



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P. (MD) No.5573 of 2013

and

M.P (MD) No.1 of 2013

A.Ghandeeban

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the
Home Secretary, Home Department,
Fort St. George,
Chennai-9.

2.The Director General of Police,
Mylapore,
Chennai-4.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in R.C.No.GB.6(2)/163764/2010 dated 12.04.2011 by the second respondent and the consequential impugned proceedings by the first respondent in letter No.35724/Pol.V/2011-5 dated 14.09.2012 thereby rejecting the petitioner's plea of alteration of date of birth from 30.09.1952 to 05.06.1955 and quash the same as illegal and thereby directing the respondents to alter the date of birth of the petitioner from 30.09.1952 to 05.06.1955 and to effect the such change of date of birth in the petitioner's service records.

For Petitioner : Mr.R.Udhayakumar

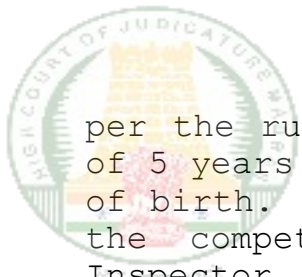
For Respondents : Mr.M.Jeyakumar,

Additional Government Pleader

ORDER

The order impugned, dated 12.04.2011 and the consequential impugned order issued by the first respondent, dated 14.09.2012 rejecting the claim of the writ petitioner for alteration of date of birth from 30.09.1952 to 5.6.1955 is under challenge in the present writ petition.

2.The writ petitioner states that he was appointed as Junior Assistant in the office of the Superintendent of Police, Nagercoil on 4.12.1974 and at the time of appointment the writ petitioner has submitted his school records. The writ petitioner states that as

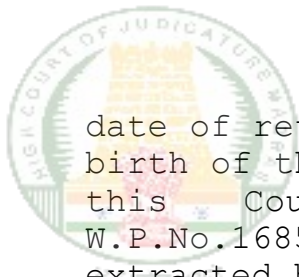


per the rules, he made an application on 7.12.1974 within a period of 5 years to the competent authority seeking alteration of his date of birth. The said application dated 7.12.1974 was acknowledged by the competent authorities and the same was forwarded to the Inspector General of Police on 27.01.1975. Thus, the petitioner states that he submitted an application seeking alteration of date of birth within 5 years as contemplated under rules. However, there was no progress thereafter and the petitioner also had not pursued the application.

3. After a lapse of 35 years and after submitting many representations, the writ petitioner filed a writ petition in W.P. (MD)No.10064 of 2011 and this Court passed an order on 8.3.2011 to consider the representation submitted by the writ petitioner and pass appropriate orders within a period of two weeks. Pursuant to the directions of this Court, the impugned orders are passed rejecting the claim of the writ petitioner for alteration of date of birth. It is pertinent to note that the writ petitioner had attained the age of superannuation and retired from service on 30.09.2010. The writ petitioner was allowed to retire from service on 30.09.2010 and the writ petition itself was filed on 5.4.2013 after a lapse of 3 years from the date of retirement and the impugned orders are challenged on the ground that the writ petitioner had submitted his application seeking alteration of date of birth within a time limit and therefore, his date of birth must be altered as 5.6.1955 so as to provide continuance of service for additional three years.

4. The writ petitioner, who appeared in person and also a practising lawyer made a submission that he submitted an application seeking alteration of date of birth on 7.12.1974, which was duly forwarded to the Inspector General of Police on 27.1.1975. The petitioner in person admitted the fact that he attained the age of superannuation and retired from service on 30.09.2010. Thus, the writ petition filed after a lapse of three years from the date of retirement itself is to be rejected on the ground of laches. Though the writ petitioner filed an application within a period of 5 years on 7.12.1974 and he had miserably failed to pursue the remedy within a reasonable period of time. The writ petitioner slept over his right and wake up three years after his retirement. The earlier writ petition was filed in the year 2011 in W.P.(MD)No.10064 of 2010 that writ petition itself was filed after the retirement.

5. This apart, the writ petitioner joined into Government service based on his school records. The date of birth was recorded as 13.09.1952 as per the school records. The date of birth recorded in the service register was being maintained all along for many years. Though, the writ petitioner submitted an application in the year 1974 he had not pursued the same for more than 35 years. Thus, the present writ petition filed after a lapse of 3 years from the



date of retirement, cannot be entertained so as to alter the date of birth of the writ petitioner for monetary benefits. In this regard, this Court also considered the legal principles in W.P.No.16857/2011, dated 5.3.2019 and the relevant paragraphs are extracted hereunder:-

18. Parliament enacted the Registration of Births and Deaths Act 1969, with the view to maintain accurate country wide registration data for purposes of National Planning Organizing Public Health and Medical activities and various other Socio Economic Welfare measures.

