

W.P. Nos.5176 & 5185 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 28.02.2025

PRONOUNCED ON : 28.03.2025

PRESENT:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.P.Nos. 5176 of 2020 & 5185 of 2020

and

W.M.P.Nos. 6115 & 6124 of 2020

1. M.Dhanammal,
W/o. Muniyandi,
No.1/15, Bajanai Koil Street,
Muppathu Vetti Village,
Arcot Taluk,
Vellore District.

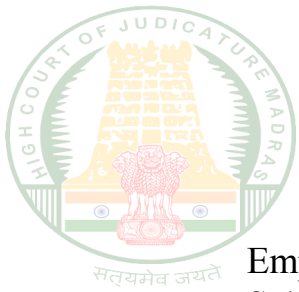
...Petitioner in WP No.5176/2020

2. M.Azeema Be
W/o. Nawab Jan (17951/16),
No.1/15, Bajanai Koil Street,
Muppathu vetti Village,
Arcot Taluk,
Vellore District.

...Petitioner in WP No.5185/2020

Vs.

1. The Commissioner,
EPFO, Royapettah,
Chennai -14.
2. The Assistant Commissioner,
EPFO Regional Office,
No.3, Rajaji Salai,
Thambaram, Chennai – 600045.
3. The Regional PF Commissioner,
Sub Regional Office,



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Employees Provident Fund Organisation,
S-1, TNHB Phase III, Vallalar Sathuvachari,
Vellore – 632 009.

4. Assistant PF Commissioner (Accounts)

Sub Regional Office,
Employees Provident Fund Organisation,
S-1, TNHB Phase III, Vallalar Sathuvachari,
Vellore – 632 009.

...Respondents 1 to 4 in

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5. S.Sadiq Basha,

Independent Contractor,
No.15, Chairman Munusamy Street,
Arcot, Vellore District – 632 503

...5th Respondent in

WP No.5176/2020

6. R.M.Ibrahim

Independent Contractor,
No.3-A, Jayaram Street,
Arcot 632 503, Vellore District.

...5th Respondent in

W.P.No.5185/2020

Prayer in W.P.No. 5176 of 2020

To issue a writ or order or direction in the nature of writ calling for the records connected with the order passed by the second respondent in proceedings No.TB/VLR/17951 & 17952/Gr-06(3)/Rejection/2018/-19 dated 4.4.2019 and quash that portion of the order passed rejecting the claim of the petitioner for family pension and further direct the respondents one to three to grant the petitioner EPF pension from the EPF Account of petitioner husband in No.TN 17952/44 from the date of death of petitioner husband namely 01.01.2002 and the arrears of pension



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for petitioner husband for the period from 1.10.1997 viz his date of superannuation to 31.12.2001 viz his date of death and pass such further or other orders as this Hon'ble Court may deem fit and necessary in the circumstances of the case.

Prayer in W.P.No.5185 of 2020

To issue a writ of Certiorarified Mandamus or any other appropriate writ or order or direction in the nature of writ calling for the records connected with the order passed by the fourth respondent in proceedings No.TB/VLR/17951&17952/Gr-06(3)/Rejection/2018/-19 dated 4.4.2019 and quash that portion of the order passed rejecting the claim of the petitioner for family pension and further direct the respondents one to three to grant the petitioner EPF pension from the EPF Account of petitioner's husband in No.TN 17951/16 from the date of death of petitioner's husband namely 20.05.2000 and the arrears of pension for pensioner's husband for the period from 1.10.1997 viz his date of superannuation to 19.05.2000 viz the date prior to his death and pass such further or other orders as this Hon'ble Court may deem fit and necessary in the circumstances of the case.

Prayer in WMP No. 6115 of 2020

To dispense with the production of the original impugned order passed in proceedings No.TB/VLR/17951 & 17952/Gr-06(3)/Rejection/2018-19 dated: 04.04.2019 by the 4th respondent rejecting the PF family Pension, for the present.



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Prayer in WMP No. 6124 of 2020

To dispense with the production of the original impugned order passed in proceedings No.TB/VLR/17951 & 17952/Gr-06(3)/Rejection/2018-19 dated 04.04.2019 by the 4th respondent rejecting the PF family Pension, for the present.

Appearance of Parties:

For Petitioner:

In both WPs : M/s.S.Arunachalam, D.Ponventhan and
M.Navinkumar, Advocates

For Respondents 1 to 4

In both WPs : Mr.P.K.Panneer Selavam, Advocate

For Respondent 5

In both WPs : No appearance

COMMON JUDGMENT

Heard.

2. Both writ petitions challenge a common impugned order dated 04.04.2019 and are founded on nearly identical facts. Consequently, they were clubbed together and a common judgment has been pronounced. The petitioners in both writ petitions are widows of their respective husbands, who were beedi workers employed under different beedi contractors, each of whom is arrayed as the fifth respondent herein.



