
(1979) 02 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 3385 of 1977

Eapen	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 28-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) 02 KL CK 0002

Hon'ble Judges : V. Balakrishna Eradi, J;K.K. Narendran, J

Bench : Division Bench

Advocate : K.S. Rajamony and A. Shahul Hameed, for the Appellant; P.C. Chacko for Central Government, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna Eradi, J.—This is a case where manifest injustice and hardship have been visited on the Petitioner by the impugned orders Exts. P-2 and P-4.

2. At the time of institution of the Original Petition the Petitioner was working as a Higher Grade Technician attached to the Auto Telephone Exchange, Trivandrum, in the Posts and Telegraphs Department of the Central Government. He commenced his service in the Electricity (Telephone) Department of the erstwhile Travancore State on 23rd December 1946 as a Lineman. The Petitioner was taken over to the Posts and Telegraphs Department of the Central Government in 1950-51 consequent on the federal financial integration. In course of time he earned his promotions in the Department and was appointed as a Higher Grade Technician in 1962 in which capacity he was continuing to function at the time of filing the writ petition.

3. The date of birth of the Petitioner as entered in his service register is 20th April 1920. Going by the said entry the Petitioner was due to retire from service on superannuation on 19th April 1978 on attaining 58 years of age.

4. The entry relating to the Petitioner's date of birth contained in his service

register is stated to have been made on the basis of the information furnished in an extract from the admission register of the St. Mary's High School, Pattom, Trivandrum where the Petitioner had last studied. The Petitioner's case is that the said entry contained in the school admission register was vitiated by a clerical error. According to the Petitioner he was actually born only on 20th April 1925 and that the said date had been correctly entered as his date of birth in the admission register of the St. Joseph's L.P. School which was the school into which the Petitioner had been first admitted and where he had studied in the 3rd and 4th Standards. It is further stated that similar entries showing the Petitioner's date of birth correctly as 20th April 1925 were also contained in the admission register of the St. Joseph's High School, Trivandrum where the Petitioner had next studied in the preparatory class and also in the admission register of the C.M.S.U.P. School, Puthuppally which the Petitioner had thereafter joined for pursuing his studies in Forms I to III. The Petitioner had joined the St. Mary's High School, Pattom, Trivandrum in Form IV after leaving the C.M.S.U.P. School, Puthuppally. It is averred in the Original Petition that in the transfer certificate issued to the Petitioner from the C.M.S.U.P. School, Puthuppally his date of birth had been correctly shown as 20th April 1925 but while carrying forward the said entry into the admission register of the St. Mary's High School, Pattom a clerical error was committed and the date was wrongly written down as 20th April 1920. This clerical error happened to be transmitted into the Petitioner's service register also when the Petitioner joined service of the Travancore Government and the said mistake remained unnoticed and unrectified even after the Petitioner's absorption in the Central Government service in the Posts and Telegraphs Department. The Petitioner has further stated that he came to notice the error only in 1969 and that thereupon, he immediately moved the Director of Public Instruction with a petition for correction of the relevant entry in the admission register of the St. Mary's High School, Pattom, Trivandrum. After conducting a detailed enquiry into the matter the Director of Public Instruction allowed that request as per his order Ext. P-5 dated 11th September, 1972 whereby it was directed that the entry regarding the date of birth of the Petitioner in the admission register of the St. Mary's High School, Pattom should be corrected as 20th April 1925. Thereafter, the Petitioner filed the representation Ext. P-1 dated 17th December 1973 before the Divisional Engineer, Telephones, Trivandrum requesting for the correction of his date of birth as entered in his service register in the light of the order of the Director of Public Instruction correcting the clerical mistake that had crept into the admission register of the St. Mary's High School, Pattom. By a letter dated 4th May 1974 addressed by the Postmaster-General, Trivandrum to the Divisional Engineer, Telephones, Trivandrum the latter was informed that the Petitioner's request for alteration of his date of birth had been examined and that the same stood rejected by the Postmaster-General. Ext. P-2 is the copy of the said letter endorsed to the Petitioner by the Divisional Engineer. The Petitioner thereupon filed a detailed representation before the General Manager, Telecommunications, Kerala Circle, Trivandrum (2nd Respondent) as per Ext. P-3 dated 4th March

1975. It would appear that that representation was forwarded by the 2nd Respondent to the Director-General of Posts and Telegraphs. New Delhi (3rd Respondent). By the letter Ext. P-4 dated 1st August, 1977 addressed by the 3rd Respondent to the 2nd Respondent the latter was informed that the request of the Petitioner had been considered in detail but it had been decided that it could not be agreed to and that the Petitioner may be suitably informed about the same. This writ petition has been brought by the Petitioner seeking to quash Exts. P-2 and P-4.

