

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2543 of 2018

K. Saleem ... Appellant/Petitioner

Vs

1. The Chairman
Chennai Port Trust
Administrative Office
Rajaji Salai
Chennai 600 001.

2. The Chief Medical officer
Chennai Port Trust Hospital
Medical Department
Chennai Port Trust
Rajaji Salai
Chennai 600 001.

... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent against the order, dated 8/1/2018, passed in W.P.No.33684 of 2017. direct the First Respondent to permit the petitioner to alter his date of birth as 15.01.1962 as per the genuine certificate of birth dated 15.08.2015 issued by the Corporation of Madurai in his Service Book and relevant service documents instead of 20.01.1960 within the time frame as may be fixed by this Hon'ble Court and pass such further other orders.

For appellant ... Mr.S.Siva Kumaar

For respondents ... Mr.J.Sathyanarayana Prasad

J U D G M E N T

(Judgment of the Court was made by Subramonium Prasad, J)

Appellant has challenged the order, dated 8/1/2018, passed in W.P.No.33684 of 2017, whereby, the learned Single Judge has dismissed the writ petition, which was filed for a writ of certiorarified mandamus, to quash the order passed by the first respondent in Letter No.P1/6293/15/H, dated 28/6/2016, refusing to alter the Date of Birth of the petitioner, as 15/1/1962, instead of 20/1/1960.

2. The appellant was appointed as Medico Social Worker, at Chennai Port Trust Hospital, on 15/7/1994. He was confirmed in the post, from 24/7/1996. At the time of his joining duty, his Date of Birth was entered in the service book, as 20/1/1960, as per the Secondary School Transfer Certificate, issued by the Head Master of St.Mary's High School, Madurai. Claiming that only after the demise of his father, i.e., on 22/1/2008, he came to know that his actual Date of Birth is 15/1/1962, he submitted a representation, dated 28/8/2015, for changing his Date of Birth from 20/1/1960 to 15/1/1962. The first respondent, by order, dated 28/6/2016, rejected the request of the appellant. The rejection is being challenged in the present proceedings.

3. It is the case of the appellant that after the death of his father, he met the Doctor, Mrs.Girijabai Muthurangam, Madurai, who is running a nursing home. She certified that the appellant was born in her clinic, on 15/1/1962, at 3.23 p.m. The appellant, then approached Corporation of Madurai and got a certificate, on 12/6/2014, changing his Date of Birth to 15/1/1962. The learned Single Judge rejected the case of the appellant, stating that the appellant cannot be permitted to alter his Date of Birth, after 22 years of entry into service. Being aggrieved, the appellant has come forward with the instant appeal.

4. Heard Mr.S.Sivakumar, learned counsel for the appellant and Mr.J.S.Sathyanarayana Prasad for the respondents.

5. The Chairman of Chennai Port Trust, has issued a Circular, No.S5/XX/11506/78/S, dated 26/4/1978, which reads as under:-

"In my circular cited, it was mentioned that no request for change of date of birth should be entertained, unless it was submitted within 5 years of the date of entertainment of the employee concerned supported by adequate proof. Recently, the Government of India, Department of

Personnel and Administrative Reforms in their Memorandum No.19017/1/76-Ests (A) dated 10th October 1977, copy attached, have stated that the date of birth as declared by the employee and accepted by the appropriate authority and entered in the service book should not be allowed to be changed ordinarily and never after the declaration of satisfactory completion of probation and that the only exception to this should be in a case where a bonafide clerical mistake had been committed in recording the date of birth in the service book.

Heads of Departments will follow this instruction in future, in supersession of the orders communicated in the circular dated 24th August 1967".