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3.Following the demise of their husbands, the petitioners submitted applications seeking a family pension under the Employees' Provident Fund Act. These applications, along with those of two others, were rejected by the second respondent by way of a common order. As regards the two petitioners, the order sets out the following particulars and provides the reasons for rejection:

Details of the WP	PF Acc & Name (Mr)	DOB	Service details	Member died on or	Form-D submitted by	Remarks
5185/2020 Azeema Be	17951/16 Nawabjohn	01.01.1933 (53 years as on 01.01.86)	<u>DOJ</u> 01.01.1986 Preponed to 01.06.1997 <u>DOE</u> 30.09.1997	20.05.00	Spouse	The member has attained 60 years as on 01.01.1993(i.e . before 01.04.93) and the DOB certificate was registered almost after 65 years. DOB certificate is not acceptable. Hence Form-10D is rejected
5176/2020 Dhanammal	17952/44 Muniyandi	01.01.1929 (57 years as on 01.01.86)	<u>DOJ</u> 01.01.1986 Preponed to	01.01.02	Spouse	The member has attained 60 years as on 01.01.1989 (i.e. before 01.04.93) and



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			01.06.1977 <u>DOE</u> 30.09.1997			the DOB certificate was registered almost after the death of member. DOB certificate is not acceptable. Hence Form-10D is rejected.
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4. A counter affidavit dated 06.10.2021 was filed on behalf of respondents 1 to 4 in W.P. No. 5185 of 2020, pertaining to M. Azeema Be. In paragraphs 8 and 13 of the affidavit, the following averments were made:

“8.Birth certificate produced by the Petitioner in respect of her deceased husband was issued on 1-6-1998 mentioning the date of birth as 7-10-1939. The circumstances under which the Registrar of Birth recorded the date of birth after a lapse of 60 long years, is not known. However, the Respondent Organisation has existing rules that the Birth Certificate issued based on Self-declaration / affidavits, cannot be a valid document for effecting change in the date of birth provided by the employer at the time of joining service.”

“13...in the case of the Petitioner, his date of birth was registered on 1-6-1998 by Registrar of Births, i.e., around 60 years after the alleged date of birth. Hence, the date of birth



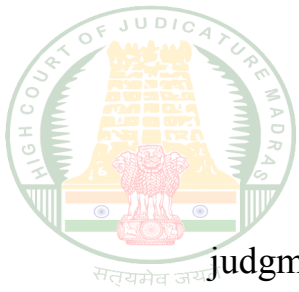
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certificate produced by the Petitioner in respect of her deceased husband was not accepted.”

5. It is pertinent to note that the Employees' Family Pension Scheme, 1971, was framed by the Central Government in the exercise of the powers conferred under Section 6A of the Employees' Provident Funds and Family Pension Act, 1952. The retention of membership under the scheme is governed by Paragraph 6. An explanation was issued on 16.02.1983, with effect from 01.01.1983, stipulating that the age of 60 years shall be determined with reference to the subscriber's date of birth. In cases where the exact date of birth could not be ascertained, the manner of determination is set forth in the explanation. However, this does not imply that employees are entitled to seek a change of date of birth either at the twilight of their service or after the demise of the subscriber.

6. The learned counsel for the respondent brought to the attention of this Court a judgment of the Supreme Court that lays down the general principles governing the determination of the date of birth of a government servant, as well as the scope of the High Court's power under Article 226 to issue directions in this regard. Reliance was placed on the



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judgment in *G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar*

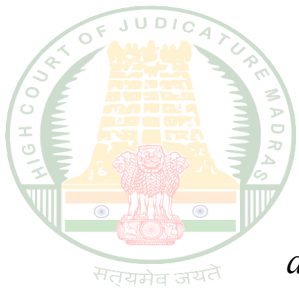
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Dushad reported in 2000 (8) SCC 696, and the following passages were cited:

“Before entering into the question of validity and sustainability of the judgment passed by the single Judge and the Division Bench of the High Court in this case we would like to make the observation that in a case where the controversy over the date of birth of an employee has been raised long after joining the service and the matter has engaged the attention of the authority concerned and has been determined by following the procedure prescribed under Service Rules or General Instructions issued by the employer and it is not the case of the employee that there has been any arithmetical mistake or typographical error patent on the face of the record, the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution should not interfere with the decision of the employer.

.....

The date of birth of an employee is not only important for employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing



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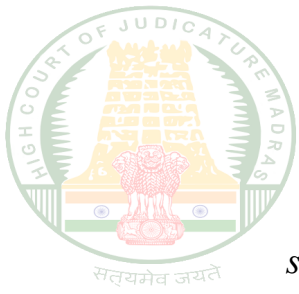
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acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on account of which the junior is denied promotion which he has all along been lead to believe will be his due on the retirement of the senior.

