

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26-04-2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.17370 of 2018

Smt.V.Anusuya Devi

.. Petitioner

..Vs..

1.The Director of School Education,
DPI Complex,
Chennai-600 006.

2.The Joint Director of School Education,
DPI Complex,
Chennai-600 006.

3.The Chief Educational Officer,
Kancheepuram,
Kancheepuram District.

4.The Head Master,
Big Kancheepuram Government Girls
Higher Secondary School,
Big Kancheepuram,
Kancheepuram District.
Pin : 631 502.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent in her proceedings bearing No.O.Mu.No.0689/A2/2018 dated 22.2.2018 and quash the same and consequently direct the respondents to rectify the wrong Date of Birth mentioned in the school/service records as 16.12.1961 instead of 17.5.1961.

For Petitioner : Mr.S.Udayakumar

For Respondents-1to3 : Mr.A.Raja Perumal,
Additional Government Pleader.

O R D E R

The order of rejection issued by the third respondent in proceedings dated 22.2.2018, rejecting the claim of the writ petitioner for alteration of date of birth, is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the writ petitioner was born on 6.12.1961 as per the Birth Certificate obtained from the competent authority. However, in her school records, the date of birth has been erroneously recorded as 17.5.1961. The School Authorities have wrongly mentioned the date of birth of the writ petitioner in the school records as 17.5.1961 instead of 6.12.1961.

3. The learned counsel for the writ petitioner states that the writ petitioner joined the in the services of the fourth respondent-School during September 2010 and she submitted an application, seeking alteration of date of birth within a period of five years on 24.7.2015. The application dated 24.7.2015 was submitted by the writ petitioner was not considered and the fourth respondent had taken the date of proposal of the application by the authorities on 22.12.2015 and rejected the application itself by stating that it is barred by the period of limitation prescribed in the Rules.

4. The Rule contemplates that an application, seeking alteration of date of birth shall be within the period of five years from the date of appointment. Thus, the claim of the writ petitioner ought to have been considered on merits for the purpose of altering the date of birth.

5. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner obtained the Birth Certificate from the competent authority, namely, the Department of Municipal Administration and Water Supply. The Birth Certificate was issued on 20.10.2015 and therefore, the said Certificate ought to have been considered for the purpose of effecting alteration of date of birth.

6. The learned counsel for the writ petitioner states that when the writ petitioner has established that she had submitted the application, seeking alteration of date of birth within the period of five years, then the authorities competent ought not to have rejected the application on the ground that the said application was submitted beyond the permissible period of five years from the date of appointment of the writ petitioner.

7. Admittedly, the writ petitioner was appointed into this service in September 2010. As per the writ petitioner, she submitted the application seeking alternation of date of birth on 24.7.2015. As per the

fourth respondent, the writ petitioner had submitted the application on 22.10.2015, which is beyond the period of five years.

8. Now let us look into the contradictions in the facts.

9. The writ petitioner states that she submitted the application on 24.7.2015, seeking alteration of date of birth within the period of five years along with the Birth Certificate issued by the Department of Municipal Administration and Water Supply on 20.10.2015. If the Date of Birth Certificate was issued on 20.10.2015, the application submitted by the writ petitioner as per her statement on 24.7.2015 would not have contained the Birth Certificate issued by the authorities on 20.10.2015. In such an event, on what basis the application was submitted, seeking alteration of date of birth has not been explained.

10. In simple terms, as per the writ petitioner, the application was submitted on 24.7.2015 and the Birth Certificate, now enclosed by the writ petitioner in page No.51 of the typed set of papers filed along with the present writ petition, issued by the Department of Municipal Administration and Water Supply was issued on 20.10.2015. After the lapse of three months from the date of submission of the application by the writ petitioner to the authorities for alteration of date of birth. Thus, the statement in the impugned order that the writ petitioner submitted the application on 22.12.2015 may be probable and the statement of the writ petitioner, cannot be accepted.

11. This apart, the Birth Certificate issued by the authorities without any adjudication as contemplated under the provisions of the Births and Deaths Act, cannot be trusted upon. The writ petitioner was born during the year 1961 and the Birth Certificate was obtained during the year 2015, after the lapse of 54 years from the date of birth of the writ petitioner. What all are the documents verified by the authorities and the nature of adjudication conducted and findings, nothing is available on record. In the absence of such proper adjudication by following the procedures contemplated under the provisions of the Births and Deaths Act, such Certificates issued by the authorities can never be trusted upon.

