
(2009) 04 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16127 of 1999

G. Chakrapani

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 — Rule 2, 2(1), 4, 4(2)

Citation : (2009) 5 ALD 601 : (2009) 5 ALT 139

Hon'ble Judges : V. Eswaraiah, J;P. Swaroop Reddy, J

Bench : Division Bench

Advocate : P.V. Ramana, for the Appellant; G.P. for Services II for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. It is the case of the petitioner that he was initially appointed as Junior Assistant in the month of August, 1965 in the Registration Department, thereafter he was promoted as Senior Assistant in the year 1980 and as Sub Registrar in the year 1985. The date of birth of the petitioner was entered in the school record as well as in the Service Record as 01.08.1941. However, after completing 16 years of service and that, too, after getting two promotions, the petitioner made applications to the Director of School Education on 28.3.1981 and on 4.12.1995 stating that he has studied in Government Upper Primary School, Hanumkonda and though his date of birth was noted in the Admission Form as 1.8.1945, his date of birth was entered in the admission register vide its No. 2524 as 1.8.1941. The Director of School Education called for remarks from the District Educational Officer, Warangal and the District Educational Officer, Warangal in turn called for the remarks from the Head Master, Government Upper Primary School, Hanumakonda. The Head Master, Government Upper

Primary School, Hanamkonda addressed a letter dated 18.12.1995 to the District Educational Officer stating that in the admission form, the date of birth was mentioned as 1.8.1945 but in the admission register of the school, the date of birth was entered as 1.8.1941. Similar report was given to the District Educational Officer by the Deputy Educational Officer and basing on the said reports, the District Educational Officer vide his letter in R.C. No. 33/B1/95-96 dated 20.12.1995 addressed the Commissioner, Directorate of School Education recommended for correction of date of birth as 1.8.1945 instead of 1.8.1941. The Director of School Education, Hyderabad recommending for correction of the entry in Higher Secondary Certificate. Accordingly the Additional Joint Secretary to the Commissioner of Government Examinations, Andhra Pradesh, Hyderabad vide its letter dated 31.7.1998 altered the date of birth from 1.8.1941 to 1.8.1945 in the H.S.C certificate of the petitioner. It is stated that in the school records the date of birth of the petitioner was altered but the Government vide its Memo No. 47097/Regn-I (1)/98-2 dated 5.8.1998 rejected the proposal of the Commissioner and Inspector General of Registration and the Stamps, Andhra Pradesh, Hyderabad for change of date of birth of the petitioner from 1.8.1941 to 1.8.1945 in the service record. The said memo reads as follows:

With reference to the letter cited, the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad is informed that as per Rule 4 of Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, no government employee, in service before the commencement of the Rules, whose date of birth has been recorded in the Service Register in accordance with the rules applicable to him or whose entry relating to date of birth became final prior to commencement of the rules shall be entitled to claim alteration of his date of birth. As per Rule 4(2), no subsequent variation of the date of birth in the school records should be relevant for the purpose of service.

As Sri G. Chakrapani, Sub-Registrar's date of birth has been changed in the School Records in 1996 i.e., after the commencement of the rules, his date of birth i.e., 1.8.1941 became final. Therefore, the proposal of the Commissioner & Inspector General of Registration and Stamps to change the date of birth of Sri G. Chakrapani, Sub Registrar from 1.8.1941 to 1.8.1945 is advised against by the Government.

3. The said Memo was challenged by the petitioner before the learned A.P. Administrative Tribunal, Hyderabad in OA No. 7267 of 1998 and the learned Tribunal by the impugned order dated 29.7.1999 dismissed the OA.

4. Questioning the orders passed by the A.P. Administrative Tribunal, Hyderabad in OA No. 7267/1998, this Writ Petition is filed.

5. The learned Counsel appearing for the petitioner submitted that the date of birth was entered into the service record based on the school record and when the school records were corrected the alleged clerical mistake, the petitioner is

entitled to get the correction of the date of birth in the service records also. It is stated that the Memo issued by the Government and the order passed by the learned A.P. Administrative Tribunal illegal and arbitrary.

6. Every Government employee shall within one month from the date on which he joins duty make a declaration as to his date of birth under Rule 2(1) of A.P. Employment (Recording and Alteration of Date of Birth) Rules, 1984. On receipt of such declaration, the Head of Office or any other Officer who maintains Service records in respect of such Government employee, by making such enquiry as he deems fit with regard to the declaration within four months from the date on which the Government employee joins the service and declares date of birth. It is not in dispute that the date of birth of the petitioner was mentioned in the record as 1.8.1941, the petitioner declared the said date of birth, while joining duty, the said date of birth was entered into the service record of the petitioner and the same has become final and binding on the employee and shall be stopped from disputing the correctness of such date, under Sub-rule (b) of Rule 4 of Rules issued in G.O.Ms. No. 165. As per Rule 4 and Sub-rule (b) of the GO Ms.No.165, the date of birth of the petitioner entered into his service record shall not be altered except in cases of bona-fide clerical error or under the orders of the Government. It is not the case of the petitioner that a clerical mistake has been crept in with regard to the date of birth determination and entry into the service records. If there is a discrepancy in the order of determination and entering into the service record due to clerical mistake that can be altered. But in the instant case, admittedly, the date of birth was entered into the school record as 1.8.1941 and the petitioner has taken his Transfer Certificate from the Upper Primary School showing his date of birth as 1.8.1941 and the same date of birth was entered into the High School record and the said date of birth was entered in H.S.C certificate. The petitioner has also prosecuted further studies and there was any (sic. no) dispute or any attempt that has been made by the petitioner till expiry of 16 years after he entered into the Government service. After working for 16 years in the Government service, first application was made in the year 1981 and the second application was made only in the year 1995. The application made in the year 1995 was considered and the application filed by the petitioner discloses that the date of birth of the petitioner is mentioned as 1.8.1945 but in the admission register of the school his date of birth was entered as 1.8.1941. The said representation of the petitioner was readily accepted by the Upper Primary School and basing on the letter of the Upper Primary School, the Deputy, Educational Officer, District Educational Officer and Director of School Education taken steps to alter the date of birth in the school records. Merely because the petitioner has succeeded in his attempts in getting the date of birth altered in the Transfer Certificate as well as H.S.C. certificate, we are of the opinion that the same is not binding on the employer for correcting the date of birth. The petitioner has not filed any suit or initiated any proceedings making the employer as a party. Therefore, we are of r the opinion that the corrected date of birth in the school records is not binding on the employer. Further as per

Rule 2 of G.O.Ms. No. 165 when once the date of birth is declared, and the same has been accepted and entered into the service record, the same becomes final as per Rule 4(b).

7. We are also of the opinion that there is no clerical error that has been crept in while determining the date of birth for entering into the service record. In the instant case, there was no dispute with regard to entering of the date of birth in the service record. Whatever declaration has been made by the petitioner, the same has been accepted by the employer and the said date of birth was entered into the service record. Had there been any dispute with regard to the entering of the date of birth contrary to the declaration or if there was any clerical mistake while entering the date of birth into the service record, if that mistake is a bona fide error, the same can be altered but not otherwise. Therefore, we are of the opinion that the Government has rightly rejected the request of the petitioner. We do not find any illegality or infirmity in dismissing the OA by the learned A.P. Administrative Tribunal, Hyderabad. The Writ Petition is devoid of merits and is liable to be dismissed.

8. Accordingly the Writ Petition is dismissed with costs, quantified at Rs. 5,000/-.