

(2013) 11 MAD CK 0196
In the Madras High Court
Case No : Writ petition No. 19277 of 2013

Ameer Haja

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0196

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : V. Selvaraj, for the Appellant; P.H. Aravind Pandian, Additional Advocate General Assisted by Mr. M. Hidyathullakhan, Government Advocate (P), for the Respondent

Final Decision : Dismissed

Judgement

N. Kirubakaran, J.—The petitioner joined the service as Forest Apprentice Trainee on 4.11.1977. His date of birth, as per school and college records, is 8.11.1955. According to the petitioner, his actual date of birth is 28.6.1957. Therefore, the petitioner submitted an application for correction of date of birth on 6.1.1978. As per the direction of the second respondent, the petitioner resubmitted an application for change of date of birth in a revised form on 28.9.1979, followed by another form on 12.7.1984. Since there was a delay in processing the application, the petitioner filed W.P. No. 26114 of 2008 seeking a direction to pass orders on his application and the said writ petition was ordered on 4.11.2008 directing the respondents to pass orders on merits within 12 weeks. The Sub Collector, by a communication dated 29.6.2011, recommended to the Government for alteration of petitioner's date of birth as 28.6.1957. The Principal Secretary to Government/Commissioner for Revenue Administration on 29.10.2011 wrote to the second respondent, requesting the second respondent to get consent from the Tamil Nadu Public Service Commission to alter the date of birth of the petitioner. The second respondent on 14.11.2011 and 9.3.2012 sent communications to the TNPSC seeking consent for alteration of date of birth

of the petitioner. On 22.4.2013, the TNPSC gave consent for change of date of birth of the petitioner as 28.6.1957 instead of 8.11.1955. However, the second respondent rejected the request for change of date of birth. The said order is being challenged before this court. Mr. V. Selvaraj, learned counsel appearing for the petitioner would submit that the petitioner's contention is supported by the birth certificate issued by the local authority. After realising the fact that the date of birth was wrongly given, within five years from the date of joining in service, the petitioner applied for alternation of date of birth on 6.1.1978 and followed by many representations. He referred to Rule 49 of the Tamilnadu Subordinate Service Rules and submitted that the petitioner filed the application within five years for change of date of birth with required documents in support of his claim and therefore, it cannot be rejected. That apart, he would submit that the Sub Collector, after enquiry and verifying the documents, recommended on 29.6.2011 to the government for alteration of date of birth of the petitioner as 28.6.1957 and the other authorities also accepted the said contention. He would submit that, in fact, the second respondent sent the communications seeking consent of the TNPSC for alteration of date of birth of the petitioner, which was also given by the TNPSC. However, contrary to the facts and Rule 49 of the Tamil Nadu State Subordinate Service Rules, the impugned order has been passed and therefore, it has to be quashed.

2. On the other hand, Mr. P.H. Aravind Pandian, the learned Additional Advocate General appearing for the respondents would contend that the petitioner declared his date of birth in service records as 8.11.1955 as per his education certificates. The petitioner kept quiet for more than 20 years. Though the petitioner was aware of the wrong date of birth in 1977, he submitted his application along with documents after a lapse of 600 days from entering into government service. Moreover, after 1984, there was no correspondence and therefore the file would have been closed. After a gap of 10 years only another application dated 5.3.2011 was given to the respondent. In view of his retirement in 30.11.2013, the petitioner approached for alteration of date of birth and therefore, his request for alteration of date of birth cannot be considered at this point of time. He would rely upon the judgment of this Court in *Arumugam, vs. Registrar, Tamilnadu Agricultural University, Coimbatore* reported in (2012) 3 MLJ 594 and also a judgment of the Division Bench of this Court in *M. Ramasubramani Vs. The Central Administrative Tribunal and Others*, .

3. Heard the parties and perused the records. It is seen from the records that the petitioner's date of birth as per the school and college records is 8.11.1955. It is stated in paragraph 21 of the counter affidavit that the petitioner's date of birth was recorded as 8.11.1955 as per the transfer certificate issued by the St. Xavier College, Palayamkottai during March 1976. The petitioner also gave the same date of birth to the TNPSC, while applying for competent examination to the post of Forest Apprentice Trainee during 1977. In the service book also the petitioner acknowledged the original date of birth as 8.11.1955. Therefore, it is evident at every stage that the petitioner consciously declared his date of birth as

8.11.1955. Hence, he is estopped from denying his declared date of birth.

4. Suddenly, only after entering into service on 4.11.1977, the petitioner was said to have given application for correction of date of birth as 6.1.1978. The above act would only demonstrate that the petitioner has laid foundation to extent his service by altering the date of birth as 28.6.1957 instead of 8.11.1955. Though the petitioner is said to have given representation on 6.1.1978, there was no response from other respondents. Even as per the petitioner's typed set, the proceedings and correspondence went up to 2.8.1980, when the District Forest Officer wrote letter to the second respondent forwarding the petitioner's request for alteration of date of birth, thereafter no action was taken by the petitioner till 16.7.1984. Then, he gave a representation to the second respondent. Thereafter also the last representation was given only on 1.9.1986.

