



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAMW.P. (MD) No.13651 of 2014

A.Palanichamy

... Petitioner

-Vs-

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Deputy Commissioner,
Madurai Corporation, Madurai.

... 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 orders vide Ma.Ni.6/14006/2014, dated 26.06.2014 and Ma.Ni6/12289/2014, dated 27.06.2014 on the file of the 2nd respondent and consequently, to direct the respondents to correct the wrong entry of the petitioner's date of birth in his service book based on his school certificate and reinstate him into service with all benefits.

For Petitioner : Mr.R.Venkateshwaran

For Respondents : Mr.R.Murali

ORDER

The order of rejection, rejecting the claim of the writ petitioner for alteration of date of birth, is under challenge in the present writ petition.

2.The writ petitioner joined as Sweeper in the respondent Corporation on temporary basis in the year 1977__and he was continuously working as temporary employee and his services were regularised in the sanctioned post in time scale of pay with effect from 15.02.1984. As per the school records of the writ petitioner, the date of birth was entered as 01.07.1954.

3.The petitioner states that his actual date of birth is 07.06.1958. However, the Authorities competent entered the date of birth of the writ petitioner as 01.07.1954 based on the school records produced by the writ petitioner at the time of granting regularization and permanent absorption.

4.Further the petitioner states that he came to know that his date of birth was erroneous and accordingly, made an application on 22.09.1989 before the Authorities competent. No action was taken by the Authorities. The writ petitioner slept over his right, no



actions were taken based on the application submitted in the year 1989.

5.The learned Counsel for the writ petitioner states that the Employees Union office bearers had discussion and negotiation with the competent authorities. However, the first writ petition filed by the writ petitioner in W.P.(MD)No.7131 of 2014 in the year 2014, after a lapse of 25 years from the date of submission of application seeking alteration of date of birth in the service records. The earlier writ petition was disposed of on 24.06.2014 directing the respondents to consider the application submitted by the writ petitioner.

6.The learned Counsel for the writ petitioner states that the direction was issued to leave the delay. However, this Court is of the considered opinion that the very same application itself was submitted beyond the period stipulated in the Rules. As per Rules, an application seeking alteration of date of birth is to be submitted within the period of five years from the date of appointment. The writ petitioner was initially appointed on temporary employee in the year 1977 and brought under regular establishment with effect from 15.02.1984. Thus, the application itself was belated and accordingly, the same was rejected. Now, the writ petitioner has already attained the age of superannuation and retired from service.

7.Asfar as the alteration of date of birth is concerned, the Courts have repeatedly held that the Government servants cannot seek alteration after the lapse of many years. When the date of birth is accepted in the school records, such date of birth is continued for several years, then alteration of date of birth cannot be granted only for the purpose of granting extension of service, which would affect the opportunities of other persons, who are all waiting for employments.

8.This apart, such stale claim cannot be entertained, after a lapse of many years. In the present case, though the writ petitioner submitted the application in the year 1989, he filed the first writ petition in the year 2014 after a lapse of 25 years from the date of submission of application. Thus, he is not entitled for alteration of date of birth. The principles in this regard are considered by this Court in W.P.(MD)No.16857 of 2018, dated 05.03.2019 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. 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.

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:

"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.?"

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

9. The learned Counsel for the writ petitioner states that on account of pendency of the writ petition, the terminal and pensionary benefits are not settled in favour of the writ petitioner. It is made clear that if there is no impediment and if the writ petitioner otherwise eligible, the respondents are directed to consider the case of the writ petitioner for settlement of terminal and pensionary benefits as expeditiously as possible. If the terminal and pensionary benefits are withheld on account of pendency of this writ petition, the same is to be released without any delay. However, the claim of the writ petition for alteration of date of birth cannot be granted as the legal principles settled do not permit such alteration after a lapse of many years.

10. Accordingly, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Commissioner,
Madurai Corporation,
Madurai.

2. The Deputy Commissioner,
Madurai Corporation, Madurai.

+1 CC to Mr. R. VENKATESWARAN, Advocate (SR-81636[F] dated 14/08/2019)

+1 CC to Mr. R. MURALI, Advocate (SR-82055[F] dated 16/08/2019)

+1 CC to Mr. R. MURALI, Advocate (SR-82241[F] dated 19/08/2019)

W.P. (MD) No. 13651 of 2014

14.08.2019

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