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In the case of Burn Standard Co.Ltd. & Ors. vs. Dinabandhu Majumdar & Anr., (1995) 4 SCC 172, this Court sounded a caution regarding entertaining writ petitions by High Courts for correction of date of births. This Court observed:

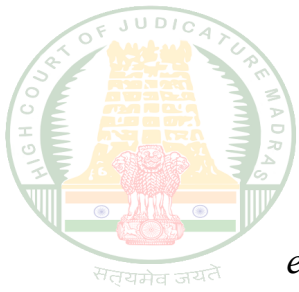
"Entertaining by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction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



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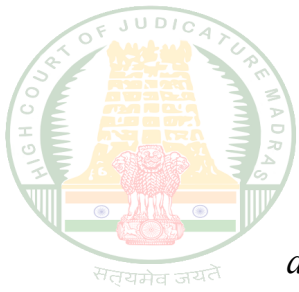
sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applicants on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his "Service and Leave Record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have not hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement. [para 10] Prudence on the part of



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every High Court should, however, in our considered view prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well-settled legal position governing such correction of date of birth, which precisely stated, is the following: [para 11] When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements of the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent G.M., Bharat Coking Coal Ltd., West ... vs Shib Kumar Dushad & Ors on 2 November, 2000 Indian Kanoon - <http://indiankanoon.org/doc/671024/> 8 gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service



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at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such a sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."

7. The learned counsel for the respondent also referred to a judgment rendered by a learned Judge of this Court, which dealt with several cases arising under the Employees' Pension Scheme concerning



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the alteration of the date of birth. Reliance was placed on the decision in *R. Devanesan v. The Regional Provident Fund Commissioner* reported in 2011 (1) CLR 830, particularly on the following passages found in paragraphs 20 and 35 to 38:

“20. The date of birth particulars furnished at the time of enrolment cannot be altered or changed at a later point of time and that too after leaving the service. In this connection, the learned counsel appearing for the first respondent/Regional Provident Fund Commissioner, Tirunelveli relies on the judgment of the Honourable Supreme Court in Civil Appeal No.6142 of 2000 {arising out of SLP (Civil) No.14116 of 1999} that the date of birth cannot be changed long after joining the service and the said judgment will apply squarely to the present facts and circumstances of the cases.”

“35. As far as the case of the petitioner in W.P.(MD) No.6382 of 2005 is concerned, on receipt of claim in Form D inasmuch as the petitioner has not attained the minimum age of 50 years as on 14/10/2003 and the first respondent on receipt of claim in Form 10 (D) has issued Scheme Certificates in accordance with the provision under paragraph 12 (8) of Employees Pension Scheme, 1971, the petitioner has not completed 50 years of age and any change in particulars after introduction of Employees' Provident Funds Scheme after 16/11/1995 cannot be accepted by the first respondent and also the age provided by the petitioner at the time of his enrolment to the Employees' Provident Fund Scheme, 1952 cannot be changed.



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36. As far as the petitioner in W.P.(MD) No.6384 of 2005 is concerned, on receipt of claim in Form 10 (D) and since the petitioner has not attained the minimum age of 50 years, the Scheme Certificate dated 19/3/2004 as provided under paragraph 12 (D) of Employees Pension Scheme, 1995 has been issued and the employer viz., the second respondent/Mills as per letter dated 7/10/2004 has only furnished a fresh Form 5 instead of furnishing a copy of Form 5 submitted the original and also not furnished the justification for the age already furnished to the office of the first respondent and therefore, the request for change of Date of Birth has not been accepted and the same was informed as per letter dated 2/11/2004.

37. Therefore, the aspect of considering the documents furnished by the petitioners after the introduction of Employees Pension Scheme, 1995 does not arise on any score. Indeed, the petitioner draw or reduced Pension as per paragraph 12 (7) only from 1/4/2007 and therefore, they have been issued with the Scheme Certificate in accordance with the provisions of paragraph 12 (8) of Employees Pension Scheme. To put it precisely, the date of birth furnished by the petitioners in a fresh Form 2 executed by an existing member under Family Pension Scheme, 1971 as on 15/11/1995 is not to be taken into account as per the existing instructions, as informed by the first respondent/Regional Provident Fund Commissioner.

38. In view of the qualitative and quantitative discussions mentioned supra and also this Court taking note of the entire gamut of the facts and circumstances of the case in an integral manner comes to an inescapable conclusion that



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the date of birth/age provided by a member/petitioner at the time of enrolment of Employees' PF cannot be changed by him at a subsequent point of time and that too the petitioners after leaving the service. Viewed in that angle, the writ petitions filed by the petitioners san merit and resultantly, the writ petitions fail”

8. In light of the foregoing, the claims made by the two petitioners for a family pension based on the altered age of their late husbands are misconceived. The reasons stated in the impugned order passed by the second respondent do not warrant interference. Accordingly, both writ petitions stand dismissed. Consequently, the connected miscellaneous petitions are also dismissed. There shall be no order as to costs.

28.03.2025

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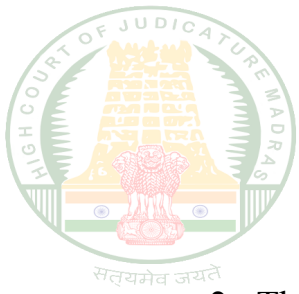
Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1. The Commissioner,
EPFO, Royapettah,
Chennai -14.



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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.Nos. 5176 of 2020 &
5185 of 2020 and
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28.03.2025