6. Government of India, Ministry of Shipping and Transport (Coordination Section), has issued a Office Memorandum, dated 10/10/1977, regarding change of Date of Birth of Government Servants. Relevant portion reads as under:-

"As Ministry of Finance, etc., are aware, according to Note 5 below F.R.56, the date of birth, as declared by the Government Servant and accepted by the appropriate authority and entered in the service book should not be allowed to be changed ordinarily and never after the declaration of satisfactory completion of probation or quasi-permanency, whichever is earlier. The only exception to this rule is that alteration in the date of birth of a Government Servant can be made at a later stage with the sanction of a ministry Department or an administrator of Union Territory under which the Government Servant is serving, if it is established that a bonafide clerical mistake had been committed in recording the date of birth in the service book."

7. The Hon'ble Supreme Court, in Punjab & Haryana High Court v. Megh Raj Garg reported in {2010 (6) SCC 482}, held thus:-

"15. The High Court or for that reason the State Government did not have the power, jurisdiction or authority to entertain the representation made by respondent No.1 after more than twelve years of his entering into service. Therefore, neither of them committed any illegality by refusing to accept the prayer made by respondent No.1 on the basis of change effected by the

University in the date of birth recorded in his matriculation certificate. Unfortunately, the trial Court, the lower appellate Court and the learned Single Judge of the High Court totally misdirected themselves in appreciating the true scope of the embargo contained in the relevant rule against the entertaining of an application for correction of date of birth after two years of the government servant's entry into service and all of them committed grave error by nullifying the decision taken by the State Government in consultation with the High Court not to accept the representation made by respondent No.1 for change of date of birth recorded in his service book.

8. Similarly, in Union of India Vs. Harnam Singh {1993 (2) SCC - 162}, the Hon'ble Supreme Court held as under:-

"15. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct.

9. In the State of Tamil Nadu Vs.T.V.Venugopalan {(1994) 6 SCC - 302}, at paragraph No.7, it is held as follows:-

"..... The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs 3000".

10. In Secretary and Commissioner, Home Department and Others Vs. R.Kirubakaran {1994 Supp (1) SCC - 155}, at paragraph Nos.7 and 9, it is held as follows:-

"7. An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable

injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in officer, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, than such application must be filed within the time, which can be held to be reasonable. The application has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can

always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.

9. The Tamil Nadu Service Manual contains Rules 49 and 49A. which are the provision in respect of alteration and correction of the date of birth. Whenever any application is filed, by persons governed by those service rules, procedures prescribed therein have to be strictly followed, including the time limit prescribed for making such an application. Clause (b) of the aforesaid Rule 49 provides that after person had entered in service, an application to alter the date of his birth as entered in the official records "shall be entertained only if such an application is made within five years of such entry in service.... It need not be pointed out that if an application is made for correction of the date of birth mentioned in the service records at an early date or within the prescribed, the authorities are in much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier. In the facts and circumstances of the case, it is not possible to uphold the finding recorded by the Tribunal.

11. The petitioner was aged about 54 years, when he filed the instant writ petition, just six years before his superannuation. Circular of the Madras Port Trust clearly prevents the authorities from entertaining such applications. Other than making a bald statement that he became aware of his

actual Date of Birth only after his father passed away, cannot be accepted. There is no reason given by the appellant as to why he did not approach the authorities earlier.

12. Issue raised in the instant Writ Appeal is also covered by a Division Bench of this Court, made in W.P.No.24989 of 2015, dated 13/8/2005, {Sundaramurthy Vs. 1. The Chief Secretary, Union of India, Government of Puducherry, Puducherry and 5 others}, wherein one of us, (Mr.Justice S.Manikumar), is a party, after referring to all the judgments on the point, the Division Bench, came to a conclusion that correction of Date of Birth, cannot be permitted, much after an employee joins service.

13. In view of the above findings and decision, instant Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

mvs.

To

1. The Chairman
Chennai Port Trust
Administrative Office
Rajaji Salai
Chennai 600 001.
2. The Chief Medical officer
Chennai Port Trust Hospital
Medical Department
Chennai Port Trust
Rajaji Salai
Chennai 600 001.

+1cc to M/s.Law Square, Advocate SR.No.79328

+1cc to Mr.J.Sathyanarayan Prasad, Advocate SR.No.79380

W.A.No.2543 of 2018

VGI (CO)
GMY (23/01/2019)