

(2004) 04 AP CK 0077

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5531 of 2003

G. Krishna Mohan Rao

APPELLANT

Vs

Registrar, Andhra Pradesh Administrative Tribunal and Others

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 — Rule 2A, 4, 5

Citation : (2004) 3 ALD 449 : (2004) 3 ALT 647

Hon'ble Judges : P.S. Narayana, J; E. Dharma Rao, J; Bilal Nazki, J

Bench : Full Bench

Advocate : K.V. Satyanarayana, for the Appellant; P. Naveen Rao, for Respondent Nos. 2 and 3 and Government Pleader for Services-2, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J

1. This case came up before this Full Bench on a reference made by a Division Bench of this Court. The controversy is short and the facts have been dealt in the order of reference. It relates to change of date of birth of the writ petitioner.

2. The writ petitioner was the 3rd respondent before the Tribunal. He had been originally recruited as a Graduate Engineer Trainee in 1974. He was appointed as Junior Engineer, Electrical in the erstwhile A.P.S.E.B. on 22.8.1976. The Respondents 2 and 3 and the writ petitioner were asked to produce certificates regarding proof of their date of birth at the time of their appointment. The writ petitioner, at the time of entering into service, declared his date of birth as 4.1.1945 which was, entered on the front page of his service book opened at the time of his recruitment. This was authenticated by him. Thereafter the writ petitioner went on deputation to the Electrical Inspectorate Organisation in 1983. He was permanently absorbed in Government service on 7.5.1991. The APSEB, on 2.6.1991, furnished all the required particulars of the employees who were

absorbed in the Government service to the Government. On 1.7.1991 the Chief Electrical Inspector, Government of A.P. issued a seniority list of all the absorbed Engineers. As per the recorded date of birth of the writ petitioner he had to retire from service in January, 2003. The writ petitioner was placed in the seniority list of Deputy Electrical Inspectors above the Respondents 2 and 3. The Respondents 2 and 3 had to retire after the writ petitioner. Therefore they had genuine expectation of getting promotion at the time of retirement of the writ petitioner. However, the Chief Electrical Inspector i.e., 5th respondent passed a suo motu order altering the date of birth of the writ petitioner to 10.10.1947 from 4.1.1945 and as such the writ petitioner would continue to be in service till October, 2005. This would adversely affect the respondents 2 and 3 and they would lose the chances of promotion. The recorded date of birth of the writ petitioner was changed and it is not disputed by the writ petitioner that his date of birth was originally recorded as 4.1.1945. However the writ petitioner submitted that after completion of his Degree in Engineering, he came to know that his date of birth was wrongly entered as 4.1.1945 and his correct date of birth was 10.10.1947. The register maintained under the Registrar of Births and Deaths Act (Birth Extracts) shows that he was born on 10.10.1947. Therefore he filed a suit being O.S. No.67 of 1971 on the file of the I-Asst. District Munsiff, Gudiwada for correction of his date of birth from 4.1.1945 to 10.10.1947. Andhra University was impleaded as defendant in the suit. The Court, by its judgment dated 24.6.1971, declared his correct date of birth as 10.10.1947. The defendant was asked to make necessary corrections. The suit had been filed by the writ petitioner when he had not joined the service. The Andhra University made the correction in the certificates on 27.2.1989. By that time he was in service having been appointed in 1976. The corrections have not been carried by the Andhra University, although the judgment and decree had been given on 24.6.1971. After the decree was executed by the Andhra University, the writ petitioner requested the authorities of A.P.S.E.B. to make entry of his correct date of birth. They did not make any correction till he was absorbed in the Government service on 7.5.1991. Then he made a representation to the Chief Electrical Inspector to Government on 9.12.1991. The representation was not decided. Then he made another representation. A.P. TRANSCO, by its letter dated 17.7.1999, asked him to approach the Chief Electrical Inspector to Government for change of his date of birth. He filed O.A. No.5445 of 1999 before the Tribunal and the Tribunal, by its order dated 8.9.1999, directed the respondents in the O.A. to pass appropriate orders on his representation within the time fixed. Then the Chief Electrical Inspector to Government ordered the change of date of birth on 26.10.1999.