5. Contending that the petitioner gave a revision on 5.3.2007, he approached this court in 2008 by filing W.P. No. 26114 of 2008 to consider his representation for alternation of date of birth. The writ petition was disposed of on 4.11.2008 giving direction to the respondents to pass orders within 12 weeks on merits. From the above, it is clear, though the petitioner was said to have moved the authority in 1977, between 1980 and 1984, there was no attempt on the part of the petitioner to follow up the matter. Moreover, after September 1986 till 5.3.2007, there was no follow up action for more than 20 years by the petitioner. Hence, the claim of the petitioner became stale.

6. If really there was inaction on the part of the authority, immediately 1986 itself, when the petitioner was alleged to have given representation on 1.9.1986, he would have approached the court seeking redressal. However, he approached the court belatedly in 2008. When the parties approached the court belatedly with stale claim, courts should be very careful enough not to pass any order reviving the stale claim. This has been declared by the Hon'ble Supreme Court and followed by this Court in *S. Balasubramaniam Vs. The Secretary to Government, Revenue Department, Fort St. George, Chennai-9* and *The Commissioner, Corporation of Chennai, Chennai-3*, .

7. It is seen from the communication dated 9.5.1986 written by the Wildlife Warden, Pollachi, petitioner's S.S.L.C. Book was returned after verification as admitted by the petitioner in his letter dated 1.7.1986. Thereafter, more than 20 years, no action was taken and only through revision petition dated 5.3.2007, the petitioner sought for alteration of date of birth. The respondent in paragraph 9 of the counter affidavit categorically stated that the petitioner did not furnish the appropriate particulars, when he was asked to give the same during 1984. It is stated that connected file cannot be alive and it might have been closed in due process and is not available in the records. It is also stated that as it is an important issue, it could not allowed to be left undecided. No reason has been given by the petitioner as to why the petitioner kept quiet for 20 years to take steps to change the date of birth. It is contended by the respondent, such an

important issue would not have been kept undecided from 1978 onwards. Therefore, this court has got every reason to believe that the petitioner would have suffered adverse orders regarding change of date birth and therefore he would have kept quiet for 20 years, so that the connected files were closed. Otherwise, the petitioner would not have kept quiet, after having taken steps very earnestly right from 1978 till 1984. Silence on the part of the petitioner for more than 20 years would only lead to doubting the claim of the petitioner. The petitioner is also guilty of laches and this would only go to show that in the last years of service, the petitioner wants to get his date of birth altered for extension of service, depriving the chance of his juniors.

8. It is true that the Principal Commissioner, Revenue Administration, after enquiry, by communication dated 29.10.2011, informed the Additional Secretary, Administration to alter the petitioner's date of birth as 28.6.1957 and the same was informed to the Revenue Secretary, the Second respondent by communication dated 29.10.2011. The second respondent also addressed a letter to the Service Commission dated 14.11.2011 seeking consent to alter the date of birth of the petitioner and by a communication dated 22.4.2013, the TNPSC gave consent to alter the date of birth.

9. The second respondent by a communication dated 9.5.2013 addressed to the Additional Chief Secretary, the Forest Authority, recommended to grant consent to change of date of birth of the petitioner. However by letter dated 16.5.2013 the first respondent addressed to the second respondent instructed to finalise the issue. By order dated 31.5.2013 the second respondent rejected the petitioner's contention to alter the date of birth. Though the relaxation order appears to be against the recommendation of the revenue department and the consent given by the TNPCB, the same cannot be set aside, for the reason mentioned above namely, the petitioner did not pursue his application for change of date of birth from 1986 to 2007 for more than 20 years and the impossibility of the petitioner to finish his school studies and PUC and degree, if the new date of birth is taken into consideration. The petitioner is guilty of laches and his claim lacks bonafide as already held and accordingly the writ petition is dismissed.

10. Though the petitioner filed an application for alteration of date of birth on 17.1.1977, he was asked to produce certain documents by the second respondent on 5.10.1984. On 15.12.1984 the petitioner gave certain details as follows:

The date of admittance into the College Degree Course in June 1973 as per Transfer Certificate.

3. Years of Studies:

-- 1961 62 to 1968 70

Ist Standard to VIII Standard College Course:

P.U.C.:

1972 -75

Degree Course:

(B.Sc.) 1973 74 to 1975 to 76

4. Names of Schools and Colleges studied as follows:

-- Government Aided Higher Elementary School, KongarayaKurichi Post, Tirunelveli District. 628624.

Ist to VIII Standard College Course:

P.U.C.

.. Islamiah College, Vaniyambadi-2, North Arcot Dist. (Madras University)

B.Sc.