19. Under Section 3(1) of the Central Government 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.

20. Under Sub-section (2) of Section 7, every Registrar shall, without fee or reward, enter in the register maintained for the 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 required to be registered in the register.

21. 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.

22. Under Section 10, duty has been cause 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 a person, furnishing information under Section 8 or Section 9.

23. Under Section 13(1), any information relating to any birth or death tender to the Registrar after the expiry of the period specified therefore, but within 30 days from the occurrence, shall be registered on payment, of such late fee as may be prescribed. 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.

24. 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 the Magistrate of the first class or a Presidency Magistrate, after verifying the correctness of the birth or death and on the payment of the prescribed fee. Thus, under Sub-section (3) of Section 13, if any information relating to the birth of a person to be recorded after the expiry of one year from the date of occurrence of such birth, such informations shall be registered only based upon an order made by a Magistrate.

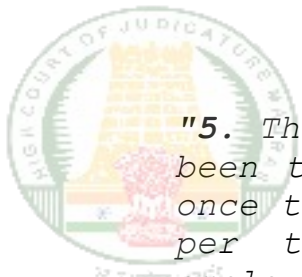
25. In the instant case, the writ petitioner appears to have submitted his application in the year 2000, before the Registrar, Mannadipet Commune Panchayat, seeking registration of date of birth as 21.07.1959 and he also entered the information in the register maintained and also furnished the extract there of on 08.08.2000. As this Court notice, the application for registration of date of birth of the writ petitioner has been made 43 years after the occurrence of his birth. There is no record to vouch the fact that, any Magistrate has issued any such order to enable the Registrar to enter the information so furnished in the records of register maintained.

26. Thus, this Court is of an opinion that, the birth extract produced by the writ petitioner from the Office of the Registrar, Mannadipet Commune Panchayat, can be of no avail. It is pertinent to note that, if at all the original date of birth is entered as 21.07.1959 in the original birth register and if the date was entered during the relevant point of time when the writ petitioner born, then the circumstances for delay is to be considered. The writ petitioner admitted the date of birth as 12.05.1957 right from his issuance of his SSLC certificate and till the year 2004.

27. This being the factum, this Court is of an opinion that, the revised certificate now produced by the writ petitioner during the year 2004 and the certificate dated 08.08.2000 cannot be considered for the purpose of granting alteration of date of birth to the writ petitioner.

28. The Hon'ble Supreme Court of India in the case of **Life Insurance Corporation of India and Others Vs. R.Basavaraju @ Basappa**, reported in (2016) 15 SCC 781 held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"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.

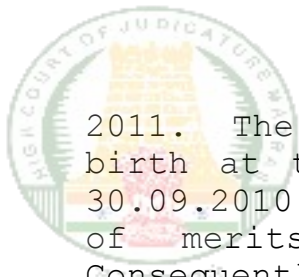
10. In our considered opinion, the impugned order [R. Basavaraju v. LIC, Writ Appeal No. 909 of 2006, decided on 29-11-2011 (KAR)] is wholly illegal and without any basis, which cannot be sustained in law.

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."

29. It is reiterated by the Hon'ble Supreme Court of India that, the 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 and the same cannot be changed. Not only that, this Court also held that, claim for change in date of birth cannot be entertained at the fag end of retirement. Now the writ petitioner is aged about 59 years, at the time of filing of the writ petition on 04.06.2018, hardly he may be serving for another 3 to 4 months. This being the factum, the correction of date of birth at this juncture cannot be considered by this Court, in view of the principles settled by the Hon'ble Supreme Court of India in the case cited supra.

30. The Apex Court considered the point raised from the Hannam Singh case which was decided during the year 1994. In the case of **Secretary and Commissioner, Home Department and Others Vs. R.kirubakaran** reported in (1994) Supp (1) SCC 155, the Hon'ble Supreme Court of India observes that, 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. The Supreme Court of India made an observation that "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.

6. In view of the facts and circumstances that the writ petitioner submitted an application seeking alteration of date of birth on 7.12.1974 and not pursued the matter for about 35 years and filed the first writ petition after the retirement during the year



2011. The writ petitioner is not entitled for alteration of date of birth at this length of time and he had retired from service on 30.09.2010 and 9 more years lapsed and the writ petition is devoid of merits and accordingly, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar(Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

To

1.Home Secretary, Home Department,
Fort St. George,
Chennai-9.

2.The Director General of Police,
Mylapore,
Chennai-4.

+1 CC to M/s.SPL GP (SR-81933[F] dated 16/08/2019)

W.P. (MD)No.5573 of 2013
14.08.2019

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JM/06.09.2019/8P/4C