5. It is contended on behalf of the Petitioner that in passing the impugned orders Exts. P-2 and P-4 there has not been a fair or proper consideration of the facts and circumstances of the case and that not even any reasons have been stated in either of those orders for rejecting the request made by him which was duly supported by clinching evidence to show that the existing entry relating to the date of birth contained in his service register was clearly vitiated by a clerical error. The Petitioner submits that natural justice and fairplay required that Respondents Nos. 2 and 3 should have applied their mind to the facts pleaded by the Petitioner and the evidence produced by him in support thereof and passed speaking orders in the matter.

6. On the side of the Respondents it was submitted that under Note 5 to Fundamental Rule 56 an alteration of the date of birth of a Government servant can be made at a stage subsequent to the completion of his probation only if it is established that a bona fide clerical mistake has been committed in recording the date of birth in the service book and that the Petitioner's case does not satisfy the said condition mentioned in the Note. According to the Respondents, it could not be said that any clerical mistake had been committed in recording the Petitioner's date of birth in the service book. On this basis it is contended on the side of the Respondents that the rejection of the Petitioner's request for correction of the date of birth by the impugned orders Exts. P-2 and P-4 was fully justified and that no interference with those orders is called for under Article 226 of the Constitution.

7. It is no doubt true that the entry in the Petitioner's service register has stood in its present form for a long number of years but at the same time it is to be noted that this case does not belong to that category of cases where officers come forward with requests for alteration of their dates of birth at a very late stage when they are practically on the eve of the date of retirement. The Petitioner was due to retire from service only in April, 1978 even as per the existing entry in the service register. He had made the applications before the Director of Public Instruction and also before the District Educational Officer, Mavelikara (see Ext. P-7) in 1969 itself and those proceedings culminated in the order Ext. P-5 dated 11th September 1972 passed in his favour by the Director of Public Instruction. Thereafter the Petitioner moved the Divisional Engineer, Telephones, Trivandrum in the year 1973 requesting for the correction of his date of birth. It cannot, therefore, be said that this is a case where the Petitioner has

slept over his rights until he had reached the verge of his retirement from service.

8. Both at the time when the Petitioner filed the application for correction of the entry in the service register and also when the order Ext. P-2 was passed by the 2nd Respondent, the inhibition at present contained in Note 5 to Rule 56 that an alteration in the date of birth of a Government servant can be made only if it is established that a bona fide clerical mistake had been committed in recording the date of birth in the service book was not there. Note 5 in its present form was introduced into the Rule only on 7th February 1975, long after the order Ext. P-2 was passed. It is not, therefore, possible to uphold the contention of the 2nd Respondent that the rejection of the Petitioner's request for correction of his date of birth as per Ext. P-2 was based on the provision contained in Note 5.

9. While it is perfectly understandable that once the date of birth of a Government servant has been recorded in the service book, requests for correction of such entry should not generally be encouraged, especially when such requests are made at a belated stage, even Note 5 to Rule 56 indicates that in exercising due strictness in regard to the grant of such requests for correction, the attitude is not to be one of wooden rigidity but it should, on the other hand, be one susceptible of sufficient flexibility so as to mete out justice in truly deserving cases where it is proved beyond doubt that the existing entry is vitiated by a clerical mistake.

10. At the time when the Petitioner made the request for correction of his date of birth as well as on the date of passing of the order Ext. P-2 by the 2nd Respondent rejecting the said request, the matter was governed only by an executive decision of the Government of India which had been circularised in an O.M. dated 17th November 1962. That O.M. reads as follows:

It has been decided that requests from Government servants for alteration of date of birth should not be entertained after the preparation of their service books and in any event not later than the completion of the probation period or declaration of quasi-permanency, whichever is earlier. The date of birth of a Government servant may, however, be altered at a later stage by a Department of the Central Government, an Administrator or a Head of Department, if he is satisfied that a bona fide clerical mistake has been committed and that it should be rectified. Efforts should, however, be made to settle the matter within the period stated above.

As per these instructions it was perfectly competent for the Head of the Department to sanction the alteration of the date of birth of a Government servant if the former was satisfied that a bona fide clerical mistake had been committed and that it called for rectification. But, the stand taken by the Respondents is that the case of the Petitioner is not one involving a clerical mistake. We find it difficult to appreciate this contention. Under the Government decision referred to above it is not necessary that the clerical mistake should have been committed at the point of making the entry in the service register

alone. The wording of the O.M. is wide enough to take in cases where an anterior clerical mistake had crept into the basic document produced as evidence in proof of age and the said mistake had been unwittingly carried forward into the service register. This is exactly what has happened in the case of the present Petitioner. It is manifest from the order passed by the Director of Public Instruction that the original entry that was contained in the admission register of the St. Mary's High School, Pattom was vitiated by a clerical mistake. It is also clear from records that the said clerical mistake had happened to be carried forward into the service register since what had been produced by the Petitioner in proof of his age was the extract from the admission register of the St. Mary's High School, Pattom. Unfortunately, there has not been due application of the mind of the Respondents to these crucial aspects while passing the impugned orders evidenced by Exts. P-2 and P-4. It does not also appear to have been sufficiently realised by Respondents Nos. 1 and 2 that in view of the fact that the Petitioner had made his application long before the introduction of Note 5 into Rule 56 and that the order Ext. P-2 had also been passed in 1974 prior to the introduction of the said Note, the Petitioner was entitled to have his claims considered on the basis of the Rule as it stood prior to the introduction of the Note.