3. The writ petitioner contended before the Division Bench of this Court that he was in possession of a decree and the correction had been made in pursuance of that decree and the suit had been filed by him for correction of his date of birth even before his appointment. The respondents, however, contended that in spite of a decree no change could be made in the date of birth of the petitioner in view

of the relevant service rules and the judgment of a Division Bench of this Court reported in Nadupuri Sanyasi Rao Vs. High Court of A.P., , was not laying the correct law as it was contrary to the judgments of the Supreme Court and even contrary to the rules, there had been some misrepresentation before the earlier Division Bench which decided the case in N. Sanyasi Rao v. High Court of A.P. (supra), even with regard to the correct position of rules. The third contention which was raised before the Division Bench by the writ petitioner was that the Respondents 2 and 3 had no locus standi to challenge the correction of his date of birth.

4. With regard to the question as to whether the judgment of the Division Bench in N. Sanyasi Rao v. High Court of A.P. (supra) is contrary to the rules and contrary to the judgment of the Supreme Court reported in Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, , let us have a look at the judgment of the Division Bench of this Court in N. Sanyasi Rao v. High Court of A.P. (supra). This case relates to a judicial officer. He filed a writ of mandamus for a declaration that he was entitled to get his date of birth corrected and he wanted it to be changed from 1.7.1949 to 29.3.1953. The case of the petitioner in that case was that according to the entry made in the Births and Deaths Register, he was born on 29.3.1953. He requested the officials of the Education Department to make necessary correction of his date of birth. He issued a legal notice to the Secretary, Intermediate Board and others on 18.4.1982. Thereafter he filed O.S. No. 61 of 1983. The suit was contested by the defendants and a decree was passed on 28.2.1985. Then he requested the officials to make necessary correction in the date of birth in terms of the decree. In the meanwhile he applied for the post of District Munsiff, he was selected and was given an order of appointment and in pursuance thereof he joined service on 7.10.1985. The District Judge, Visakhapatnam opened his service register on 30.12.1985, recorded his date of birth as 29.3.1953 based on the decree dated 28.2.1985 in O.S. No. 61 of 1983. However, he also entered his date of birth as 1.7.1949 as per H.S.C. Register. Then the defendants took steps for correction of date of birth in the S.S.C. Certificate of the petitioner in terms of the decree and the Government of A.P. issued a G.O. Rt No. 1739, dated 9.12.1988 altering the date of birth in H.S.M.P.S.L.C., register from 1.7.1949 to 29.3.1953. Thereafter the petitioner made a representation to the A.P. High Court for making necessary entries in the records of the High Court. The High Court, by an order dated 13.11.1997, rejected his request with the following endorsement:

"Considered and since it is found that entry in respect of the date of birth in the service record has been made on the basis of the representation of the concerned officer/officers and materials produced including decree of Civil Courts do not inspire confidence, resolved that representations for alteration of dates of birth be rejected."

5. Thereafter the petitioner filed a review. When the review was pending before the High Court on administrative side, the writ petition was disposed of. The High

Court allowed the writ petition and directed that the petitioner was entitled to get 29.3.1953 entered in the service register as his date of birth. It found that the Civil Court's decree was prior to the entry of the petitioner into service and the correction had been made even in his educational certificates. The High Court referred to Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 and held that the correction ordered by the Civil Court would be binding. The observation of the High Court needs to be reproduced which is as under;

"The date of birth was altered as per judgment dated 28th February, 1995 in O.S. No. 61 of 1983 on the file of the Principal District Munsif, Chodavaram on keen contest in the suit. As per Rule 4 of the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, correction ordered by the Civil Court will be binding and the Civil Court will either decree the suit or dismiss the same and the correction ordered by the Civil Court will be useful for entry into the service Register."

6. Now let us look at Rule 4 of the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984.

Rule 4 lays down:

"(4) The date of birth determined under this rule shall be entered in the service record of the employee concerned duly attested by the Head of the Office or the officer who maintains the service records and the date of birth so entered shall be final and binding and the Government employee shall be estopped from disputing the correctness of such date of birth."

7. The Rules were framed in terms of Article 309 of the Constitution of India. Thereafter the Rules were amended in 1993 by G.O. Ms. No. 383, dated 16.11.1993. After Rule 2, the following rule being Rule 2A was inserted,

"Civil Courts Decree not to be taken into consideration.

2A. In any proceedings before the Government or any Court, Tribunal or other authority for the alteration of date of birth in the service records, the decree of a Civil Court in regard to alteration of the date of birth in the School or the University records or the contents in the judgment leading to such decree, or the effect of its implementation shall not be taken into consideration in derogation to these rules and it is hereby declared that these rules shall have effect notwithstanding anything contained in any judgment, decree or order of a Civil Court in regard to the alteration of date of birth in the School or the University records whether or not the Government is a party to such proceedings."

