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W.P.No.1620 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1620 of 2022

A.Raj

... Petitioner

Vs.

- 1.Union of India,
Represented by its Secretary,
Ministry of Information & Broadcasting,
Government of India, Shastry Bhavan,
New Delhi – 110 001.
- 2.The Managing Director,
National Film Development Corporation Limited,
A Government of India Enterprise,
Discovery of India Building,
6th Floor, Nehru Centre,
Dr.Annie Besant Road, Worli,
Mumbai – 400 018.
- 3.The Deputy General Manager (Admin – C/Reporting Officer),
National Film Development Corporation Limited,
A Government of India Enterprise,
350, Pantheon Road,
Co-optex Warehousing Building,
Egmore, Chennai – 600 008.



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4.The Assistant Manager -HR,
National Film Development Corporation Limited,
A Government of India Enterprise,
Discovery of India Building,
6th Floor, Nehru Centre,
Dr.Annie Besant Road, Worli,
Mumbai – 400 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, quash the communication of the 3rd respondent dated 11/09/2020 vide NFDC / MDS / A.Raj / 2020 - 2021 and subsequent communication dated 01/10/2020 vide NFDC / CH /294 and consequently direct the respondents to accept the Petitioner's Application No.19 and 10D, either with the existing Pan Card and Aadhar Card having date of Birth as 10/02/1960 or without insisting for the Pan card and Aadhar Card with 10/02/1959 as date of birth in the service record and process the above said application immediately within the Specified time fixed by this Court and remit the petitioner the provident fund, pensionary and other attendant benefits into his bank account.

For Petitioner : Mr.L.N.Pragasam

For Respondents : Mr.M.Ravi
Central Government Senior Standing
Counsel



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ORDER

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The short point involved in this Writ Petition is that the petitioner's claim for retirement and pensionary benefits has been rejected by the respondent, on the ground that the service records reflect his date of birth as 10.02.1959, whereas, the Application No.19 and 10D submitted by the petitioner on 10.09.2020 shows his date of birth as 10.02.1960 and he had not taken steps to rectify his date of birth in the service records which shows as 10.02.1959 and therefore, this small omission on his part should not deprive of his retirement and pensionary benefits.

2.The respondents in the impugned order have stated that since there is a discrepancy in the petitioner's date of birth from the school testimonials as well as Pan card, Adhar card and other documents issued by the Government, they are unable to process the petitioner's application seeking for provident fund and retirement/pensionary benefits. The petitioner has produced a copy of his birth certificate issued by the Corporation of Madras dated 28.05.1976, his passport dated 19.12.2013, computer generated birth certificate from the Chennai Corporation dated 21.10.2016, the transfer certificate issued by the Annamalai University



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dated 15.09.2000 as well as the Pan card, Aadhar card, driving license and Voter ID reflects his date of birth as 10.02.1960. The only discrepancy of his date of birth is in the service records of the respondents herein.

3. When all these documents issued by various departments of the Central, State Governments and Corporation reflect his date of birth as 10.02.1960, the claim made by the petitioner may not be kept pending or the petitioner should not be subjected to the rigorous process of trial by the civil Court.

4. This court in the case of ***J.Ganesan Vs. The Secretary to Government and ors*** in W.P.No.9697 of 2020 dated 28.07.2021 has already taken a view that when the alteration of date of birth is based on unimpeachable documents and when there is no immediate benefits to the claimant, the claim for alteration should be considered.

The relevant portion of the order reads as follows:-

“16. In the case of M.T.Ganesh Moorthy Vs. State of Tamil Ndu, rep. by the Secretary to Government, Home (Police



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1A), Department, Secretariat, Chennai and others passed in the order dated 23.04.2018 in W.P.No.29669 of 2014, in which alteration of the date of birth was also claimed on the basis of the birth certificate, this Court had held that when the alteration of date of birth is based on unimpeachable documents and when there is no immediate benefits to the claimant, the claim for alteration should be considered. The relevant portion of the order reads as follows:-

“9.1. The claim for alteration of date of birth has not been made either at the eve of promotion or at the fag end of retirement. The first application itself has been given even in the year 1996. The second application has been given in the year 2000. The first application has been dismissed in the year 1996 and the second application has been dismissed in the year 2006.

