

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION No. 20255 of 2018

% 13.08.2018

P. Lachaiah S/o Narshima Aged about 49 years
Occ: Sardar Head Load Worker,
Food Corporation of India Buffer Stock Complex,
Miryalguda, Nalgonda District

... Petitioner

Vs.

\$ The Union of India,
rep. by its under Secretary Ministry for Food and Agriculture,
New Delhi and others.

.... Respondents

!Counsel for the petitioner : Mr M Venkat Ram Reddy

Counsel for the Respondent No.1 : Mr Namavarapu R Rao

Counsel for respondents 2 to 5 : Mr B Krishna Mohan

<Gist :

>Head Note:

? Cases referred:

(2008) 12 SCC 481



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

WRIT PETITION No. 20255 of 2018

Between :

P. Lachaiah S/o Narshima Aged about 49 years
Occ: Sardar Head Load Worker, Food Corporation of India
Buffer Stock Complex, Miryalguda, Nalgonda District

.... Petitioner

And

The Union of India, rep. by its under Secretary Ministry
for Food and Agriculture, New Delhi and others.

.... Respondents

JUDGMENT PRONOUNCED ON : 13.08.2018

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : yes
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : yes
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? :no

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 20255 of 2018

Date: 13.8.2018

Between:

P. Lachaiah S/o Narshima Aged about 49 years
Occ: Sardar Head Load Worker,
Food Corporation of India Buffer Stock Complex,
Miryalguda, Nalgonda District

...Petitioner

And

The Union of India, rep. by its under Secretary Ministry
for Food and Agriculture, New Delhi and others.

.... Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 20255 of 2018

ORAL ORDER:

This writ petition is filed praying to direct the respondents 2 to 5 to record the petitioner's date of birth as 1.7.1969 and to continue the petitioner in service based on the said date of birth by holding the action of respondents 2 to 5 in not correcting the petitioner's date of birth wrongly printed as 1.7.1958 on Central Provident Fund (For short CPD) slip as unjust and unreasonable.

2. Heard learned counsel for petitioner Sri M Venkat Ram Reddy and learned standing counsel for Food Corporation of India Sri B Krishna Mohan.

3. With effect from 1.8.2003, petitioner was enrolled as Direct Payment System Worker on minimum guaranteed wages as a Head Loader. According to petitioner, as he is an uneducated person, his age was assessed by the Government Medical Officer and based on such assessment, his date of birth was determined as 1.7.1969 and accordingly in the list prepared on 13.1.2004, date of birth was recorded showing as 1.7.1969, however, in the Contributory Provident Fund slip, his date of birth was recorded as 1.7.1958 and based on the said entry, petitioner was sought to be retired from service. According to petitioner, when he came to know about this wrong entry made, he submitted representation on 24.11.2014 followed by representations dated 17.10.2015 and 4.10.2016, however, so far, the request made by the petitioner for correction of date of birth is not acted.

4. According to learned counsel for petitioner, as per the statement showing the allotment of provisional CPF numbers (filed as Annexure P-4), date of birth of the petitioner was shown as 1.7.1969, this is how the date of birth is recorded in the service records of the respondents. Instead of taking into consideration, the said document as the basis, respondent corporation sought to rely on wrong entry made in the CPF records and the same is illegal.

5. According to learned standing counsel, when petitioner was enrolled as Direct Payment Worker, his date of birth was assessed as 1.7.1958; petitioner also filed application under Employment Provident Fund Scheme disclosing his date of birth as 1.7.1958 and all along in the correspondence generated by the corporation, the date of birth of petitioner was shown as 1.7.1958 only. In support of the said contention, learned standing counsel, referred to pay slip dated 30.6.2018, Labour CPF Account Slip dated 30.6.2016 and submitted that such pay slips were given to the petitioner every month and all the pay slips disclose the date of birth as 1.7.1958 only. He would further submit that petitioner submitted Permanent Account Number (for short PAN) issued by Income Tax Department, Government of India, wherein his date of birth was also shown as 1.7.1958. As per the system, on attaining the age of superannuation, petitioner applied for withdrawal of CPF benefits and based on said application, on 3.7.2018 the amounts were paid to him and after the amounts were received by him, this writ petition is filed. He would further submit that son of the petitioner by name Mr P Nagaiah joined the service of FCI on 1.1.2003 as Direct Payment System Worker (Ancillary) whose

I.D number is 36; that in the SSC certificate of his son, his date of birth is recorded as 10.5.1978. He would therefore submit that if 1.7.1969 is taken as date of birth of petitioner, the date of birth of his son cannot be 10.5.1978 and therefore, claim of the petitioner is not valid.

