



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) .No.5515 of 2014

P.Sundararajan

... Petitioner

-Vs-

1.Government of Tamil Nadu,
Rep. by the Principal Secretary to the Government,
Animal Husbandry and Veterinary Service Department,
Fort St. George, Chennai.

2.The Commissioner of Animal Husbandry
and Veterinary Service Department,
Chennai-6.

3.The Joint Director of Animal Husbandry
and Veterinary Service Clinician,
Dindigul.

4.The Veterinary Surgeon,
Clinician Centre, Dindigul.

5.The Revenue Divisional Officer,
Palani, Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to pass orders based on the recommendations of the 5th respondent dated 20.05.2011 in Na.Ka.No.2243/2011/A3/and correct the petitioner date of birth as 29.3.1956, reinstate the petitioner into service, allow the petitioner to continue in service till 30.03.2014 and disburse the salary and other service benefits for the period from 01.06.2011 to 30.03.2014.

For Petitioner

: Mr.R.Subramanian

For Respondents

: MrD.Muruganantham

Additional Government Pleader

ORDER

The relief sought for in the present writ petition is for a direction to the respondents 1 to 4 to pass orders based on the recommendations of the 5th respondent, dated 20.05.2011, in Na.Ka.No.2243/2011/A3/and correct the date of birth of the writ petitioner as 29.3.1956 and reinstate the petitioner into service.



2. The writ petitioner was appointed as Junior Assistant in Treasury Department in the year 2003 on temporary basis. On account of the fact that the large scale Government employees went on strike during the relevant point of time, the writ petitioner continued as a temporary employee on 08.02.2010. The writ petitioner was brought under the permanent establishment as regular employee.

3. The grievance of the writ petitioner is that his date of birth was entered in the school records as well as in the service records as 11.05.1953. But his actual date of birth is 29.03.1956. The learned counsel for the writ petitioner states that soon after the writ petitioner was appointed as a temporary employee, he made an application to alter the date of birth and the same was rejected. However, the writ petitioner was appointed on regular basis through the special qualifying examination. Accordingly, he was appointed as a regular employee with effect from 08.02.2010. Thereafter, the writ petitioner pursued his remedy for alteration of date of birth and the Revenue Divisional Officer also conducted an enquiry, which resulted in favour of the writ petitioner. However, no final order has been passed in respect of the correct date of birth of the writ petitioner.

4. The fact remains that the writ petitioner was engaged as a temporary employee in the year 2003. He was appointed in the year 2010 on regular basis. He was. The date of birth of the writ petitioner was initially entered in his SSLC book and the same was continuing for more than three decades. The writ petitioner also accepted the date of birth and accepted the Government services and thereafter, made an application to alter his date of birth. The fact remains that even at the time of filing of the writ petition, the writ petitioner was aged about 58 years and now he would be around 63 years. The very application was pursued by the writ petitioner one year prior to the date of retirement and this Court is of the opinion that the application seeking alteration of date of birth cannot be entertained during the fag end of service. The issue in this regard is dealt with by this Court in **W.P.No.16857 of 2018, dated 05.03.2019** and the relevant paragraphs are extracted hereunder:-

"..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:-

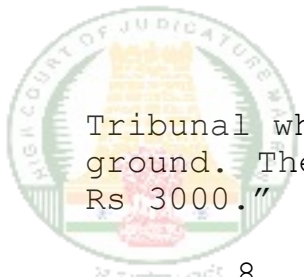
"5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also 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)

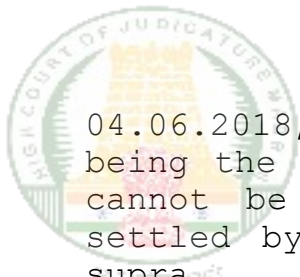
"4. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice 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."

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.

