

(2009) 12 KL CK 0110

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23620 of 2009 (V)

Chandrika A.K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Kerala Education Rules, 1959 — Rule 3, 5

Citation : (2010) 1 ILR (Ker) 95 : (2010) 1 KLJ 729 : (2010) 1 KLT 223

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : A.N. Rajan Babu, P. Gopalakrishnan and A.R. Easwar Lal, for the Appellant; Sandesh Raja (Spl. G.P.), for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The petitioner is aggrieved by Ext.P30 order by which the application for correction of date of birth in the SSLC book has been disallowed, the petitioner would become an under-aged student at the time of admission in Standard I, i.e., having only 4 years, 4 months and 18 days of age, which is strictly against the provisions contained in Rule 5 of Chapter VI.K.E.R. Heard learned counsel for the petitioner Shri. A.N. Rajan Babu and learned Govt. Pleader Shri. Sandesh Raja who appeared for the respondents.

2. Learned counsel for the petitioner contended that the approach made by the respondents in the matter is in violation of the directions issued by this Court in Exts.P17 and P28 judgments. As per the above judgments, this Court had directed the respondents to consider the claim of the petitioner for correction of date of birth, in the light of the material evidence produced by the petitioner. It is submitted that the respondents are really sidelining the issue and have been finding our unsustainable reasons every time to reject the application. The petitioner is due to retire from service shortly and hence it is pointed out that great injustice has been caused to her by the attitude taken by the respondents.

3. The bare facts for the disposal of the case are the following: The petitioner is seeking to correct the date of birth from 24.12.1954 to 14.1.1957 in the SSLC

book and in her service book, she is working in the cadre of Joint Registrar of Co-operative Societies.

4. The petitioner is the 5th among the eight children born to her parents. The details of all the children and their date of birth are as shown below:

The Petitioner's case is that going by Ext.P1 birth certificate issued by the Palamel Panchayat, it can be seen that the same has been recorded correctly as 14.1.1957. The petitioner has also made available various certificates issued in the name of her brothers and sisters as Ext.P2 to P9.

5. The endeavour to get the date of birth corrected in the SSLC book has got a chequered history. Her first application is dated 8.5.1980. This was rejected as per Ext.P10, which according to the petitioner, was without conducting any statutory enquiry. Subsequently, she entered service as Junior Inspector of Co-operative Societies on 19.12.1983, An application for correction of the date of birth entered in the Service Book was submitted immediately, which was also rejected as per Ext.P11 dated 19.2.1987 on the ground that it is time barred and devoid of merit. Again, she moved the Government by Ext.P12 which was followed by Ext.P13 and P14 representations. This was rejected finally by Ext. P16 order dated 30.10.2004 and the petitioner filed W.P.(C) No. 36619/2004 challenging the same. Ext.P17 is the judgement of this Court, wherein the respondents were directed to pass fresh orders in the light of the findings rendered by this Court. Even though the petitioner produced various materials, the same was rejected again by Ext.P27 order. The view taken therein is that she had failed to produce the birth certificate of her elder brother K. Surendran and younger brother K. Prasad and the SSLC certificates of her immediate elder sister K. Radhamony and younger sister K. Sarojam. The view taken in Ext.P27 is that in the absence of those records, the date of birth cannot be corrected. By an elaborate judgement Ext.P28, the said order was quashed. Appropriate directions have been issued after considering various materials produced before this Court.

6. Since the main contention raised by the learned counsel for the petitioner is that the present order totally goes against the directions issued in Exts.P17 and P28 judgments, it is only appropriate to refer to those findings also.

7. Ext.P16 was the order under challenge which was considered in Ext.P17 judgement. In Ext.P16, the view taken is that if 14.1.1957, as claimed by the petitioner, is accepted as the date of birth, she would have completed five years of age only on 13.1.1962 and as such, she would have completed SSLC only during 1971-72 instead of 1970-71. Therefore, the view taken is that the date 14.1.1957 cannot be taken as a correct date of birth of the petitioner beyond doubt.

