

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.4472 of 2018

and

WMP.Nos.5490 & 5491 of 2018

Tmt.I.Santakumari

...Petitioner

-Vs-

1. The Secretary to Government
Industries Department, Secretariat,
Chennai 600 009.
 2. The Secretary to Government,
Public Department, Secretariat,
Chennai 600 009.
 3. The Commissioner of Revenue,
Administration, Chepauk, Chennai 600 005.
 4. The District Collector,
Chennai District, Chennai 600 001.
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, directing the respondents to pass appropriate orders on the proposal of the petitioner for alternation of date of birth as 22.08.1961 instead of 22.02.1960 and consequently direct the respondents not to retire the petitioner on 28.02.2018, the date of superannuation as per existing entry in the service book.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mrs.P.Rajalakshmi,
Addl.Govt. Pleader

O R D E R

The relief sought for in the present writ petition is to direct the respondent to pass appropriate orders on the proposal of the writ petitioner for alternation of date of birth as 22.08.1961 instead of 22.02.1960.

2. The facts remains that, the writ petitioner attained the age of superannuation and retired from service on 28.02.2018. Almost one year lapsed and the grievances of the writ petitioner is that, during the pendency of the writ petition, the authorities have rejected the claim of the writ petitioner on 27.02.2018 and the said order has not been communicated. The respondents are bound to communicate the order of rejection to the writ petitioner.

3. However, the alteration of the date of birth cannot be considered at the fag end of the services of the Government servants. The writ petitioner was appointed on 24.11.2010 and she submitted an application on 15.11.2013, seeking alteration of date of birth. The writ petitioner right from her birth is maintaining the date of birth as 22.02.1960. The SSLC book of the writ petitioner which was issued during the year 1976, also reveals that the date of birth of the writ petitioner is 22.02.1960. When the date of birth entered in the school records is maintained as 22.02.1960 and the writ petitioner all along accepted accepted the said date of birth for many number of years, this Court is of the considered opinion that, the claim regarding the alteration cannot be entertained at the fag end of the service of the writ petitioner.

4. The Hon'ble Supreme Court of India, in the case of Life Insurance corporation of India & others Vs. R.Basavaraju, reported in 2016 (15) SCC 781, held as follows :-

" 5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement.

6. It has not been disputed by the respondent that at the time of appointment his date of birth was recorded in the service record as 3-2-1943 and the said date of birth was duly acknowledged and accepted by the respondent. It was only after appointment, he asked the appellant to change his date of birth, which was not accepted by the appellant Corporation.

7. This Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294] , elaborately dealt with such a demand made by the employee with regard to alteration in the date of birth. This Court observed: (SCC p. 307, para 7)

"7. As held by this Court in Harnam case [Union of India v. Harnam Singh, (1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92] , Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force i.e. 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the far 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."

8. In Home Deptt. v. R. Kirubakaran [Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] , this Court again observed: (SCC p. 157, para 5)

"4. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not."

9. As noticed above, the respondent filed a suit for declaration with regard to his date of birth without impleading the appellant, who is the employer, and has obtained the decree against the persons, who have no concern with the date of birth of the respondent. It goes without saying that the said decree obtained by the respondent is not binding on the appellant being not a party to the suit.

10. In our considered opinion, the impugned order [R. Basavaraju v. LIC, Writ Appeal No. 909 of 2006, decided on 29-11-2011 (KAR)] is wholly illegal and without any basis, which cannot be sustained in law.

11. For the reasons aforesaid, this appeal is allowed, the impugned order [R. Basavaraju v. LIC, Writ Appeal No. 909 of 2006, decided on 29-11-2011 (KAR)] passed by the High Court is set aside. It is held that the respondent shall superannuate on the basis of his date of birth i.e. 3-2-1943 recorded in the service record."

5. In view of the legal principles settled, the claim of the writ petitioner cannot be considered and further, the writ petitioner already reached the age of superannuation and retired from service on 28.02.2018 itself. This being the factum, no further adjudication is required and accordingly, the writ petition is devoid of merits and stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Pkn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Industries Department, Secretariat,
Chennai 600 009.
2. The Secretary to Government,
Public Department, Secretariat,
Chennai 600 009.
3. The Commissioner of Revenue,
Administration, Chepauk, Chennai 600 005.
4. The District Collector,
Chennai District, Chennai 600 001.

+lcc to Mr.T.Ranganathan, Advocate, SR.No.40882/19
+lcc to the Govt.Pleader, Vide Sr.No.41313/19

सत्यमेव जयते

W.P.No.4472 of 2018

Kak(12/07/2019)

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