

(1995) 02 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 9287 of 1993

Jaidev R. Brahmabhatt

APPELLANT

Vs

Ahmedabad Municipal Corporation

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1996) 2 GLR 344

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

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard the learned counsel for the petitioner.

2. It is not in dispute that in the S.S.C. certificate of the petitioner, his date of birth is shown as 12.12.1938. It is also not in dispute that in the School Leaving Certificate the date of birth of the petitioner is shown to be 12.12.1938. It is also not in dispute that the petitioner applied for employment on the post of Junior Clerk in the year 1966 in the office of the Ahmedabad Municipal Corporation, Ahmedabad and he claimed his appointment on the basis of his qualification S.S.C. The petitioner has relied on the document of SSC certificate for seeking employment in the Corporation. In the service record of the petitioner, his date of birth has been entered as 12.12.1938 on the basis of document of SSC certificate which has been submitted by himself.

3. In para 4 of the petition, the petitioner averred that "the petitioner submits that in fact the petitioner was all throughout conscious that by mistake his birth date was shown as four years earlier in the service book". From the averments which have been made by the petitioner in para 4 of the writ petition, it is clear that the petitioner was conscious of the mistake regarding his date of birth at least from the date on which he joined the services of the Corporation. It is not in dispute that from 1966 till 16.9.1992, the petitioner has never raised any objection whatsoever regarding the entry of his date of birth in his service record as 12.12.1938. The petitioner has raised an objection regarding the date of birth

which has been entered in the service record after more than 26 years of his appointment. The petitioner has sought correction in his date of birth by the application dated 16.9.1992 on the basis of medical fitness certificate dated 4.5.1966. What the petitioner states is that the date which has been mentioned in the aforesaid medical fitness certificate i.e. 4.5.1943 is the correct date of birth. The petitioner has come up with the case that in the SSC certificate, a wrong date of birth was shown as his parents were not alive when he was admitted in the school and some relatives of the petitioner had wrongly given the birth date as 12.12.1938. The petitioner along with the writ petition has not submitted the copy of his SSC certificate nor he has mentioned in the writ petition that in which year he passed the SSC examination. The petitioner was appointed as Junior Clerk in the year 1966 on the basis of qualification of SSC certificate. It can be inferred therefrom that he has passed the SSC examination either in the year 1966 or prior to that year. The petitioner knew well that in the SSC certificate his date of birth has wrongly been entered as 12.12.1938 even earlier to the aforesaid date of passing the aforesaid examination or in the year in which he passed the examination or on the day on which he received the SSC certificate. He never raised any objection against the entry of his date of birth in the SSC certificate till this date. Date of birth petitioner in the service record, as stated earlier, has been recorded by the Corporation on the basis of the SSC certificate and as such it cannot be said that there was no basis or conclusive evidence for recording the date of birth of the petitioner to be 12.12.1938. The date of birth of the petitioner has been recorded on the basis of SSC certificate and as such it cannot be said that his date of birth has been wrongly entered in the service record. What basically the petitioner is making grievance that in his SSC certificate, wrong date of birth has been entered. The Corporation is not author of the document of SSC certificate. In view of these facts, it cannot be said that the Corporation has committed any illegality or the date of birth of the petitioner as entered in the service record maintained by the Corporation is based on no material. When the petitioner's date of birth has been recorded in the service record on the basis of his own document, I am of the opinion that he is estopped from challenging the entry.

4. The petitioner earlier filed Special Civil Application No. 2967 of 1993 before this Court and that writ petition was disposed of on 22.6.1993 on the basis of the statement of the petitioner that he first desires to approach the Municipal Commissioner by way of representation for getting his birth date corrected in the service record. He withdrew the aforesaid writ petition. Thereafter the petitioner made representation to the Municipal Commissioner, but the said representation was dismissed by the Municipal Commissioner by his order dated 4.8.1993. The petitioner has come up with the case that the Municipal Commissioner declined the prayer of the petitioner for the change of his date of birth in the service record on the ground that as per the circular of the Corporation dated 23.8.1981, he has not approached the authority within time limit as laid down for making of such representation. Certain portion of the said circular has been filed by the

petitioner as Annexure "E" to the writ petition. The relevant portion of the circular reads as under :

"5(1) The date of birth of every Municipal employee shall be recorded in his service book when he enters Municipal Service. The date, month and year of birth shall be recorded in words and figures.

5(2) The head of department shall verify the date of birth from the following documents.

(a) School leaving certificate, S.S.C. Examination Certificate of Matriculation Certificate.

(b) Extract from the births and deaths register of a local body or Municipality etc., with name of the child and its parents entered therein.

(c) Primary vaccination certificate with the name and age of the child entered therein.

(d) Old horoscope.

If there is any discrepancy between the date of birth entered in (a), (c) or (d) above and the date of birth recorded in the extract from the births and deaths register with the name of the child and its parents entered therein shall be accepted as correct and final for all purposes.

5(3) If the employee is unable to produce documentary evidence about the date of his birth.

(a) If the year of birth is known but not the month and date the first day of July shall be entered in the service book as the date of birth.

(b) If the year and month of birth are known but not the exact date, the sixteenth day of the month shall be entered in the service book as the date of birth.

(c) If the date, month and year are not known the approximate age stated in the medical certificate of physical fitness shall be taken as correct and the employee shall be deemed to have completed the age stated in the certificate on the date on which the Certificate is given. The date so fixed shall be entered in the service book by the head of the department under his signature after the employee has consented in writing to such entry being made.

xxxxxxx xxxxxxxx 5(6) No application for correction of the date of birth entered in the service book made by a person already in Municipal service shall be entertained unless it is made within six months from the date on which these regulations come into force".