8. Now coming to the judgment of the Division Bench of this Court reported in N. Sanyasi Rao v. High Court of A.P. (supra), it noted:

"The date of birth was altered as per judgment dated 28th February, 1985 in O.S. No. 61 of 1983 on the file of the Principal District Munsif, Chodavaram on

keen contest in the suit. As per Rule 4 of the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, correction ordered by the Civil Court will be binding and the Civil Court will either decree the suit or dismiss the same and the correction ordered by the Civil Court will be useful for entry into the service Register."

9. Obviously the Division Bench of this Court was not shown the amendment to the rules and the inserted provision of Rule 2A. Even without Rule 2A, there was nothing in Rule 4 to suggest that a decree of Civil Court was binding. Under Rule 5 only the bona fide clerical error could be corrected under the orders of the Government. Therefore the judgment of this Court in *N. Sanyasi Rao v. High Court of A.P. (supra)* is contrary to the rules and it cannot be said that the judgment lays down the correct law. In view of the clear rule position, it may not be very necessary to refer to the judgments of the Supreme Court, but since the question involved is of some importance, therefore we are referring to the following judgments of the Supreme Court.

10. In *Burn Standard Co., Ltd. v. Dinabandu Majumdar (supra)* the Supreme Court held:

"When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements of the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules."

11. In a judgment reported in *State of Punjab v. S.C. Chadha*, 2004 (2) Scale 337, the Supreme Court held in Paras 9 and 10:

"9. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that

many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

10. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by , a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained, the sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of State of Assam and Another Vs. Daksha Prasad Deka and Others, , this Court said that the date of compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure". In the case of Government of Andhra Pradesh and Another Vs. M. Hayagreev Sarma, , the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births-and-deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births-and-deaths register ignoring the Rules framed by the State Government referred to above. It was inter alia observed by this Court:

"The object underlying Rule 4 is to avoid repeated applications by a Government employee for the correction of his date of birth and with that end in view it provides that a Government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

In Executive Engineer, Bhadrak (R and B) Division, Orissa and Others Vs. Rangadhar Mallik, Rule 65 of the Orissa General Finance Rules was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on 16-11-1968. On 9-9-1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the order of the Tribunal saying that the claim of the respondent that his date of birth was 27-11-1938 instead of 27-11-1928 should not have been accepted on

the basis of the documents produced in support of the, said claim, because the date of birth was recorded as per the document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as 27-11-1928. The said respondent did not take any step nor made any representation for correcting his date of birth till 9-9-1986. In the case of Union of India Vs. Harnam Singh, , the position in law was again reiterated and it was observed:

"A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

An application for correction of the date of birth should not be dealt with by the Courts, tribunals 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 the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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 the 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 within at least a reasonable time. 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 about 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 date 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 or 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 thereby caused injustice to his immediate junior."

12. In these circumstances, we hold that even if an employee is in possession of a decree declaring his date of birth to be different than what is recorded in his service register, that decree cannot be binding on employer even if the employer is a party to the suit in view of the bar created under Rule 2A of Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984.

13. Since the question regarding the locus standi has already been decided by the Division Bench of this Court under order of reference with which we agree and the question referred to us as to whether the judgment of the Division Bench of this Court *N. Sanyasi Rao v. High Court of A.P.* (supra), was laying down the good law has been decided by us that the judgment does not lay down the good law, therefore, it will not be necessary to send the matter back to the Division Bench.

14. Accordingly we dismiss the writ petition and hold that the orders impugned before the Tribunal were illegal and the date of birth of the writ petitioner should be taken to be 4-1-1945 and not 10-10-1947. No order as to costs.

P.S. Naryana, J.—I agree with my learned Brother Bilal Nazki, J., but however, wish to add a couple of words.

2. The factual matrix needs no repetition. The precise question, which this Court, a Full Bench is called upon to decide by virtue of the reference order made by the Division Bench, is:

"Whether the ratio in *Nadupuri Sanyasi Rao Vs. High Court of A.P.*, can be said to have been correctly laid down in view of the ratio laid down by the Apex Court in *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, .