8. In Ext.P17, the crucial findings are contained in para-4 which is extracted below:

The controversy would be relating to the petitioner at Sl. No. 5 in the aforesaid

list of eight children. According to her, she was born on 14.1.1957. Ext.P1 is certain extract of the Birth Register. It shows that the name of the child is A.K. Chandrika and the parents are Kuttappan and Kallyam. The birth is registered on 23.1.1957. It is issued from the Register of Births maintained by the competent authority for Palamel Panchayat of Mavelikara Tahsil in Alappuzha District of the State of Kerala. That is an authentic statutory document. To cross-check its veracity, Ext.P2 would show that Radhamani, the petitioner's immediate elder sister was born on 2.1.1955 and Saroja, the immediate younger sister was born on 25.3.1959. If the date of birth of the petitioner is 24.12.1954 as is presently shown in her SSLC book, the difference in age between her elder sister Radhamani and the petitioner would be less than one month and the petitioner would be elder to Radhamani. Even if I were to assume that Radhamani is a younger sister of the petitioner Chandrika, the age difference cannot be just a month, going by the minimum gestation period which has been recognised not only by science but by quite a number of decisions by the Apex Court as well as different High Courts. Under such circumstances, I find that it is absolutely necessary that the statutory authority adverts to the aforesaid facts and materials which were, obviously, not appropriately placed before it for consideration.

Accordingly, after quashing various orders, this Court issued the following directions:

For the aforesaid reasons, the impugned decisions contained in Exts.P10, P11, P12 and P16 are quashed and it is directed that the request of the petitioner for correction of date of birth entered in her SSLC book would be taken up, considered and disposed of after adverting to the entire materials on record and having regard to what is stated above.

Evidently, therein, this Court found that if the date of birth of the petitioner is 24.12.1954, as is presently shown in her SSLC Book, the difference in age between her elder sister Radhamani and the petitioner would be less than one month and the petitioner would be elder to Radhamani. This was an aspect which ought to have been considered by the respondents.

9. When we come to Ext.P27 order, the view taken is that some of the documents have not been produced. We will have to advert to the findings in Ext.P28 judgement, wherein Ext.P27 order was quashed. I shall extract the relevant findings contained in para 6:

The petitioner's application for correction of the date of birth in the school records stands rejected on the ground that the SSLC books relating to her elder sister Smt. K. Radhamani, younger sister Smt. K. Saroja and the birth certificates of her elder brother Sri. K. Surendran and younger brother Sri. K. Prasad have not produced. The Commissioner has held that the said documents are essential for ascertaining the petitioner's claim. The petitioner has produced before this Court photostat copies of the SSLC books of Smt. K. Radhamani and

Smt. K. Saroja. The learned counsel for the petitioner submits that at the time when the Commissioner for Government Examinations called for the SSLC books, Smt. K. Radhamani and Smt. K. Saroja were not in station and therefore the petitioner could not collect their school records and produce them before the Commissioner for Government Examinations. The learned counsel for the petitioner submits that in these circumstances, Ext.P27 may be set aside and the Commissioner for Government Examinations may be directed to reconsider the application, after affording the petitioner an opportunity of being heard.

Directions were therefore issued in the following manner:

In the result, Ext.P27 is quashed and the Commissioner for Government Examinations is directed to reconsider the application submitted by the petitioner for correction of her date of birth in the school records, after affording the petitioner an opportunity of being heard. The petitioner shall produce the originals of the SSLC books of Smt. K. Radhamani and Smt. K. Saroja and also extracts from the school register in respect of her other siblings. The petitioner shall also produce the photostat copies of SSLC books of Smt. K. Radhamani and Smt. K. Saroja. The Commissioner for Government Examinations shall after comparing the photostat copies of the SSLC books of Smt. K. Radhamani and Smt. K. Saroja with the originals thereof, return the originals to the petitioner after verifying the authenticity and genuineness of the photostat copies.