Sub-clause 2 of Regulation 5 of the aforesaid circular provides that the Head of the Department shall verify the date of birth from the documents enumerated therein and in the list of documents, the first document is of School Leaving

Certificate, SSC Examination Certificate or Matriculation Certificate. The date of birth as recorded in any of the aforesaid certificate has to be entered in the service record of the employee concerned. As stated earlier, both in the School Leaving Certificate and SSC Certificate, the date of birth of the petitioner has been recorded as 12.12.1938 and which date has been entered into the service record. Regulation 5 of the circular further provides that in case of any discrepancy between the date of birth entered in the documents enumerated in clauses (a), (c) and (d), the date of birth recorded in the extract from the births and deaths register with the name of the child and its parents entered therein shall be accepted as correct and final for all purposes. It is not the case of the petitioner that there is any discrepancy in his date of birth as recorded in the School Leaving Certificate and SSC Examination Certificate with that of extract from the births and deaths register of a local body or Municipality.

5. The petitioner has come up with a case that as per the medical fitness certificate, a copy of which is filed by him at Annexure "A", his date of birth should be taken to be 4.5.1943. How he made out this calculation needs to be stated. The medical fitness certificate was issued on 4.5.1966 and in the said certificate his age has been stated to be 23 years. So after minusing 23 from the figure of 1966, the figure of 1943 is arrived at and the date of the certificate was 4th May, the petitioner has stated his date of birth as 4.5.1943. The petitioner has not produced fully legible copy of the fitness certificate at Annexure "A". But from the reading thereof, the age of the petitioner as 23 years has been mentioned in the certificate according to his own statement. This certificate has been issued to the petitioner when he was sent for the physical fitness certificate on his appointment in the Corporation. It is not the case of the petitioner that he was sent for determination of his age by the Doctor. The certificate has been issued only with respect to fitness to the job and not with respect to ascertaining his correct age. From the mere reading said document, it comes out that it is only on the basis of what is stated by the petitioner, his age has been stated to be 23 years. Much emphasis has been laid by the petitioner on clause (3) of regulation 5 of the circular that he should have been sent for medical determination of the age. This argument of the petitioner is wholly fallacious. Clause (3) of regulation 5 of the circular attracts only in case where the employee is unable to produce any documentary evidence about his date of birth. In the present case, there is documentary evidence about the date of birth of the petitioner. That document is the petitioner's own document which he relied for employment. It is highly unjustified on the part of the petitioner to rely on this document so far as it relates to academic qualification for seeking employment, but to disown the document to the extent it relates to the date of birth. This conduct itself would disentitle the petitioner from seeking any relief under Article 226 of the Constitution of India. Be that as it may, the physical fitness certificate, Annexure "A", on the basis of which the petitioner is seeking correction in his date of birth cannot be said to be a conclusive material. No reliance can be made on such a certificate when documentary evidence i.e., SSC

certificate and School Leaving Certificate are available and have been placed on record but the petitioner. The Apex Court in the case of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, laid down factors which are relevant in disposal of application filed by an employee for the correction of his date of birth. It has further been held by the Apex Court that the onus of proof that the recorded date of birth was wrong lies on the applicant. The Apex Court further observed in the aforesaid case that the application for correction of the date of birth in the entry of service record should be made within the time fixed by any rule or order or in the absence of any such rule or order, it should be made within a reasonable time. In the aforesaid case, the application for correction of date of birth in the service record was filled after 33 years of service. In the present case, this has been filed by the petitioner after 26 years of service. The Apex Court further held that the procedure prescribed by any rule or order for the application for correction of date of birth must be strictly followed. From regulation 5(6) of the Circular, it comes out that the petitioner should have made application for correction of his date of birth in the service record within six months from the date on which the circular has come into force. This circular is dated 23.10.1981 and even if the date of the circular is taken to be date on which the same came into force, the petitioner could have moved the application within six months thereafter. Admittedly, the petitioner was in employment of the Corporation at that time. In view of regulation 5(6) of the circular dated 23.10.1981 and the decision of Apex Court in the case of Secretary Commissioner, (supra) no illegality whatsoever has been committed by the Commissioner in rejecting the application of the petitioner for correcting the entry of date of birth in the service record. Even otherwise, the application which has been filed by the petitioner for correction of birth date on 16.9.1992 after 26 years of service cannot be said to be filled within reasonable time.

6. The correction in the date of birth, leaving apart all other questions, sought on the basis of document which cannot be said to be material conclusive in nature cannot be accepted. The physical fitness certificate as stated earlier gives out age which has been mentioned on the basis of what has been stated by the petitioner. Physical fitness certificate cannot be said to be a conclusive evidence or final verdict on the question of date of birth.

7. It is wholly frivolous writ petition which has been filed by the petitioner. Looking to the conduct of the petitioner and the facts which have come on record of the application, it is a case where exemplary cost has to be imposed.

8. In the result, this writ petition fails and the same is dismissed with costs of Rs. 2,000/- (Rupees two thousand only). Petitioner is directed to deposit the cost of Rs. 2,000/- in the office of Gujarat High Court Legal Aid Committee within a period of two months from day. In case the petitioner fails to deposit the amount of Rs. 2,000/- in the office of the Gujarat High Court Legal Aid Committee within the aforesaid period, the Legal Aid Committee will be at liberty to take appropriate proceedings for recovery of the said amount from the petitioner.