
(1995) 11 KL CK 0013

In the High Court Of Kerala

Case No : O.P. No"s. 5637 and 7048 of 1995

Anantha Pai and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Kerala Education Rules, 1959 — Rule 3

Citation : (1995) 11 KL CK 0013

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : K. Balakrishnan, for the Appellant; V.J. John, Govt. Pleader for 1st Respondent, George Poonthottam, for 2nd and 3rd Respondents and M.V. Bose, for 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Petitioners in O.P. 7048 of 1995 are working as Deputy Chief Engineers (Civil) under the Kerala State Electricity Board. Petitioners in O.P. 5637 of 1995 are working as Executive Engineers in Civil Division under the Kerala State Electricity Board. Petitioners in both these cases are aggrieved by Exts. P-3 and P-6 orders in O.P. 7048 of 1995 issued by the 2nd Respondent by which 4th Respondent's date of birth was corrected as 20th September 1941 in the service records. According to the Petitioners Exts. P-3 and P-6 orders are issued due to extraneous reasons and in gross violation of Ext. P-4 order G.O. (P) No. 45/91/P. and A.R.D., dated 30th December 1991 issued by the Government laying down the guidelines for effecting the correction of date of birth of Government Employees which has been adopted by the Board by Ext. P-5 order dated 24th January 1992.

2. Government issued certain guidelines to be followed vide Ext. P-4 order dated 30th December 1991 in order to curb the tendency on the part of the Government employees to get the date of birth corrected when they are about to retire from service. According to the then existing orders, a Government

employee can apply for correction of date of birth entered in his service book up to the period beyond two years preceding his retirement reckoned with reference to the date of birth as originally entered in the service book. Government however decided to adopt the system followed by the Government of India in this matter. Government accordingly ordered that applications for correction of date of birth if any needed in the case of a Government employee after the date of the order be made within five years of one's entry in service. However, in the case of those who have already crossed this limit, one year time from the date of that order shall be allowed, provided they apply beyond the two years preceding retirement, reckoned with reference to the date of birth as recorded in the service book. It was also provided that the applications for correction of date of birth in service book shall be submitted to Government in Administrative Department concerned through proper channel. It was also provided that the application for condonation of delay and for entertainment of applications in relaxation of the condition regarding time limit shall be summarily rejected.

3. The 4th Respondent herein had submitted an application on 17th November 1982 before the Commissioner for Government Examinations for alteration of his date of birth from 9th April 1940 to 20th September 1941 in school records and his qualification certificates. There was delay in submitting the application. But the Government condoned the delay in applying for alteration of date of birth as per Rule 3, Chapter VI of the K.E.R. application submitted by the 4th Respondent was not favourably considered by the Commissioner for Government Examinations and was rejected by order dated 9th April 1985.

4. Fourth Respondent then filed an appeal before the Government vide appeal petition dated 27th May 1985. Government rejected the appeal vide Ext. P-2 order dated 26th November 1985. The said order has become final.

5. After a lapse of 8 years, 4th Respondent filed a review petition dated 20th December 1993 before the Government. Review petition was allowed by the Government vide Ext. P-3 order dated 21st January 1995 after condoning the delay in filing the petition and directed the Commissioner for Government Examinations to take steps to correct the date of birth of the 4th Respondent as 20th September 1941 instead of 9th April 1940, in his S.S.L.C./School records. With the said order 4th Respondent approached the Commissioner for Government Examinations who vide order K. Dis/8435/94/EXB5, dated 2nd March 1995 carried out the correction of date of birth in his S.S.L.C. book as 20th September 1941 instead of 9th April 1940. Later he approached the Board with a representation dated 6th March 1995 and the Board condoned the delay and accorded sanction to correct the date of birth in school records and qualification Certificates issued to him. Petitioners are aggrieved by the various Government orders mentioned above, which according to them prejudicially affect their chances for further promotion. According to them Government have no power to review its earlier order. They contended that the order was issued due to extraneous reasons and vitiated by mala fide exercise of powers.

6. The 2nd Petitioner in O.P. No. 7048 of 1995 has filed an affidavit wherein it has been stated that but for the continuance of the 4th Respondent beyond 30th April 1995, he would have got promotion to the post of Chief Engineer in a vacancy which is to arise on 1st November 1995. The first Petitioner submitted that he also would be promoted to the post of Chief Engineer on 1st February 1996, but for Exts. P-3 and P-6 orders.

7. The 4th Respondent in O.P. No. 7048 of 1995 has filed a counter affidavit wherein it is stated that the Petitioners have no locus standi to challenge the various orders by which the 4th Respondent's date of birth was corrected. It was stated that the Government as well as the Board have power to carry out the correction of date of birth of the employees. The allegation of mala fide was denied. It was pointed out that an officer can have only one date of birth, that is, his correct date of birth and the Government was only carrying out the correct date of birth entered in the S.S.L.C. Book which was later incorporated in the service records.