9.2. The claim of the petitioner is based on a document which is maintained in the regular course of official duty, namely, the birth certificate of the petitioner. Apart from that, the birth certificates of the other brothers and sisters of the petitioner have been filed. These birth certificates being documents relevant under Section 35 of the Evidence Act cannot be lightly



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brushed aside. The comparison of date of birth of the petitioner would furnish clue as to whether the claim would be genuine or not.

S. No	Name of the family member	Date of Birth	Date Registered
1	M.T.Palaniappan	08.05.1956	23.05.1956
2	M.T.Dhananchayan	29.07.1958	11.08.1958
3	M.T.Krishnamoorthy	25.11.1960	15.12.1960
4	M.T.Ganesan	10.10.1962	14.11.1962
5	M.T.Sumathi	15.12.1967	30.12.1967
6	M.T.Lathamaheswari	26.12.1969	02.02.1970

9.3. Perusal of these details as disclosed in the birth certificate would go to show that initially, there is a time gap of two years between the birth of one child to other child up to the birth of this petitioner and only thereafter, there is a time gap of five years between the birth of the petitioner and his sister. If really, the petitioner had to make use of time gap, he might have preferred to use a still later year as a year of birth in order to gain advantage in the service period. It is highly unrealistic to imagine that the petitioner might have utilized the gap of five years which existed between his birth and birth of his sister as the registration of the birth has been made



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even in the year 1962, when the petitioner was a small child. Therefore, when the correction is asked for based on unimpeachable documents, the authenticity of which cannot be doubted and when the claim is made at a time when there was apparently no immediate benefits, the claim ought to have been considered. The rejection of the claim based on no acceptable reasons is liable to be rejected.

10. It is relevant to quote the decision of the Apex Court with relevant observations regarding the circumstances under which the claim for alteration of date of birth should not be considered:

4. In U.P.MADHYAMIK SHIKSHA PARISHAD AND OTHERS Vs. RAJ KUMAR AGNIHOTRI (2006- 2-L.W.182), the Supreme Court relying on its earlier decisions in STATE OF U.P. AND OTHERS Vs. GULAICHI (SMT), ((2003) 6 SCC 483), STATE OF UTTARANCHAL AND OTHERS Vs. PITAMBER DUTT SEMWAL (2002) 1 UPLBEC 441 SC, STATE OF T.N. Vs. T.V.VENUGOPALAN (1994) 6 SCC 302=1994 WRIT L.R.831=1995-1-L.W.13



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S.N., EXECUTIVE ENGINEER, BHADRAK (R&B) DIVISION, ORISSA AND OTHERS Vs. RANGADHAR MALLIK, 1993 SUPP (1) SCC 763, GOVERNMENT OF ANDHRA PRADESH AND ANOTHER Vs. M.HAYAGREEV SARMA ((1990) 2 SCC 682), UNION OF INDIA Vs. HARNAM SINGH, ((1993) 2 SCC 162), BURN STANDARD CO. LTD. AND OTHERS Vs. DINABANDHU MAJUMDAR AND ANOTHER (AIR 1995 SC 1499) and THE SECRETARY & COMMISSIONER HOME DEPARTMENT & ORS Vs. R.KIRUBAKARAN, (JT 1993 (5) SC 404), had come to the conclusion that the correction in entries made in the Government records, on the basis of which the Government servant got the service, cannot be allowed to be changed just a few years before retirement or at the fag end of his service.

As pointed out already, it is not a claim made just few years before retirement or at the fag end of his service, though there is a delay on the part of the authorities to pass final



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orders.

