation of India
District Office, Chennai - 31.

+2cc to Mr.M.Imthias, Advocate sr.no.3747

W.A.No.883 of 2012
and M.P. No.1 of 2012 &
C.M.P. No.1144 of 2016

kji(co)
nr 14/03/2019



WEB COPY