

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.16911 OF 2018

Dated:05.06.2018

Between:

M.A. Raoof, S/o. Shaik Jilani,
Aged about 56 years, Assistant
Sub Inspector of Police,
Santoshnagar Police Station,
Hyderabad

.. Petitioner

And

The Commission of Police,
Hyderabad City, Hyderabad
And others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.16911 OF 2018****ORDER:**

Heard.

2. Petitioner was appointed as Police Constable on 18.05.1983 and subsequently earned promotions as Head Constable and Assistant Sub Inspector of Police. At the time of entry into service, his date of birth was recorded as 03.05.1960 based on the entry in Secondary School Certificate (S.S.C.). Petitioner submits that Transfer Certificate issued to him reflects his date of birth as 03.05.1962, which is correct, whereas wrong entry was made in the Service Register. According to petitioner, he came to know about the wrong entry in the year 2011 and immediately he made representation for correction of entry in the Service Register. Thereafter, he made further representations seeking correction of his date of birth. Alleging inaction on the representations made by the petitioner and seeking a direction to correct his date of birth in the Service Register, this Writ Petition is filed.

3. The entry of date of birth in the Service Register is regulated by the AP Public Employment (Recording & Alteration of date of Birth) Rules, 1984 (for short 'the Rules'). As can be seen from the rules, once an entry is made in the Service Register and has become final, no alteration can be made unless there is a clerical error in the entry. Furthermore, according to the

Rules, the date of birth as per SSC is the relevant criteria to determine the age.

4. According to petitioner at the time of entry into service he has submitted S.S.C. He does not say whether entry in SSC produced by him reflected the date of birth of the petitioner as 03.05.1962. Copy of SSC is not filed. What is filed is school leaving certificate. Even in the representations he does not say that even though SSC reflected correct age, but wrong entry was made in the Service Register. Furthermore, petitioner has not protested within the time prescribed for correction of his date of birth. Once date of birth has become final, the same cannot be corrected even assuming that there was a mistake in the entry in the school records, unless there was a clerical error. In the instant case, it was not a clerical error as fairly submitted by learned counsel for the petitioner. Petitioner cannot rely on the Transfer Certificate to claim that his date of birth ought to have been shown as 03.05.1962 and that too at the fag end of his service.

5. It is settled principle of law that even if an employee has a valid service grievance and employer has denied the service benefit to which employee is legally entitled, he cannot sleep over such right and make a belated claim. The delay and laches, more particularly in service disputes, is fatal to a claim.

6. In **State of Madhya Pradesh Vs. Premlal Shrivastava**¹, Supreme Court frowned upon entertaining belated claims to seek correction of entry of date of birth in service record. Supreme Court held:

“10. In *State of U.P. v. Shiv Narain Upadhyaya* [(2005) 6 SCC 49 : 2005 SCC (L&S) 794] while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

11. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990 i.e. 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1-6-1942 and not 30-6-1945. It had come on record of the Tribunal that at the time of the respondent's medical examination, his age as on 27-9-1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1-6-1942 and this document was signed by the respondent and the form of agreement known as “Mamuli Sipahi Ka Ikrarnama” was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting the respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated.

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is *ex facie* fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

¹ (2011) 9 SCC 664

7. In **Eastern Coalfields Limited Vs. Bajrangi Rabidas**²

Supreme Court held as under:

“.....It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised “to reach injustice wherever it is found”. In *Sangram Singh v. Election Tribunal* [AIR 1955 SC 425 : (1955) 2 SCR 1], **it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue.** That apart, the High Court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity. It is a well-known principle that one of the ends of equity is to promote honesty and fair play..... (paragraph 19).”

(emphasis supplied)

8. It is well settled principle of law that correction of date of birth cannot be entertained at the fag end of service as it can result in serious repercussions on other employees in the service and therefore on this ground also, the claim of the petitioner to correct the entry of date of birth cannot be entertained. Further, petitioner earned promotions as Head Constable and Assistant Sub-Inspector but never pointed out wrong entry of his date of birth. The Writ Petition deserves no consideration and is liable to be dismissed.

9. The Writ Petition is accordingly dismissed. No costs. Pending Miscellaneous Petitions shall stand closed.

P. NAVEEN RAO, J

Date:05.06.2018

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² (2014) 13 SCC 681