11. Explaining the law applicable to the employees recruited through Tamil Nadu Public Service Commission, which is highlighted in the case of In THE SECRETARY & COMMISSIONER Vs. R.KIRUBAKARAN, (1994) Supp (1) SCC 155, the Supreme Court has held as follows:

"9. The Tamil Nadu Service Manual contains Rules 49 and 49-A, which are the provisions in respect of alteration and correction of the date of birth. Whenever any application is filed by persons governed by those service rules, procedures prescribed therein have to be strictly followed, including the time-limit prescribed for making such an application. Clause (b) of the aforesaid Rule 49 provides that after a person has entered in service, an application to alter the date of his birth as entered in the official records "shall be entertained only if such an application is made within five years of such entry in service...." It need not be pointed out that if an application is made for correction of the date of birth



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mentioned in the service records at an early date or within the time prescribed, the authorities are in a much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier....."

This is a case where the petitioner herein has promptly raised the issue about two decades back and the authorities concerned



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have kept it pending for a long time, for which, the petitioner cannot be made liable.

12. Explaining the nature of evidence that should be looked into the reliability of the evidence adduced, the relative value of documents produced for the justification for correction of date of birth, the Supreme Court has held as under:

In STATE OF PUNJAB Vs. MOHINDER SINGH (2005) 3 SCC 702, the Supreme Court has held as follows: 11.

Horoscope is a very weak piece of material to prove age of a person. In most cases, the maker of it may not be available to prove that it was made immediately after the birth. A heavy onus lies on the person who wants to press it into service to prove its authenticity. In fact, a horoscope to be treated as evidence in terms of Section 32 clause (5) must be proved to have been made by a person having special means of knowledge as regards authenticity of a date, time etc. mentioned therein. In that context horoscopes have been held to be inadmissible in proof of age. (see Ramnarain Kallia v. Monee Bibee, Biro v. Atma Ram and



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Satish Chandra Mukhopadhyaya v. Mohendra Lal Pathak.)

12. On the contrary, the statement contained in the admission register of the school as to the age of an individual on information supplied to the school authorities by the father, guardian or a close relative is more authentic evidence under Section 32 clause (5) unless it is established by unimpeachable contrary material to show that it is inherently improbable. The time of one's birth relates to the commencement of one's relationship by blood and a statement therefore of one's age made by a person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32 clause (5).

13. As observed by this Court in Umesh Chandra v. State of Rajasthan ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even



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the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required under Section 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam."

If the facts of this case are scanned in the light of the dictum laid down, guidelines shown in the above decision, it is clear that the document relied upon (birth certificate) is ante litem motam maintained by the statutory authority, which is regularly kept in the discharge of official duty and it constitute good proof for date of birth. Therefore, when authentic document is relied upon to correct the date of birth, it should be entertained.

13. The next contention is that already a claim made has been dismissed in the suit in O.S.No.4283 of 2007 and hence, the writ



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petition is not maintainable. Admittedly, the suit filed praying for alteration of date of birth is dismissed. But, in case of a public servant, seeking alteration in the date of birth, the claim should have been filed only before the Administrative Tribunals. From the year 2004 onwards, the jurisdiction of the Administrative Tribunal has been transferred to the High Court and therefore, the writ jurisdiction is the appropriate remedy in case of the petitioner. The Judgment rendered in O.S.No.4283 of 2007 is without jurisdiction and therefore, it is a void decree, i.e. a decree is a non-existing one or not in existence at all. Therefore, the decree in the suit does not bar the jurisdiction of the writ court.

14. When a public servant discharging public functions, demand correction of date of birth in the Service Register, which is made neither at the fag end of the career nor in anticipation of any promotion and the claim is supported by impeccable public documents and the authenticity of which cannot be challenged, then, normally, the Court must be



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inclined to effect the correction. Therefore, the claim of the petitioner has to be accepted and the writ petition has to be allowed.”

17. The aforesaid decision in M.T.Ganesh Moorthy's case (supra) came to be affirmed by the well considered decision of the Hon'ble Division Bench of this Court in its order, dated 09.10.2020 passed in W.A.No.781 of 2019. The relevant portion of the order reads as under:

“25. The certificate which was produced before the learned Single Judge and before us appears to be an extract of the entries made in the Register as early as 14.11.1962. As per the said procedure, birth or death was to be registered within one week from the date of birth or death. Therefore, we do not find any reasons to question the correctness of details of the birth certificate issued to the first respondent/writ petitioner under the provisions of the Registration of Birth and Death Act, 1969 read with Rule 8 of Tamil Nadu Birth and Death Registration Rules, 2000.

