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W.A.No.2871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.2871 of 2023

K.Narayanan

.. Appellant

Vs.

1.The Chief Engineer (Personnel)
TANGEDCO
No.114, Anna Salai
Chennai 600 002

2.The Superintending Engineer
C&DC/South-II/K.K.Nagar
110, K.K.Nagar
Chennai 600 078

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 02.08.2023 passed by the learned Judge in W.P.No.22811 of 2023.

For Appellant : Mr.K.Selvaraj

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Challenging the order dated 02.08.2023 passed by the learned Judge in W.P.No.22811 of 2023, the writ petitioner has preferred this writ appeal.



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2.The appellant has filed the aforesaid writ petition for issuance of a writ of Mandamus directing the respondents to consider and pass orders on his application dated 28.06.2007 for alteration of his date of birth in his service records.

3.Considering the facts and circumstances of the case, the learned Judge dismissed the writ petition by the order impugned herein, on the ground that the appellant has given the representation to the respondents, after a period of 20 years from the date of service in the Department and that, it is settled law that any application for change of date of birth ought to have been given within 5 years from the date of appointment. Aggrieved by the same, the present writ appeal has been filed.

4.The learned counsel for the appellant stated that the appellant was originally appointed as Helper in TNEB on 11.09.1987 and thereafter, promoted as Instrument Mechanic, Junior Engineer-II Grade (Electrical), Technical Assistant (Electrical), Assistant Engineer (Electrical) and finally at present, he is working as Assistant Engineer (Special Maintenance-Outdoor MRT) in Chennai Electricity Distribution South Circle-II, Pallavaram, Chennai-600 043. The learned counsel further went on to state that the



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appellant has rendered unblemished services for the past 36 years and that his original date of birth is 30.09.1965, but it has been wrongly recorded as 30.07.1964 in the service register and that as soon as he came to know about his correct date of birth from his mother, he submitted an application dated 28.06.2007 to the second respondent requesting to enter the correct the date of birth in the service records, but the same has not been considered. The point of delay attributed on the part of the appellant as stated in the impugned order is not correct, since immediately after coming to know of the information from his mother, the appellant has submitted the application. Stating so, the learned counsel prayed for setting aside the impugned order and to allow the prayer as sought for by the appellant in the writ petition.

5.Heard the learned counsel for the appellant and also perused the records.

6.There is no dispute that the appellant was originally appointed as Helper in the respondent Department and thereafter received many promotions after strengthening his qualifications. It is also not in dispute that he has put in unblemished service for about 36 years. But, that is not the issue here. The issue that arises for consideration herein is relating to submission of the



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application to the authorities for change of date of birth, after a prolonged

period. In this connection, it may be relevant to refer to the following decisions

of the Hon'ble Supreme Court:

(i)State of T.N v T.V. Venugopalan [1994 SCC (6) 302 : JT 1994 (5) 337]:

"7. As held by this Court in Harnam Singh case, 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 the G.O.Ms 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."

(ii)State of M.P. v Premlal Shrivastava [(2011) 9 SCC 664]

"8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real



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*injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. **Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous.** No court or the Tribunal can come to the aid of those who sleep over their rights [see: Union of India v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92].*

*"12.Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. **It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay.** There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."*

Thus, it is clear from the above that the application filed for alteration/change of date of birth, should be made within a period of five years from the date of entry into service and the same made, after a prolonged period, as a matter of right, cannot be entertained, even if the delay is substantiated.

7. In the present case, admittedly, the application seeking change of date of birth has been given by the appellant after 20 years of service in the Department. Normally, the period for considering this type of application is five years. That is what the learned Judge has observed that any change of date



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of birth, ought to have been given within 5 years from the date of appointment and hence, the direction to dispose of the representation seeking alteration of date of birth, would not serve any purpose. That apart, the reason adduced by the appellant for the delay that once he came to know his original date of birth, he immediately made the application, is not a valid ground to be considered. Therefore, following the legal proposition as referred to above, the application made after a prolonged period of 20 years for alteration of date of birth as a matter of right, cannot be countenanced by this Court.

8.In view of the foregoing, the writ appeal stands dismissed. No costs.

[R.M.D,J.] [M.S.Q, J.]

18.10.2023

Internet : Yes

Neutral Citation : Yes/No

gya

To

1.The Chief Engineer (Personnel)

TANGEDCO

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Chennai 600 002

2.The Superintending Engineer

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