

(2013) 12 MAD CK 0141
In the Madras High Court
Case No : Writ Petition No. 33483 of 2013

K. Subramanian

APPELLANT

Vs

Union of India and Central Administrative Tribunal

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 MAD CK 0141

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : Y. Kavitha, for the Appellant;

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This Writ Petition is filed challenging the order passed by the Central Administrative Tribunal in Original Application No. 3989 of 2011 dated 29.6.2011, wherein the petitioner challenged the order dated 18.2.2011 rejecting his request seeking alteration of date of birth and for a direction to the respondents to alter the date of birth of the petitioner as 22.12.1952 instead of 4.6.1951 in his service records, with all consequential benefits and forbear the respondents from superannuating the petitioner before 31.12.2012. The Tribunal, noticing the fact that the petitioner entered into service in Indian Army in the year 1973 and considering the Rule, namely F.R.56, which states that Government servant can seek alteration of date of birth within 5 years of entry into service and the application seeking alteration of date of birth having been filed on the verge of retirement on 30.6.2011, dismissed the Original Application as well as the Review Application filed by him.

2. The only grievance expressed by the petitioner is that on 4.8.1995, he submitted a representation before the Income Tax Department, where he was employed from the year 1993 and therefore that application should be treated as application, filed within five years of entry into service. The said ground cannot be taken as a valid one, as the petitioner was selected in the Income Tax

Department as an Ex-serviceman and while entering into Army Service, the date of birth given by the petitioner was 4.6.1951 based on the entry made in the S.S.L.C. Book and the same was not corrected. There may not be contra entries, one date of birth in the Army service and another date of birth in the Income Tax Department. Therefore, the said submission made by the learned counsel for the petitioner is not sustainable. Having regard to the fact that the petitioner relied on horoscope, based on which Srilankan authority has issued the Birth Certificate, the same cannot be taken as a valid document.

3. The Supreme Court in the decision reported in *Union of India Vs. Harnam Singh*, considered the similar issue and in paragraph 7, it is held as follows:

7. A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. 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. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or state claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam and Another Vs. Daksha Prasad Deka and Others*, , a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. This court said:

The date of compulsory retirement under F.R. 56(a) 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 consistent with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record.

4. Again in the decision reported in Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, , wherein in paragraph No. 7, it has been held as follows:

7. An application for correction of the date of birth should not be dealt with by the Tribunal 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 officer, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important 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, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, 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 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, than such application must be filed within the time, which can be held to be reasonable. The application 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 dates 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 for 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 merely caused injustice to his immediate junior.

5. Similar is the view taken by the Supreme Court in the decision reported in Union of India Vs. C. Rama Swamy and others, and in paragraph No. 25, it has been held as follows:

25. In matters relating to appointment to service various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate at the first instance communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently, claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply. In such a case where the age of person who is sought to be appointed may be relevant consideration to assess his suitability.

6. All the aforesaid decisions were followed by the Hon"ble Supreme Court in the decision reported in Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another, . The evidentiary value of the entry made in S.S.L.C. Book with regard to the date of birth is also considered by the Supreme Court in the decision 2002 (6) ALT 46 (SC) . A similar case as to whether such records can be discarded while considering the date of birth of a Government servant was considered in the decision reported in State of Punjab Vs. Mohinder Singh, and in paragraph Nos. 12 and 13 it has been observed as follows:

12. On the contrary, the statement contained in the admission register of the school as to the age of an individual on information supplied to the school authorities by the father, guardian or a close relative is more authentic evidence u/s 32 clause (5) unless it is established by unimpeachable contrary material to show that it is inherently improbable. The time of one's birth relates to the commencement of one's relationship by blood and a statement therefore of one's age made by a person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32 clause (5).

13. As observed by this Court in Umesh Chandra v. State of Rajasthan ordinarily

oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the need of a particular situation. Entries in the School register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official book should be kept only by a public officer and all that is required u/s 35 of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem modam.

7. It is a settled position that horoscope is a secondary evidence, which cannot be taken as a primary evidence to establish the date of birth of the Government servant. For correction of date of birth, unimpeachable evidence must be shown, even if the Government servant applied within five years. In the decision reported in *The Registrar General, High Court of Madras Vs. M. Manickam and Others*, , the Supreme Court, applying the principles laid down in its earlier decision reported in *State of Punjab Vs. Mohinder Singh*, , reiterated that horoscope is a very weak piece of material to prove the age of a person, and that heavy onus lies on the person who wants to press into service to prove its authenticity. The time limit mentioned in Sub-rule (a) of Rule 30 of the Tamil Nadu State Judicial Service Rules, 1953 requiring submission of application seeking correction of date of birth to be made to the State Government through High Court, within five years of entry into service, is in pari materia to Fundamental Rules. The decision of this Court in confirming the decree passed by the Munsif Court correcting date of birth was set aside in the appeal filed by the Registrar General, High Court, Madras. In view of the said judgments of the Supreme Court as well as the petitioner having not applied for alteration of date of birth within 5 years of entry into service in terms of F.R.56, the decision arrived at by the Central Administrative Tribunal is just and proper and we do not find any reason to interfere with the same. Hence, the Writ Petition is dismissed. No costs.