10. The petitioner was directed to produce originals of the SSLC books of Smt. K. Radhamani and Smt. K. Saroja and also extracts from the school register in respect of her other siblings. She was also directed to produce the photostat copies of SSLC books of Smt. K. Radhamani and Smt. K. Sarojam. Importantly, the matter was finally disposed of with the following directions:

The Commissioner for Government Examinations shall pass final orders in the matter giving reasons in support of his conclusions, within three months from the date on which the petitioner produces a copy of the judgement.

The petitioner thereafter produced all materials. But without entering any findings on the merits, another reason is found out by referring to Rules 5 and 10B of Chapter VI.K.E.R.

11. Learned Govt. Pleader appearing for the respondents supported the order passed by the respondents. It is submitted that the petitioner cannot get the Service Book corrected, at this distance of time. In fact, in para 8 of the counter affidavit, the very same reasons pointed out in the order impugned, is reiterated and it is contended that in the light of the same, the order has to be upheld. It is contended in para 9 that the Commissioner of Government Examinations had to adhere to the existing provisions of KER in arriving at a final conclusion under Rule 5 Chapter VI of the KER and Rule 10B of Chapter VIKER, as these provisions have not been either changed or removed in any statutory body or Government so far.

12. The validity of these findings have therefore to be examined. Rules 5(1) and 10B of Chapter VI.K.E.R. are extracted below:

5. Age limit for admission.-- No child who has not completed five years of age as on the 1st June of the year of admission shall be admitted to any school " except pre-primary schools.

10B. A pupil admitted to any Standard, if subsequently found to be underaged for admission to that standard, he/she shall not be promoted from the standard in which he/she is studying at the time of detection of the irregular admission till he/she attains the age prescribed for the standard to which he/she is to be promoted and the promotions shall be effected only along with the other pupils provided he/she is otherwise eligible for promotion.

Provided that nothing in this rule shall apply to pupils admitted to any Standard-

(i) before the school year 1973-74, or

(ii) in relaxation of the minimum age rule granted by competent authority.

Going by rule 5, age limit is provided for admission of a child and it is provided that no child who has not completed five years of age as on the 1st June of the year of admission shall be admitted to any school except pre-primary schools. Learned counsel for the petitioner submitted that Rule 10B will not apply to the facts of the case, in the light of the proviso therein. It is pointed out that going by the proviso, it shall not apply to pupils admitted to any standard before the school year 1973-74 and the petitioner was admitted prior to the said date. Therefore, no reliance can evidently be placed on Rule 10B. As the proviso applies to the petitioner, the said rule cannot have an application here, evidently.

13. With regard to the interpretation of Rule 5 of Chapter VI.K.E.R., there is an earlier decision of this Court in *K.K. Nandakumaran v. Joint Commissioner for Government Examinations, Trivandrum* (1976 KLN 178 C. No. 158). In the above decision, the learned Judge relied upon the judgement in O.P. No. 4350/1970 wherein an identical question was considered in which this Court held as follows:

There is yet another reason given by the 2nd respondent in Ext.P4 for rejecting the petitioner's request and that in case the petitioner's date of birth is accepted as 5.12.1088 as claimed by him he would have been below 5 years of age at the time of his admission into Standard I. If on the basis of relevant and acceptable evidence the petitioner succeeds in establishing that he was actually born only on 5.12.1088 the fact that he would have been below 5 years of age at the time of his admission into Standard I cannot constitute a valid ground for turning down his request for correction of the entry in his SSLC... It is difficult to understand on what principle the petitioner can be penalised for the in-correctness of an entry given by his guardian at the time when he was a minor child of about four years and how it can be said that an advantage has been gained by the petitioner by making a wrong representation.

He said dictum squarely applies to the facts of this case.