8. I heard learned Counsel on all sides. Government under Ext. P-4 order laid down certain guidelines for carrying out correction of date of birth of the employees in the service books. The purpose of laying down the said guidelines is due to the growing tendency on the part of the employees to get the date of birth corrected when they are about to retire from service. Government felt that this growing tendency has to be discouraged. Government reviewed the entire matter with due regard to the system followed in the case of Central Government employees. The date of birth is entered in the service book with the full knowledge of the individual and the same continues to be in the service book for a reasonable long period. Employees also signs the service book and thus get an opportunity to verify whether the date is correctly entered in the service book. Therefore, there is no rationale in allowing a correction at all. Government however, thought, still an opportunity can be granted during the initial period of one's service to make corrections in bona fide cases. It was therefore ordered that the correction of date of birth if any needed in the case of a Government employee shall after the date of the order be made within five years of one's entry in service. In the case of those who have already crossed this limit, one year time from the date of this order was allowed, provided they apply beyond the two year preceding retirement, reckoned with reference to the date of birth as recorded in the service book. It was also pointed out that the application in relaxation of the condition regarding time limit shall be summarily rejected.

9. It is therefore clear that after issuing Ext. P-4 order dated 30th December 1991 if a Government employee wanted to carry out the correction of his date of birth in the service book he ought to have filed application within one year from the date of the said order provided the employee apply beyond the two years preceding his retirement, reckoned with reference to the date of birth as recorded in the service book. In the instant case the 4th Respondent filed a review petition only on 20th December 1993. His date of retirement is 30th April

1995 as per the original entry in the service book. Assuming that the Government have power to entertain the review petition, the same ought to have filed before two years of retirement. He has also to comply with the other conditions for filing the application within one year from the date of Ext. P-4 order.

10. It is specifically provided in Clause 5 of Ext. P-4 that the application for condonation of delay and for entertainment of applications in relaxation of the condition regarding time limit shall be summarily rejected. It is also pertinent to note that the 4th Respondent's earlier application filed in the year 1985 was rejected by the Government vide Ext. P-2 order dated 26th November 1985. Ext. P-2 order has become final and the same was not challenged by the 4th Respondent either before this Court or before any other forums. After a lapse of 8 years, he has presented the present application and that too in violation of Ext. P-4 Government order. Therefore, I am of the view that by entertaining the said order, the Government have violated their own norms. I have occasion to come across several cases in which the Government have strictly followed Ext. P-4 Government order and rejected various applications submitted in violation of the Government order Ext. P-4. I fail to see why a special treatment has been meted out to the 4th Respondent. There is no special reason to treat the 4th Respondent differently. The principle followed must guide every state action. I have no doubt in my mind that Exts. P-3 and P-6 orders are vitiated due to mala fide exercise of power.

11. I fail to see under what provision of law the Government have issued Ext. P-3 and the Board has issued Ext. P-6 order. No legal provision or executive orders have been brought to my notice. On the other hand Ext. P-4 specifically states that the application for condonation of delay and for entertainment of applications in relaxation of the condition regarding time limit would be summarily rejected. The Government can exercise the power only under Rule 3, Chapter VI of the K.E.R. for correction of date of birth in S.S.L.C. Book. No power of review have been bestowed on the Government or any other authorities for reviewing its earlier order. As held by Supreme Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. In the instant case the Government have rejected the application in 1985 and there is no provision for review. The Government have exceeded their power in entertaining the application in the year 1995 when the 4th Respondent was about to retire from service.

12. Supreme Court had occasion to consider an identical provision in *State of T.N. Vs. T.V. Venugopalan*, In the said decision the Supreme Court has stated that 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. The Supreme Court in *State of Orissa and Others Vs. Brahamarbar Senapathi*, interpreting the Orissa General Financial Rules held that an application for effecting a change in the date of birth shall be summarily rejected if filed after five years of entry into Government Service. The Supreme Court in *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, has held that a sudden and belated change may upset the legitimate expectation of Ors. 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. According to the Supreme Court it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired.

13. Counsel for the 4th Respondent has pointed out that there are precedents in the Board whereby the date of birth has been corrected on the basis of the Government order dated 30th December 1991. Counsel referred to Exts. R-4(d), R-4(e) and R-4(f). I am not inclined to accept the said contention. First of all the validity or otherwise of the impugned order has to be judged not on the basis of precedent but on the basis of the legality or otherwise of the order. I am convinced that Exts. P-3 and P-6 orders are issued in gross violation of Ext. P-4 Government order. It has been held by the Supreme Court in *Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran*, that whenever an application is filed by a person governed by service rules, procedures prescribed therein have to be strictly followed including the time prescribed for making such an application. The Supreme Court also pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as Ors. 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. It was stated that the cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to the Supreme Court, 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. In view of the law laid down by the Supreme Court, I am of the view that the Petitioners have got locus standi to challenge Exts. P-3 and P-6 orders.

14. For the aforesaid reasons, I quash Exts. P-3 and P-6 orders in O.P. 7048 of 1995 and declare that the 4th Respondent is not entitled to continue in service beyond 30th April 1995. O.P. 7048 of 1995 is allowed.

15. In view of the judgment in O.P. 7048 of 1995, O.P. 5637 of 1995 is also allowed.