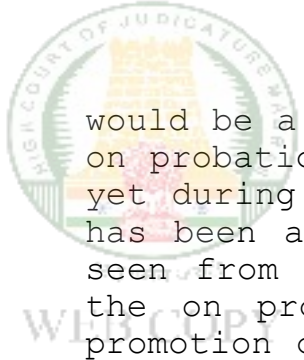
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30. The Apex Court considered the point raised from the Hannam Singh case which was decided during the year 1994. In the case of Secretary and Commissioner, Home Department and Others Vs. R.kirubakaran reported in (1994) Supp (1) SCC 155, the Hon'ble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

31. For all these reasons, this Court is of an opinion that, the writ petitioner for purposes entered in to the services of the first respondent on 02.05.1986 and he has not submitted the application seeking alteration of date of birth within 5 years, from the date of his first appointment and therefore, the subsequent direct recruitment cannot be construed as a first appointment for the purpose of entertaining the application seeking alteration of date of birth of the writ petitioner. This apart, the writ petitioner is due to retired from service within a period of 3 or 4 months and under these circumstances, it is not preferable to alter the date of birth.

32. The learned Senior Counsel made a submission that the impugned order is running counter to the order passed by this Court in WP.No.41333 of 2006 dated 23.01.2018. The learned Senior Counsel mainly relied upon paragraph No.15 of the judgement which reads as under:-

"Probation can notes a period of trial. On successful completion of the probation an employee is confimed in the appointment held by him. Obviously, the purpose of putting an employee on probation is to find out his suitability to hold the post substantively or permanently in the sense that he thereafter gets a right to hold the post. The fitness of suitability has to be judged at the time of confirmation and not, unless any specific rule or term of contract of service so provides, as on the date of the original appointment. If the employee is not found suitable either during the period of probation or on completion thereof he is not retained in service and the service is terminated by notice. It



would be a contradiction in terms if it is said that an employee is on probation, namely, is on trial for being retained in service and yet during this period he has a right to hold the post to which he has been appointed on probation. In the case on hand, as could be seen from the service book of the petitioner, it is appointment of the petitioner on probation, consequent to his resignation, and it is not promotion of the petitioner, it is appointment of the petitioner on probation, consequent to his resignation, and it is not promotion of the petitioner to the post of Professor. Therefore, by no stretch of imagination, the petitioner's appointment could be treated as promotion."

33. On a perusal of the said portion of the judgement, this Court elaborated the meaning of the word probation and further reiterated that, the probation connotes the period of trial. Therefore, the direct recruitment to the post of Professor alone is to be taken in to account for the purpose of reckoning the limitation period of 5 years.

34. This Court is of the considered opinion that, such a probation period may be relevant for the purpose of assessing the performance of the candidate in the post of Professor and therefore, such a probation cannot be construed as a point for limitation as far as the application seeking alteration of date of birth is concerned. Because, the writ petitioner was already in service in the same college namely, the Pondicherry Engineering College, right from 02.05.1986. Thus, this Court cannot come to the conclusion that the writ petitioner was not aware of the date of birth entered into his service records. Even at the time of submitting application for the direct recruitment to the post of Professor, the writ petitioner accepted the date of birth as 12.05.1957 as per the school records and as per the service records already maintained by the first respondent institutions. Considering the facts and circumstances, this Court has to provide a constructive interpretation for the purpose of entertaining the application seeking the alteration of date of birth and the point of limitation to be reckoned.

35. In the present case, though the appointment to the post of Professor is a direct recruitment, the same cannot be considered as a first appointment as the first appointment of the writ petitioner was made in the post of lecturer on 02.05.1986, in the very same institution namely the Pondicherry Engineering College, Puduchery. Accordingly, the writ petition stands dismissed. No Costs."

5. In view of the fact that the writ petition itself is filed after retirement, this Court is of the opinion that the date of birth entered in the school records as well as in the service register, cannot be altered now, after the retirement of the writ petitioner, more specifically, after a lapse of above 8 ½ years from the date of retirement.



6. With these observations, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1. The Principal Secretary to the Government,
Government of Tamil Nadu,
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5. The Revenue Divisional Officer,
Palani, Dindigul District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-78408[F] dated
30/07/2019)

+1 CC to M/s.SPL GP (SR-78518[F] dated 30/07/2019)

W.P. (MD) .No.5515 of 2014
29.07.2019

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JM/09.08.2019/7P-8C