

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.11882 of 2019

K.V.Loganathan

...Petitioner

Vs

- 1.The Director,
Directorate of Government Examinations,
DPI Campus, College Road,
Nungambakkam, Chennai - 600 006.
- 2.The Director,
Department of Higher Education,
(School Education),
EVK Sampath Buildings - 9th floor,
College Road, Chennai - 600 006.
3. The Principal Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai.
4. The District Elementary Educational Officer,
District Library Campus,
Salem - 636 007.
5. The District Educational Officer,
District Library Campus,
Salem - 636 007.
6. The Chief Educational Officer,
Collectorate Campus, Salem-636 001.
7. The Head Master,
Sri Saraswathy Paadasalai,
Ambalavanar Swami Koil Street,
Gugai, Salem - 636 006.
8. The Head Master,
Municipal High School,
Opp.Shevapet Police Station,
Shevapet, Salem-636002.

9. The Registrar,
University of Madras, Chepauk, Chennai-600 005.
10. The Chief Controller of Accounts,
Office of the Chief Controller of Accounts,
Ministry of Commerce and Textiles,
Government of India, Room No.532-A,
5th floor, Udyog Bhavan, Maulana Azad Road,
New Delhi-110011.
11. The Controller General of Accounts,
Office of the Controller General of Accounts,
Ministry of Finance, Government of India,
Mahalekha Niyantrak Bhavan,
GPO Complex, Block E, Aviation Colony,
INA Complex, New Delhi - 110023.
12. The Senior Pay and Accounts Officer,
Office of the Pay and Accounts Office,
Government of India,
Ministry of Commerce and Textiles,
Shastri Bhavan, Annexe 5th floor,
No.26, Haddows Road, Chennai - 600 006.
13. The Accountant General (A&E),
Office of the Accountant General (A & E),
No.236, Anna Salai, Teynampet,
Chennai - 600 018. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking writ of mandamus thereby directing the Respondents to consider and dispose the representation made by the Petitioner to change the Date of Birth in the Service Records from the erroneous date i.e. 17.05.1959 to the authentic and correct Date of Birth i.e. 10.09.1960 on the basis of the necessary Documents and Records, within a time-frame as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr. Richard T.Christopher

For Respondents : Mr.A.RajaPerumal,
Additional Govrnment Pleader
for RR1 to 6

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to consider and dispose of

the representation made by the writ petitioner, to change the date of birth in the service records from the erroneous date, i.e., 17.05.1959 to the authentic and correct date of birth i.e., 16.09.1960 on the basis of necessary documents and records within a time frame.

2. The learned counsel for the writ petitioner states that, the writ petitioner is now working as Assistant Accounts Officer and the contention of the writ petitioner is that, his date of birth was erroneously entered in his service records as 17.05.1959, instead of 10.09.1960. The learned counsel for the writ petitioner states that, the writ petitioner entered in to the Government services on 04.04.1985 and within a period of five years, he submitted an application seeking alteration of date of birth to the Authorities Competent on 07.12.2018. However, the application submitted by the writ petitioner was kept pending without passing any orders and the writ petitioner was pursuing his remedy all along for the past about 30 years.

3. The learned counsel for the writ petitioner further states that, the birth certificate issued by the Commissioner, Salem Municipality, states that the date of birth of a male baby was 10.09.1960. However, no name has been stated in the birth certificate now enclosed by the writ petitioner in page no.4 of the typed set of papers, filed along with the present writ petition. Relying on the said birth certificate issued by the Commissioner, Salem Municipality on 28.05.1986, the learned counsel for the writ petitioner states that, the Authorities Competent has failed to correct the date of birth of the writ petitioner in his service records. The writ petitioner is having few more months of service and therefore, he must be allowed to continue as per his original date of birth, i.e., 10.09.1960.

4. The writ petitioner has submitted the birth certificate of his two younger sisters. However, the SSLC school record shows that, the date of birth of the writ petitioner is 17.05.1959. Based on the school records, the date of birth of the writ petitioner was recorded in his service records as 17.05.1959. Though, the application seeking alteration of date of birth was preferred by the writ petitioner during the year 1988, he has not pursued with remedy for the past more than 30 years.

5. A Government employee who slept over his right for more than three decades, cannot wake up one fine morning and knock the doors of the Court, seeking remedy of alteration of date of birth for the purpose of getting extension of services, beyond the date of birth record in the service register, as per the school records.

6. The fact remains that, the writ petitioner all along accepted the date of birth entered in his service records as 17.05.1959, as per his school records. Now he is in fag end of his retirement and at this point of time, the claim of the writ petitioner for alteration of date of birth cannot be granted, in view of the fact that, the writ petitioner had not pursued his remedy for more than 30 years. Beyond this, the birth certificate now produced by the writ petitioner cannot be considered by this Court and all those documents deserves examination by the Competent Authorities.

7. This apart, the date of birth of the writ petitioner was recorded based on his school records as 17.05.1959 and the same remains in the service records for the past many years. Even recently, the Hon'ble Supreme Court of India, in the case of Life Insurance Corporation of India & 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."

8. It is reiterated that with regard to correction of date of birth has been time and again discussed by the Courts and held that, once the date of birth has entered in the service records as per the educational certificates and accepted by the employee, the same cannot be changed. The claim of change in date of birth cannot be entertained at the fag end of service. In the present case on hand, the writ petitioner is already 58 years of age and having few more months of service. This being the fact, the date of birth accepted by the writ petitioner all

along right from his date of appointment and based on the school records cannot be changed now at this point of time. Accordingly, the writ petitioner is devoid of merits and stands dismissed. No Costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

Pkn

To

1. The Director,
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+2cc to Mr.Richard T.Christopher, Advocate SR.No.38645

+1cc to Government Pleader SR.No.39103

W.P.No.11882 of 2019

22.04.2019

GJ(CO)
GMY(24/05/2019)

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