12. This apart, the writ petitioner completed her SSLC long back and her date of birth was entered in SSLC Book as 17.5.1961. The writ petitioner completed the Degree in April 1984 and M.A. (Tamil) in April 1986 and B.Ed., in

1988 as well as M.Phil in the year 1995. During the course of study, the writ petitioner had not taken any efforts to change the date of birth nor the writ petitioner had taken any efforts to secure appropriate date of birth Certificate from the competent authority after adjudication under the provisions of the Births and Deaths Act. Contrarily, the writ petitioner was appointed during September 2010 in the fourth respondent-School and thereafter during the year 2015, she obtained the Birth Certificate from the Municipal Administration and Water Supply Department on 20.10.2015 and submitted the application.

13. The Hon'ble Supreme Court of India in the case of Life Insurance Corporation of India vs. R. Basavaraju [(2016) 15 SCC 781], wherein in paragraphs 5 to 11 held as under:-

"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."

14. The Hon'ble Supreme Court, in the judgment cited above, held that 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 far end of retirement.

15. The writ petitioner even at the time of filing the writ petition was aged about 57 years and now she is having only few more months to go for her retirement.

16. Under these circumstances, this Court is not inclined to entertain the present writ petition for the purpose of alteration of date of birth. This apart, the very discrepancy in respect of date of application itself is not clarified and therefore, the application submitted by the writ petitioner as per the writ petition on 24.7.2015, cannot be relied upon for the purpose of considering the writ petition as the Birth Certificate itself was issued in October 2015 i.e., after three months from the date of submission of the application.

17. On account of these facts and the circumstances, this Court is of the view that the writ petitioner has not established any acceptable ground for the purpose of considering the relief, as such, sought for in the present writ petition.

18. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn
To

1.The Director of School Education,
DPI Complex,
Chennai-600 006.

2.The Joint Director of School Education,
DPI Complex,
Chennai-600 006.

3.The Chief Educational Officer,
Kancheepuram,
Kancheepuram District.

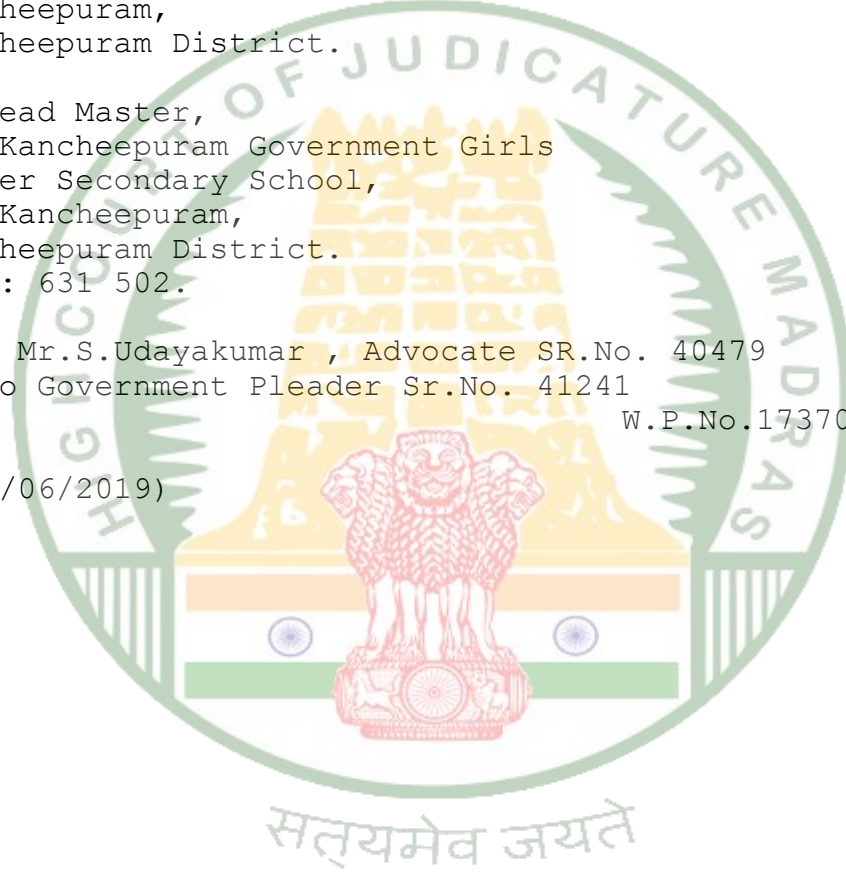
4.The Head Master,
Big Kancheepuram Government Girls
Higher Secondary School,
Big Kancheepuram,
Kancheepuram District.
Pin : 631 502.

+1cc to Mr.S.Udayakumar , Advocate SR.No. 40479

+1 cc to Government Pleader Sr.No. 41241

W.P.No.17370 of 2018

A.SK(10/06/2019)



WEB COPY