3. The Division Bench while making an elaborate order of reference had clearly spelt out the question required to be answered by the Full Bench. It is no doubt true that there is no specific question framed in the reference order. There cannot be any doubt that it would be advisable and desirable to frame a specific question or questions of reference in reference order whenever reference is made but when such questions though not specifically framed, an order of reference cannot be found fault on that ground.

4. In the decision referred *Burn Standard Company Limited v. Dinabandhu Majumdar*, (supra), the Apex Court held that:

"Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following:

When a person seeks employment, he impliedly agree with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others 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. In any case in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."

5. It may also be appropriate to have a look at Para 9 wherein the Apex Court had observed:

"No doubt, there may be special law or rules which permit a person appointed in the service of the Government or its instrumentality to seek correction of his date of birth which might have been accepted by the Government or its instrumentality, as the case may be, as correct at the time of his appointment. But, the special law or rules governing the service of an employee if forbids correction of such date of birth of employee after its acceptance by the Government or its instrumentality, its subsequent correction at the instance of such employee, becomes impermissible. However, in the absence, of such special law or rules it may be open to the employee concerned to seek correction from the Government or its instrumentality, of the date of birth declared by him and accepted by the Government. Even where such correction is sought, the Government or its instrumentality, as the case may be, would be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction."

6. It cannot be laid down as a rule that under no circumstances, the date of birth of an employee in public service be permitted to be changed. That would depend upon the rules governing the service of a particular employee and if any specific procedure has been prescribed, the same can be done in accordance with such procedure and not otherwise. Whether the decree obtained in Civil Court in relation to the date of birth is binding on employer and whether such date of birth to be rectified or altered in service records also would depend upon the relevant rules governing the field. In such cases whether the suit was instituted prior to joining of the service or after joining service or when the decree was obtained also would not assume much significance and may not be much relevant. Serious attempt was made to show that in view of the fact that the suit was filed even before entering into service in the present case, the ratio in *Burn Standard Company Ltd. v. Dinabandhu Majumdar* (cited supra) cannot be made applicable.

7. In *Union of India (UOI) Vs. Chajju Ram (Dead) by Lrs. and Others*, , the Five Judge Bench of the Apex Court held that "even a little difference in facts or additional facts may lead to a different conclusion while deciding whether a decision would operate as a binding precedent." In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , a Three Judge Bench of the Apex Court held that a decision is an authority for which it is decided and not what can be deduced there from logically.

8. The Division Bench in the decision referred *N. Sanyasi Rao, District Judge-cum-Chairman, A.P. Co-operative Tribunal, Vijayawada v. High Court of Andhra Pradesh Represented by its Registrar (Administration) Hyderabad* (supra) was dealing with a case of Rule 4 of A.P. Public Employment (Recording an Alteration of Date of Birth) Rules, 1984, and the aspect of correction of date of birth of a District Judge on the strength of a Civil Court's decree. It is made clear that the

correction of date of birth in service record if any can be made only in accordance with procedure contemplated by the Rules or Regulations governing the service of a particular employee and not otherwise. Reliance also was placed on Union of India v. Chajju Ram (Dead) by Legal Representatives and Ors. 2003 (3) Sup 661, Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others, , State of U.P. and Others Vs. Smt. Gulaichi, , Babu Parasu Kaikadi (Dead) by Lrs. Vs. Babu (Dead) through Lrs., , Government of West Bengal Vs. Tarun K. Roy and Others, , Commissioner of Police v. Bhagwan V. Lahane 1997 SCC (L&S) 719, Devti Nandan Verma v. State of Haryana and an attempt also was made to show that the Division Bench referred to supra had not adverted to all the rules while disposing of the matter.

9. Suffice to state that normally entry in Service record relating to the date of birth made on the strength of the statement of an employee cannot be changed unilaterally unless the service conditions or the relevant rules permit the same and employer may in genuine and bona fide cases, consider such alteration in accordance with the procedure contemplated by the relevant rules and not otherwise.

10. Thus, the reference is answered accordingly. However, for the reasons specified supra, the writ petition is bound to fail and accordingly the same shall stand dismissed. No costs.

Bilal Nazki, J.

11. I have gone through the judgment written by my Brother Justice P.S. Narayana.

12. I am entertaining a doubt when both the Member Judges of the Division Bench who referred the matter to a Full Bench are Members Judges of the Full Bench, is it appropriate to pinpoint the lacunae in the reference by my learned Brother, who is a Member Judge of Full Bench, in his views written separately while agreeing with the reasoning given by the two Members Judges of the Full Bench.