

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9627 of 2019

W.M.P.Nos.10242, 10244 & 10248 of 2019

M.Rajendran

.. Petitioner

Vs.

1. The Director of School Education,
College Road,
Nungambakkam,
Chennai-600 006.

2. The Director,
Collegiate Education,
Chennai-600 006.

3. The Registrar,
Annamalai University,
Chidambaram,
Cuddalore District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 3rd respondent University order No.554/2017(C) dated 07.04.2017 and quash the same and also direct the 3rd respondent for further consequential benefits of the petitioner pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.Deivasigamani

For Respondents : Mr.A.Raja Perumal
Additional Government Pleader for
R1.
Mr.V.Kathirvelu
Special Government Pleader for R2.

O R D E R

The order of rejection dated 07.04.2017, rejecting the claim of the writ petitioner for alteration of Date of Birth, is under challenge in the present writ petition.

2. The petitioner is working as Assistant Professor in the Government Arts College, Villupuram. He was appointed as Lecturer in Commerce, in the Department of Commerce, Annamalai University, Chidambaram on 24.02.2003.

3. The learned counsel for the writ petitioner states that the date of birth of the writ petitioner had been erroneously furnished at the time of appointment. It was also mentioned wrongly in the school records of the petitioner.

4. The learned counsel for the writ petitioner states that as per the school records and other certificates, Date of Birth of the writ petitioner is 06.07.1962, which is erroneous. The actual Date of Birth is 13.04.1965. The writ petitioner after joining the services on 22.04.2003 approached the Civil Court by filing O.S.No.83 of 2008. The learned Principal District Munsif Court, Ariyalur passed a judgment and decree on 26.08.2008 declaring the date of birth with the petitioner as 06.07.1965. which was produced by the writ petitioners, subsequently to the authorities concerned.

5. The learned counsel for the petitioner further states that the writ petitioner sent a representation on 10.11.2008, requesting the authorities to alter his Date of Birth in his service records. However, no action has been taken and the petitioner is also approaching the authorities with a request to alter his Date of Birth. The impugned order has been passed by the Registrar, Annamalai University in proceedings dated 07.04.2017 stating that the application for alteration of Date of Birth from the writ petitioner was received after a lapse of five years from the date of appointment and any such application which is not supported by entries in SSLC, School, College or University records, birth records or from the records of local bodies, shall summarily be rejected.

6. The learned counsel for the writ petitioner states that the application seeking for alteration of Date of Birth was submitted by the writ petitioner on 10.11.2008. Thus, it was submitted within a period of five years. However, the representation which is enclosed in Page No.25 of the typed set of papers simply states as follows:

"I am working as Lecturer in Commerce at Annamalai University. I joined the service in 22.04.2003. The Syndicate passed the resolution, and it sent circular stating that, the alteration of Date of Birth within 5 ½ years of entry into service. Hence, I reached the original records and I found my correct date of birth. Then I filed an application before the Court on the Principal District Munsif, Ariyalur and I got the

judgment.

I have completed my X standard in Govt.Higher Secondary School, as Sendurai in Ariyalur District in 1981.

Kindly I request you to change my date of Birth in my SSLC book and public in the Government Gazette herewith I have enclosed the following records."

7. The representation states that the petitioner joined service on 22.04.2003 and the Syndicate passed a resolution and sent a circular stating that the application is to be submitted within 5 ½ years from the entry into service. Thereafter, the writ petitioner unearthed for his actual Date of Birth and approached the Civil Court and obtained a decree. Thus, the application is to be considered.

8. The writ petitioner passed his SSLC Course during the year 1997/1980. As per the SSLC book, the Date of Birth is recorded as 06.07.1962. Thereafter, the writ petitioner completed his degree, passed a P.G. Degree and all other courses and even during that period his Date of Birth was mentioned as 06.07.1962. Even, during the appointment in the year 2003, the petitioner had not attempted to alter his Date of Birth.

9. The writ petitioner had not taken any efforts to change his Date of Birth till the year 2008. For the first time, he has approached the Civil Court by filing a Civil Suit. The attempt of the petitioner seems to get extension of service. The authorities are not bound to accept the belated attempt made by the petitioner to alter his date of birth.

10. In W.P.No.7988 of 2017 dated 12.07.2017, this Court held as follows:

13.Parliament enacted the Registration of Births and Deaths Act, 1969 with a view to maintain accurate countrywide registration data for purposes of national planning, organizing public health and medical activities and various other socio economic welfare measures.