11. Let us now examine the position in the light of the restriction imposed by Note 5 to Rule 56. That Note reads:

The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of his appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as Matriculation Certificate or extracts from Birth Register. The date of birth so declared by a Government servant and accepted by the appropriate authority shall not be subject to any alteration after the preparation of his service book and in any event, after the completion of probation period of declaration of quasi-permanency, whichever is earlier. An alteration in the date of birth of a Government servant can be made at a later date only with the sanction of a Ministry, or Department of the Central Government or an Administrator of a Union Territory under which the Government servant is serving, if it is established that a bona fide clerical mistake has been committed in recording the date of birth in the service book.

The contention advanced on behalf of the Respondents is that under the provisions of the said note an alteration of the original entry regarding the date of birth of a Government servant can be allowed only where it is shown that a clerical mistake has been committed by the officer or other employee of the Department who recorded the particular entry; in other words, it must be a case where the recording officer did not correctly record the information furnished to him by the Government servant relating to his date of birth. We do not think that this is a correct interpretation to be placed on the Note. A clue in that direction is clearly furnished by the use of the word "bona fide" as qualifying the expression

"clerical mistake". It is impossible to think that the bona fides referred to is to be that of the departmental officer or employee who actually recorded the entry. Obviously what is intended by the Rule is that the mistake must be shown to be one bona fide committed by the concerned Government servant in furnishing the information; that means that the mistake referred to in the Note need not necessarily be one committed while actually writing down the entry in the service book and that it might as well as be a bona fide mistake that has been committed by the Government servant by reason of the fact that the basic record relied on by him in proof of age was vitiated by a clerical mistake. Hence, even if the provisions of Note 5 are to be regarded as applicable to the present case, it was incumbent on the part of the 3rd Respondent to have considered the Petitioner's case on the merits in the light of the evidence produced by him.

12. Another plea put forward by the Petitioner is that similar requests for correction of date of birth made by two other employees of the Department, namely, R. Padmanabhan, Telephone Lineman, Paravoor, and one Smt. Ponnamma T.G. Thomas, Clerk, were sanctioned by the Postmaster-General, Trivandrum as per the orders evidenced by Exts. P-13, dated 6th January 1962 and P-9 dated 12th August 1974 respectively on the basis of orders passed in their favour by the Director of Public Instruction correcting the entries contained in their school admission register and that in denying similar relief to the Petitioner the Petitioner has been subjected to discriminatory treatment. The explanation offered in the counter-affidavit in respect of the order passed in favour of Sri. Padmanabhan is that that it was passed prior to the issuance of the Central Government's instructions as per the O.M. dated 17th November 1962. In the light of what we have observed regarding the scope of those instructions this explanation cannot be regarded as valid or acceptable. In regard to the case of Smt. Ponnamma in whose favour the order sanctioning the alteration of date of birth was passed as recently as on 12th August 1974 the only explanation offered in the counter-affidavit is that though she had entered the Department on 26th April 1966 her name had first appeared in the Circle gradation list only in January 1973 and even though the official had attested the first page entries in the service book while joining the Department "that was at a time when she could not have gained sufficient experience to understand the full implications about the date of birth entered therein" unlike in the case of the Petitioner who had entered service in December 1946 itself. In our opinion, this explanation is totally unsatisfactory and does not at all justify the difference in treatment meted out to the Petitioner on the one hand and Smt. Ponnamma on the other. Equally unsustainable is the further reason stated in the counter-affidavit that the order in respect of Smt. Ponnamma was passed by the Postmaster-General on the basis of notes put up by the Director of Postal Services while in the case of the Petitioner, since he belonged to the Telegraphs Engineering wing, the order was passed by the Postmaster-General on the basis of the notes put up by the Director of Telegraphs.

13. The fact that the service of the Petitioner has been terminated during the

pendency of the writ petition on superannuation on the basis of the existing entry regarding date of birth contained in his service register will not disentitle him to relief, because, in case it is ultimately found that the request of the Petitioner for alteration of his date of birth deserves to be allowed, he will be entitled to be reinstated into service with all consequential benefits.

14. It follows from the foregoing discussion that the impugned orders Exts. P-2 and P-4 are illegal and unsustainable. Exts. P-2 and P-4 are accordingly quashed. There will be a direction to Respondents Nos. 2 and 3 to reconsider the request of the Petitioner in the light of the observations contained in this judgment and to pass final orders in the matter within a period not exceeding three months from today.

15. The Original Petition is allowed to the extent indicated above. The parties will bear their respective costs.