.. St. Xavier's College, Palayamkottai, Tirunelveli Dist. (Madurai University)

If the petitioner's new date of birth namely 28.6.1957 is to be taken into account, then the petitioner should have studied PUC during 1972-73 at the age of 14 and he should have completed degree at the age of 17 years, which is highly impossible. Therefore, the actual date of birth namely 28.6.1957 alleged by the petitioner cannot be the correct one and it is being employed by him only to extend his service, which he should have planned at the time of entering into the government service itself.

11. In normal course a child would have admitted in Ist standard only after completion of five years and he would have finished his school studies, namely old SSLC (11th standard) at the age of 16 years, PUC at the age of 17 years and after three years, he would complete the degree at the age of 20 years. If the petitioner's new date of birth namely 28.6.1957 is taken into account, the petitioner should have been admitted in the school after completion of five years only during 1962-63 and he should have completed SSLC (XI standard) only during 1973-74, PUC only during 1974-75 and degree during 1978-79. Therefore, even as per his own letter dated 15.12.1984, the petitioner could not have completed the degree at the age of 18 years. Hence, the new date of birth cannot be a correct one. This court finds factually that new date of birth is not correct, in view of the above mentioned calculation.

12. In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, the Hon'ble Apex Court explained about the chain of reactions and its consequences about the alteration of date of birth of serving government servants. Paragraph 7 of the said judgment is extracted as follows:

7. An application for correction of the date of birth should not be dealt with by the 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important 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 materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, 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 filed within the time, which can be held to be reasonable. 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 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 dates 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 for 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 merely caused injustice to his immediate junior.

In *Union of India Vs. C. Rama Swamy and others*, , the Apex Court dealt with Rule 16-A of All India Services (Death-cum-Retirement Benefits Rules 1958 and declared the relevancy of age of a candidate to assess the suitability for appointment in service. Paragraphs 25 and 26 of the judgment read as follows:

25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is

obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability.

26. In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable and relief of change of date of birth can be legitimately denied. To that extent the decision in Manak Chand case does not lay down the correct law.

This court, considering the above judgments in Arumugam, vs. Registrar, Tamilnadu Agricultural University, Coimbatore reported in (2012) 3 MLJ 594 held that the date of birth cannot be altered after entering into service. Paragraphs 13 and 14 of the judgment are usefully extracted as follows:

13. It is not as if immediately after attaining majority, government appointments are given and there is no time available for those government servants who want to correct their wrong date of birth after joining service. It is not joining of government service or five years therein which gives cause of action for alteration of wrong date of birth. If there is any discrepancy or mistake in the date of birth, three years from the date of attaining majority alone can be limitation to alter the date of birth. Appropriate government may consider incorporation of a provision similar to Article 60(a) of the limitation for alteration of date of birth within 3 years of attaining majority, considering the public interest.

14. The concerned person is required to make endeavour to verify the correctness of his date of birth as recorded in the school/academic records in time by getting birth extract register. If wrong date of birth is not altered within time, it is the default of the concerned individual. The said wrong entry of date of birth cannot be allowed to be corrected after entering into service, as it would affect others. To put it in other words, the default of an individual cannot cause

loss or injustice to innocent juniors and unknown unemployed youth. As long as the alteration of date of birth does not affect others, there should not be any problem to alter the same and it remains as individual right. After entry into service, the alteration of date of birth affects others like juniors. Therefore, the alteration cannot be considered as individual right, as it endangers rights of others.

13. The order passed by this Court on 4.11.2008 in W.P. No. 26114 of 2008 filed by the petitioner seems to have been the starting point for reviving the stale claim of the petitioner. This court is also cautioned the issuance of mandamus regarding stale claim as held in S. Balasubramaniam Vs. The Secretary to Government, Revenue Department, Fort St. George, Chennai-9 and The Commissioner, Corporation of Chennai, Chennai-3, . A perusal of the letter dated 16.10.2009 addressed to the Principal Commissioner, Revenue Administration would reveal that the petitioner studied Ist standard to 8th standard from 1961 to 1969 in Middle School Kongaraya Kurichi and further underwent 9th standard to 11th standard during 1969 to 1970, 1971 to 1972, in Government High School, Karunkulam. If his date of birth is to be taken as 28.6.1957, it would not have been possible for the petitioner to join in school at the age of 4 years and he could not have obtained Higher Secondary Leaving Certificate at the age of 14 years. Therefore, the stale claim for alteration of date of birth at the verge of his retirement cannot be accepted. Having got the benefits of appearing for SSLC examination based on existing date of birth namely 8.11.1955, it is not open to the petitioner to change the date of birth, after availing the advantage/gain from the date of birth found in the school records. For the reasons stated above, the writ petition fails and the same is dismissed. No costs. Consequently the connected M.P. No. 1 of 2013 is also dismissed and M.P. No. 2 of 2013 is closed.