

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.32085 of 2018

and

W.M.P.Nos. 37328 & 37330 of 2018

M.Govindarajan

... Petitioner

..Vs..

1. The State of Tamil Nadu
rep. by its Principal Secretary to Government,
Municipal Administration and Water Supply
(M.E-1) Department,
Fort St.George, Chennai - 9.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Namakkal Municipality,
Namakkal.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed in Letter No.9739/M.E.1/2018/1 dated 09.07.2018 and quash the same and direct the respondents to alter the petitioner date of birth from 15.06.1960 to 05.12.1961 in his service records and grant all consequential service and monetary benefits.

For Petitioner : Mr.R.Sagadevan

For Respondents 1 & 2: Mr.A.N.Thambidurai
Special Government Pleader

For Respondent R3 : Mr.M.Rajamathivanan

O R D E R

The order of rejection issued by the first respondent in proceedings dated 09.07.2018, 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 entered into the service of the Junior Assistant on 13.01.1984. The correct date of birth of the writ petitioner is 05.12.1961. However, the date of birth was erroneously entered into his School records and other records as 15.06.1960. Based on the School records, he was appointed and his date of birth was recorded as 15.06.1960 in Service Records. Under these circumstances, the writ petitioner submitted an application dated 23.04.2018 to alter the date of birth in his service records. The said application was rejected on the ground that the application for alteration of date of birth is submitted after a lapse of 5 years from the date of appointment of the writ petitioner.

3. The writ petitioner himself extracted Rule 39 of the Tamil Nadu Service Rules 1970, which reads as under:

"39. Alteration of date of birth:-

a) The date of birth of a member of service shall be the date found on record in the S.S.L.C. or Matriculation Register or any School Certificate which he produces at the time of his appointment to the service. If a member or a service claims subsequently that his date of birth is different from that entered in the S.S.L.C. or matriculation Register or School certificate, he shall make an application to the appointing authority, explaining him the mistake occurred and also produce the evidence on which he relies.

b) An application for alternation of the date of birth should not normally be accepted by the appointing authority, if it is made five years after the member had entered a service unless the applicant furnish adequate reasons for not making his application earlier.

c) Th appointing authority shall send the relevant records to the Collector of the district concerned who shall have the matter required in by an officer of the Revenue Department not lower in rank than Revenue Divisional Officer. The Collector shall forward with his remarks, if any, the report of the Revenue Divisional Officer concerned and all the relevant records to the State Government. Thereupon, the State Government shall pass suitable orders thereon.

d) In considering the question of permitting an alteration in the date of birth as entered in the official records, even when such entry is proved to

have been due to a bona fide mistake, the Government or the appointing authority shall take into consideration the circumstances whether the applicant would normally be eligible for appointment to the post at the time of entry into service had his age been correctly stated and what would have been its effect on the service, and Government may permit the alteration subject to such conditions as they may deem fit to impose.

e) The procedure laid down in sub-rules (a) to (d) shall be followed also in case where alteration of date of birth is proposed suo motu by the Head of Office on the basis of medical opinion, in the absence of any other authoritative records."

4. This Court is of an opinion that once the date of birth was recorded in the Service Records of the writ petitioner as 15.06.1960, and the same was accepted and followed for many number of years. Now after a lapse of about 57 years from the date of birth of the writ petitioner, the claim for alteration of date of birth is not only belated but cannot be considered at all.

5. This Court is of an opinion that even for correction of date of birth the persons aggrieved has to approach the Competent Authority for getting the birth certificate. In the present case, the writ petitioner claims alteration of date of birth during the eve of his retirement.

6. The Hon'ble Supreme Court of India in the case of Life Insurance Corporation of India & others vs. R.Basava Raju Alias 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."

7. 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.

8. This being the legal principles to be followed, the order of rejection passed by the respondents on the ground that alteration is in consonance with the principles settled and there is no infirmity as such.

9. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Pns

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply
(M.E-1) Department,
Fort St.George, Chennai - 9.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Namakkal Municipality, Namakkal.

+1 cc to Mr.R.Sagadevan, Advocate, S.R.No.32528

+1 cc to Mr.M.Rajamathivanan, Advocate, S.R.No.32845

+1 cc to the Government Pleader, S.R.No.33454

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RJ-I (CO)

SSM(03/05/2019).