

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal No.624 of 2019

Date: 23.09.2019

Between:

Khaja Khutbuddin S/o.Gulam nabi

..Appellants

And

State of Telangana represented
By its Principal Secretary,
Home Department,
Secretariat Buildings, Hyderabad
and others

..Respondents

Counsel for the Appellants : Sri J.Sudheer

Counsel for the respondents : Sri S.Sharath Kumar,
Special Government Pleader

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the order of the learned Single Judge passed in W.P.No.15937 of 2018, dated 11.06.2019, the present Writ Appeal is filed.

2. The brief facts of the case are that the appellant herein was appointed as a Fireman on 05.05.1979. Taking into account the date of birth of the petitioner as 02.04.1960 instead of 02.04.1961, he was made to retire on 30.04.2018. Since the petitioner was being retired on the basis of his date of birth as 02.04.1960, he approached this Court for questioning the proceedings in Rc.No.06/DFO/TSFS and CDTI/2018, dated 24.04.2018.

3. It is the case of the petitioner that even though the Service Register of the petitioner shows the date of birth his as 02.04.1961, the authorities, for reasons best known to them, have taken the same as 02.04.1960. And retired the petitioner on 30.04.2018. The writ petition was dismissed by the learned Single Judge on the ground that the writ petition was filed three days prior to the date of retirement, and an employee cannot seek correction of his date of birth in his Service Register at the fag end of his career, that too three days prior to his retirement.

4. Heard Sri J.Sudheer, the learned Counsel for the appellant, and Sri M.Sharath Kumar, learned Special Government Pleader for the respondents.

5. It is the contention of the appellant that all the Certificates produced by him prove the fact that his date of birth is 02.04.1961.

Even in the Service Register, his date of birth is shown as 02.04.1961. Further, as the appellant has no access to the said Service Register, any corrections made in the Service Register cannot be attributed to him. Lastly, when the record clearly shows that his actual date of birth is 02.04.1961, the question of retiring the petitioner on 30.04.2018 does not arise.

6. A perusal of the record shows that the petitioner had joined the duty on 05.05.1979 and at the time of his appointment, he had studied only upto IX Class. Subsequently, in the year 1989, he appeared privately for the SSC examination. In the said examinations, he has shown his date of birth as 02.04.1961. The petitioner mainly relies on the said SSC certificate to show that he was born on 02.04.1961 and even in the Service Register, the same is reflected. A bare perusal of the Service Register shows that there is overwriting and tampering in the Service Register and the letter "1961" is written subsequently. Even if the over-writings and corrections in the Service Register are ignored, the fact remains that in the application form, wherein the details of the family members are furnished, filled and signed by the petitioner, he has clearly mentioned his date of birth as 02.04.1960.

7. Even otherwise, in the seniority lists prepared and published by the Department, dated 01.07.2001 and 30.11.2004, the seniority of all the employees was shown. As against the name of each employee, the date of birth of the particular employee was also recorded. As can be seen from the said seniority lists, as against the name of the petitioner, the date of birth is clearly shown as 02.04.1960. Further, in the seniority list published on

30.11.2004, as against the name of each employee, not only the date of birth of the employee, but also his/her date of retirement is also shown. As is evident from the said seniority list, as against the name of the petitioner, his date of birth is shown as 02.04.1960 and his date of retirement as 30.04.2018. Thus, in the seniority lists prepared by the official respondents, the date of birth of the petitioner is clearly shown as 02.04.1960. Interestingly, the petitioner never challenged the correctness of these two seniority lists published in 2001 and 2004.

8. Insofar as the S.S.C. Certificate is concerned, on which the petitioner relies, it is an undisputed fact that the petitioner has written the said examination subsequent to his entering into service, that too as a private candidate. As such, no credence can be given to the said certificate, as whatever date entered by the petitioner in the application form will be reflected in the SSC certificate. The Hon'ble Supreme Court as well as this Court have time and again reiterated the fact that the Courts should be cautious while dealing with the corrections of date of birth in the Service Register of an employee, more particularly, in respect of those who are at the fag end of their service.

9. In BURN STANDARD CO.LTD. AND OTHERS v. DINABANDHU MAJUMDAR AND ANOTHER¹, the Hon'ble Supreme Court at para 10 held as under:-

Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and

¹ (1995) 4 SCC 172

entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly-found material.

10. The Hon'ble Supreme Court in the decision reported in BHARAT COKING COAL LIMITED AND OTHERS v. CHHOTA BIRSA URANW², at paragraph No.9, held as under:-

Another practice followed by the Courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organisation. Even this Court in spite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is question of fact fit to be determined by the appropriate forum.

11. In HOME DEPTT., v. R.KIRUBAKARAN³, the Hon'ble Supreme Court in paragraph No.7 held as under:-

An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his

² (2014) 12 SCC 570

³ 1994 Supp (1) SCC 155

immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

12. In this particular case, the petitioner has approached the Court just three days prior to his retirement even though he had ample opportunity to get his date of birth corrected in the year 2001 itself when the first seniority list was prepared.

13. In view of the above mentioned reasons, the Writ Appeal is devoid of merit and the order of the learned Single Judge

does not suffer from any illegality or infirmity and the same is accordingly dismissed.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

23rd September, 2019
smr