26. In such view of the matter, the Birth Certificate produced by the first respondent/writ petitioner in this case, to substantiate his date of



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birth, will outweigh any other documents furnished by him to prove his date of birth. In fact, along with the application for alteration of date of birth, the first respondent/writ petitioner has not only enclosed his birth certificate, but also produced the birth certificates of his brothers and sisters to show that the date of birth indicated in the birth certificate issued to him is probable and reliable. While so, we see no reason to disbelieve the birth certificate produced by the first respondent/writ petitioner to substantiate his date of birth. 27. Yet another submission of the learned Additional Advocate General appearing for the appellants is that the name of the first respondent/writ petitioner in his birth certificate is Ganesan, but what was indicated in his educational records is Ganesa Moorthy, and therefore also, the date of birth indicated in his birth certificate cannot be relied upon. We see no force in such submission of the learned Additional Advocate General. The difference in the name of the first respondent/writ petitioner given in the birth certificate as well as the other testimonials is not such that it would invalidate the Birth Certificate issued in favour of the first



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respondent/writ petitioner. In the Birth Certificate, the name of the first respondent/writ petitioner is mentioned as Ganesan, but in the educational testimonials it was Ganeshmoorthy. Such difference in the name of the first respondent/writ petitioner is probable, reasonable and common, particularly, when the names of the parents of the first respondent~writ petitioner are clearly mentioned in the Birth Certificate, and therefore, it will not be a ground for outright rejection of the Birth Certificate issued in favour. ...

32. In the present case, as held above, the application submitted by the first respondent/writ petitioner, on the strength of the Birth Certificate issued to him, within a period of five years from the date of his appointment on 16.12.1991 and it is in accordance with Rule 49 (b) of the said Rules. The word “such entry“ mentioned in the relevant Rules, mean entry into a particular service. Therefore, such application can be entertained by the appellants and its rejection is not warranted especially when birth certificate produced by the first respondent/writ petitioner is not seriously disputed. The learned Single Judge also, in our opinion, rightly allowed the writ



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petition filed by the first respondent/writ petitioner, over which, we decline to interfere.”

5.The respondents herein have not disputed the petitioner's date of birth in his testimonials issued by Central Government/State Government/Corporation. The only apprehension the respondents may have is that, if the petitioner's date of birth is now altered in his service records as 10.02.1960, his service could be added by one more year and the petitioner may claim benefits.

6.However, the said apprehension of the respondents may not arise in view of the additional affidavit filed by the petitioner dated 14.12.2023 stating that, he will not claim any additional benefits based on his date of birth as 10.02.1960.

7.The relevant portion of the affidavit of the petitioner states as follows,

“ 4. I state that, I am retired from service on 28.02.2019 in accordance with date of birth 10.02.1959, as mentioned in the School Transfer Certificate. Due to



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this difference of date of birth, I am unable to receive my provident fund, pensionary and other attendant benefits. I state that, I am willing to receive provident fund, pensionary and other attendant benefits as mentioned in the School Transfer Certificate.

I hereby submit that I will not claim my provident fund, pension and other attendant benefits from the respondents based on my Birth Certificate issued by the Chennai Corporation as 10.02.1960.”

8.This Court is of the view that the undertaking given by the petitioner could be recorded and his date of birth in his service records of the respondents 2 to 4 herein shall be directed to be read as 10.02.1960 instead of 10.02.1959.

9.Accordingly, there shall be directions to the respondents herein to accept the petitioner's Application No.19 and 10D, by taking his date of birth as 10.02.1960 instead of 10.02.1959 and consequently, pass appropriate orders, disbursing all his retirement benefits, including pensionary benefits. Such orders shall be passed within a period of four



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(04) weeks from the date of receipt of a copy of this order.

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10. Accordingly, Writ Petition stands allowed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order

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To



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Represented by its Secretary,
Ministry of Information & Broadcasting,
Government of India, Shastry Bhavan,
New Delhi – 110 001.
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