6. He would further submit that though there is no provision for reviewing date of birth, having regard to the persistent demand made by the petitioner, Committee was constituted to verify the claim of the petitioner. The Committee gone into the personal file of petitioner and having come to know that his son is working in the corporation, sought information from his son, who has produced SSC certificate awarded to him, as referred to above and on consideration of the matter, Committee resolved to retain the date of birth as originally recorded.

7. It is not in dispute that petitioner is not a regular employee but he was enrolled as Direct Payment System Worker with Minimum Guaranteed Wages. Thus, the Corporation, do not maintain the service book unlike for regular employees.

8. In the absence of service book, the other material need to be looked into to ascertain whether the record disclose correct date of birth of petitioner or whether there is any correction carried out behind the back of the petitioner depriving him some more service.

9. The declaration filed by the petitioner to enroll himself in the Employment Provident Fund Scheme disclose that he has written his date of birth as 1.7.1958; the PAN card issued by

Income Tax Department, Government of India supplied by petitioner to the FCI also disclose his date of birth as 1.7.1958; it is categorical assertion of the respondents that all along pay slips issued by Corporation contain the date of birth entry and those pay slips were given to the petitioner from time to time but petitioner never protested. Similarly, the Labour CPF slips also contain the date of birth entry. Be that as it may, it is not in dispute that Mr P.Nagaiah, son of petitioner is also working in the respondent corporation as Direct Payment System Worker (Ancillary) with I.D No. 36. According to records available with the respondent corporation and the copy of SSC furnished by Mr P.Nagaiah, his date of birth is 10.5.1978.

10. Cumulatively all the documents placed on record would disclose that the claim of the petitioner that his date of birth ought to have been shown as 1.7.1969 is not a valid claim.

11. Remedy under Article 226 of the Constitution is an extraordinary remedy available to every aggrieved person. In exercise of this power, writ Court stretches its hand to reach out wherever injustice is caused and in whatever manner injustice is meted out. The remedy under Article 226 is equitable and discretionary. The writ Court has no bounds in issuing prerogative writs except self imposed restraint. To exercise such extraordinary remedy, the Court expects the person coming before it to be fair and frank in stating the facts which constitute cause of action to ventilate his grievance, leaving it to Court to decide whether relief can be granted and if so, what relief. Thus, the minimum that Court expects from petitioner, knocking the doors of the High

Court under Article 226 of the Constitution, is to state the true and correct facts and project the grievance.

12. Court would be disinclined to lien in favour of a petitioner to grant equitable relief if he does not disclose the true facts, tries to mislead the Court or suppress as true facts deliberately in order to gain undue advantage while invoking the writ Court to exercise extraordinary jurisdiction under Article 226 of the Constitution.

13. In **K.D.Sharma v. Steel Authority of India Limited and others**¹, Supreme Court observed that the party invoking extraordinary jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “**hide and seek**” or to “**pick and choose**” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts”. Relevant paragraphs of the judgment read thus:

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

.....

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your**

¹ (2008) 12 SCC 481

application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

38. The above principles have been accepted in our legal system also. As per settled law, **the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible.** The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

(emphasis supplied)

14. In the facts of this case, as noted above, it is clear that the petitioner made false statements and sought to mislead the Court by claiming as if he has been agitating about the correction of date of birth and wrong date of birth was entered without his knowledge and erroneously he was sought to be retired from service even before he attained the age of superannuation. It is also relevant to note that petitioner filed PAN card issued by Income Tax department showing his date of birth as 1.7.1969, whereas according to PAN card issued by Income Tax Department submitted to corporation by the petitioner, his date of birth is shown as 1.7.1958. More particularly, the conduct of the petitioner to claim that his date of birth is 1.7.1969, having regard to the fact that his son was born on 10.5.1978, would show that by misleading the Court and by not disclosing the true and correct facts, petitioner intended to gain undue advantage and to continue in service for some more years. It cannot be expected that petitioner was not aware of date of birth of his son and has employment in the FCI. Thus, by making wrong averments and

placing reliance on wrong documents and not disclosing the true and correct facts, petitioner sought direction to continue in service. The suppression of relevant facts is palpable and intended to snatch an order to which he is not entitled. It cannot be said that petitioner was not aware of date of birth recorded in various documents.

15. Thus, for the foregoing reasons, the writ petition is liable to be dismissed and it is accordingly dismissed. Miscellaneous petitions, if any pending, are closed.

DATE: 13-08-2018
TVK

P NAVEEN RAO,J



HONOURABLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.20255 of 2018

Date: 13.8.2018

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