14. Apart from the same, in Ext.P16 order the very same reason as stated in Ext.P30 was shown, to reject the application. This was quashed by this Court in Ext.P17 judgement wherein a direction was issued to consider the request of the petitioner after adverting to the entire materials on record and having regard to the findings in the judgement. Therefore, it was not proper to rely upon the very same reason shown in Ext.P16, to reject the application as per Ext.P30 and respondents are bound to consider the matter on merits itself.

15. The respondents have relied upon a judgement of this Court in W.P.(C) No. 5499/2008, wherein a similar view taken by the Joint Commissioner that if the date of birth of the petitioner therein is corrected, that would mean that she joined the school at the age of 3 1/2 years which is clearly prohibited in the KER, was accepted. The decision in Nandakumaran's case (supra) was not brought to the notice of the learned Single Judge. I respectfully agree with the dictum laid down in Nandakumaran's case (supra).

16. It is not the law that when a person's date of birth is allowed to be corrected, the advantage obtained by the said person based on the irregular entry, has to be forfeited. What is provided under the relevant rule is an opportunity to correct the date of birth in the school records on the basis of cogent materials which, if accepted, would lead to the conclusion that the original entry has to be corrected. Going by Rule 3 of Chapter VI.K.E.R. a facility has been provided to correct the date of birth in the Admission Register and sub-rule (1A) also provides for a facility for correcting the date of birth in school records by the Commissioner of Government Examinations. Sub-rule (2) of Rule 3 is important. It provides that "if the authority referred to in sub-rule (1) is satisfied after necessary enquires that the change applied for could be granted, he will issue an order to make the alteration...." Therefore, their enquiry is confined to the question whether the original entry requires alteration, in the light of the materials made available by the applicant. If the applicant can conclusively prove that the original entry does not tally with the correct date of birth, based on sufficient materials, power is given to the authority to order an alteration. It is not the law, therefore, that the advantage obtained by the irregular entry, if at all anything is there, will be detrimental to the applicant. The prohibition contained in Rule 5 of Chapter VI have to be understood in the light of the above fact. The admission of the child herein, viz the petitioner, in the school at that point of time, would have been based on the entry, viz. 24.12.1954. The petitioner's case is that her correct date of birth is 14.1.1957 and in support of in Ext.P1 certificate of birth issued by the Panchayat concerned and other records including the entries in relation to her brothers and sisters have been produced. As held by this Court in Ext.P17 judgement, if the date of birth of the petitioner is 24.12.1954 as entered in her SSLC book, the difference in age between her elder sister Smt. K. Radhamani and the petitioner would be less than one month and the petitioner will be elder to the said sister. When this Court directed the

authority to adopted by relying upon Rule 5 of Chapter VI cannot be appreciated. The prohibition for admission of a child in a school as provided in Rule 5 cannot have any relevance in the matter of considering the question of alteration of the date of birth. The petitioner cannot be penalised for that. As held by this Court, the crucial issue has to be adjudicated without recourse to those aspects.

17. Therefore, Ext.P30 is quashed. Learned counsel for the petitioner further submitted that once the date of birth in the SSLC book is corrected, automatically the date of birth in the Service Book also has to be corrected and there is a prayer in that regard in the writ petition. What is considered in Ext.P30 is the request for correction of date of birth in the school records and evidently, it does not deal with the correction of date of birth in the service records. It is upto the petitioner to move the respondents in the matter at the appropriate time, depending upon the order to be passed. Therefore, the second respondent has to pass a fresh order on the merits of the claim of the petitioner, after considering all the materials produced by the petitioner and in the light of the findings rendered by this Court in Exts.P17 and P28 judgments. The crucial question is whether the date of birth, viz. 24.12.1954 has to be corrected as 14.1.1957, in the light of the materials produced by the petitioner. Emphasis should be made to find out whether the entry in the SSLC book as 24.12.1954 is correct or not. Since every effort of the petitioner to get it corrected during the entire service failed, the second respondent will pass a considered order in the light of these directions, after hearing the petitioner, within a period of one month from the date of production of a copy of this judgement. No costs.