(i) Under Section 3(1), the Central Government has been authorized to appoint a person as Registrar General of India. Under Section 4, the respective State Governments are entitled to appoint a Chief Registrar for every State. Under Section 6, the State Government was empowered to appoint a District Registrar for each Revenue District and such number of Additional District Registrars as it thinks fit, who shall also discharge such functions as District Registrars subject to the general control and direction of the District Registrar. Under Section 7 of the Act, the State Government may

appoint a Registrar for each local area comprising the area within the jurisdiction of a municipality, panchayat or other local authority or any other area or a combination of any two or more of them.

(ii) Under Sub-Section (2) of Section 7, every Registrar shall, without fee or reward, enter in the register maintained for that purpose, all information given to him under Section 8 or Section 9 and shall also take steps to inform himself carefully of every birth and of every death, which takes place in his jurisdiction and to ascertain and register the particulars in the register. Under Section 8(1), it shall be the duty of the persons specified therein to give or cause to be given either orally or in writing, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under Sub-Section (1) of Section 16.

(iii) Under Section 10, duty has been cast on certain persons specified therein to notify compulsorily births and deaths. Under Section 12, the extracts of registration entries are liable to be furnished to the person furnishing information under Section 8 or Section 9.

(iv) Under Section 13(1), any information relating to any birth or death tendered to the Registrar after the expiry of the period specified there for, within 30 days of its occurrence, shall be registered on payment of such late fee as may be prescribed. Sub-Section (2) of Section 13 makes it obligatory that any delayed information relating to birth or death furnished to the Registrar, after 30 days but within one year of its occurrence, shall be registered only with the written permission of the Prescribed Authority and on payment of prescribed fee and production of an affidavit made before a Notary Public or any other officer authorized in this behalf by the State Government. Sub-Section (3) of Section 13 further makes it clear that any birth or death, which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. Thus, under Sub-Section (3) of Section 13, if any information relating to the birth of a person is to be recorded after the expiry of one year from the date of occurrence of such birth, such information shall be registered only based upon an order made by a Magistrate.

11. In the instant case, the writ petitioner has all along maintained his Date of Birth as 06.07.1962. He approached the Civil Court during the year 2008 and obtained an ex-parte decree. Based on the ex-parte decree, he submitted an application to the Director of School Education on 10.11.2008 and thereafter, he approached the respondents, seeking alteration of Date of Birth. Even as per the representation dated 10.07.2008, the said application to Director of School Education was submitted after a lapse of five years from the date of appointment. This apart, acknowledgment for the representation dated 10.11.2008 is not enclosed in the typed set of papers filed along with the writ petition. The said representation is also not referred in any one of the communication of the respondents. In the absence of any such proof to establish that the writ petitioner submitted a representation on 10.11.2008, which was received by the respondents, this Court cannot pass any orders, based on such blank representation which is enclosed in the typed set of papers. When the statute has prescribed certain limitation period, representation should be submitted within that period. In the absence of any such proof, such representation cannot be proceeded for the purpose of granting the relief of alteration of Date of Birth.

12. Even, recently the Hon'ble Supreme Court considered the issue relating to the alteration of Date of Birth in the case of Life Insurance Corporation of India and Others Vs. R.Basavaraju @ Basappa, 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 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."

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."

13. In view of the principles laid down by the Hon'ble

Supreme Court, this Court is of the opinion that the date of birth of the petitioner was recorded in all his school records as 06.07.1962 and he has accepted the said Date of Birth for about 46 years, and first time he approached the Civil Court by filing Civil Suit during the year 2008 and obtained an ex-parte decree. Based on the ex-parte decree, the writ petitioner claims alteration of Date of Birth after a lapse of five years from the date of entering into service. This apart, the writ petitioner is already aged about 52 years and at this point of time, his date of birth cannot be altered and therefore, the reasons stipulated in the order impugned is in consonance with the statutes and in accordance with the settled legal principles.

14. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

ssb

To

1. The Director of School Education,
College Road,
Nungambakkam,
Chennai-600 006.

2. The Director,
Collegiate Education,
Chennai-600 006.

3. The Registrar,
Annamalai University,
Chidambaram,
Cuddalore District.

+1cc to Mr.C,Deivasigamani, Advocate SR.No.31783

+1cc to Government Pleader SR.No.32024

W.P.No.9627 of 2019
W.M.P.Nos.10242, 10244 & 10248 of 2019

SSV(CO)
GMY(06/06/2019)