
(1995) 02 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 12042 of 1994

Kantibhai Atmaram Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1996) 1 GLR 710

Hon'ble Judges : K.R. Vyas, J

Bench : Single Bench

Judgement

K.R. Vyas, J.—The present petition is filed under Article 226 of the Constitution of India for correcting the date of birth of the petitioner as 1-3-1938 or 28-2-1938 in the service record and to calculate the year of Superannuation of the service on the basis of the said date of birth.

2. The petitioner was selected as clerk on the basis of his having passed the Secondary School Certificate Examination and at the time of selection, he was required to produce the secondary school examination certificate. The certificate issued by the Secondary School Certificate Examination Board, dated 1st July, 1957 shows the petitioner's birth date 28-2-1937, and on the basis of the same, the said date was recorded as his birth date in his service record. The petitioner after having passed the Lower Revenue Qualifying Examination was promoted as Deputy Mamlatdar in the year 1980. It is the case of petitioner that in the year 1990, the petitioner checked his birth date in the school leaving certificate and realised that instead of 28-2-1938 in the secondary school certificate his date of birth was shown as 28-2-1937. The petitioner, therefore, obtained the certified copy from the Birth Register of Sidhpur taluka. In the birth register he found that his date of birth is shown as 1st March, 1938. Having confirmed that the petitioner was born on 1-3-1938 and his year of birth was 1938 and not 1937, the petitioner by his application dated 19-11-1990 addressed to the Collector, Mehsana, pointed out the discrepancy in the birth date and requested to correct

the birth date in his service record. As the petitioner did not receive any reply, again on 9-3-1992 he addressed a communication to the Collector, Mehsana and made similar request. Alongwith the said application, the petitioner sent the copies of all the certificates. The Collector by his letter dated 22-4-1992, asked the petitioner to inform whether he made any application to correct his birth date earlier and as to why he did not point out the said mistake for a long period of time. By his communication dated 14th July, 1992 the petitioner pointed out that he had not looked into the Government record and therefore, as and when the mistake come to his notice he immediately pointed out the same to the Collector, Mehsana. By Communication dated 27-12-1993 addressed to the petitioner by the Collector, the petitioner was informed that he should immediately apply the information which was asked for in the earlier letter dated 19-3-1993. The petitioner by his letter dated 2-3-1994 addressed to the Collector pointed out that he had not received the communication dated 19-3-1993 and requested to send the copies thereof. There is one more letter dated 9-3-1994 addressed to the petitioner by the Collector, Mehsana asking the petitioner to send information regarding his date of birth with the documents viz; (1) The School Leaving Certificate; (2) Extract from the Birth Register. It was also pointed out that normally date of birth in the SSC certificate and the School Leaving Certificate should be the same. He was therefore asked to explain as to how the aforesaid difference crept in. The petitioner was also ask to explain why he made the application at a belated stage. The petitioner by his communication dated 23-3-1994 addressed to the Collector, Mehsana sent the original extract from the Birth Register and the School Leaving Certificate. He also pointed out that there seems to be typing mistake in the SSC Certificate which was shown as 28-2-1937 instead of 28-2-1938.(R is further pointed out that from the birth register, it is clear that the date shown is 1-3-1938 and, therefore, the year of 1938 as year of his birth. The petitioner further pointed out that as the time of retirement came nearer, he tried to think about his pension and at that time he realised the mistake in the service record. It appears that all the informations sent by the petitioner were sent to the State of Gujarat Revenue Department for necessary correction in the service record of the petitioner. However, by the communication dated 21-5-1994 addressed to the Collector, Mehsana by the Section Officer of the Revenue Department of the State of Gujarat it was pointed out that the request of the petitioner cannot be accepted as it is not in accordance with the Government Policy. The petitioner has challenged the said decision in the present petition.

3. Perusing the correspondence on record, it appears that the petitioner for the first time on 9-11-1990 requested the Collector, Mehsana to correct the date of birth in the service record and from that date onwards up to 23-3-1994 there is exchange of communication between the petitioner and the authorities. It also appears from the correspondence that the authorities have rejected the request of the petitioner to change the birth date on the ground that the request of the petitioner is at unbelated stage. Therefore, the short question which arises for

consideration is whether in such circumstances, authorities can correct the date of birth? Rule 171 of the Bombay Civil Services Rules is relevant for our purpose, which read as under :

"Rule 171 : In the service book every step in a Government servant's official life, including temporary and officiating promotions of all kinds, increments and transfer, and leave of absence taken, should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills and leave statements, and attested by the head of the office. If the Government servant is himself the head of an office the attestation should be made by his immediate superior.

Officiating and temporary service and leave taken prior to first substantive appointment to a permanent post should also be recorded in the service book and duly attested after verification. The date of birth should be verified with reference to documentary evidence"and a certificate recorded to that effect stating the nature of the document relied on. In the case of a Government servant, the year of whose birth is known but not the date, the 1 st July should be treated as the date of birth. When both the year and the month of birth are known, but not the exact date, the 16th of the month should be treated as the date of birth. In the case of Government servant who is only able to state his approximate age, and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment. When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in Rule 11 should be taken as correct, he being assumed to have completed that age on the dates the certificate is given, and his date of birth reduced accordingly. When once an entry of age or date of birth has been made in service book, no alteration of the entry should afterward be allowed unless it is known, that the entry was due to want of care on the part of some persons other than individual in question or is an obvious clerical error. Request made for alteration of date of birth should not be entertained after the preparation of the service book of the Government servants concerned and in any events,"not after the completion of the probation period or five years" continuous service, whichever is earlier. In the case where there is no probation period, such request should not be entertained after the completion of five years" continuous service. The date of birth may, however be permitted to be altered at a later stage if the Government is satisfied that a bona fide clerical mistake has been committed and that it "should be rectified. Officers of a rank not lower than the Principal District Officer in the Department concerned may correct errors in the service book which are obviously clerical. Cases, in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority."

Reading the said rule, it is clear that the Government servant has a right of

correction of entry either on the ground of apparent clerical mistake or on any other grounds including the ground of want of care on the part of the present respondents for making the entries. The rule nowhere provides for any limitation for making certain application for correction of entries.

4. It appears that Finance Department of the Government has issued a notification amending Rule 171 of the B.C.S.R. whereby the additional provision is sought to be introduced which reads as under :

"(2) In the Bombay Civil Services Rules, 1969, in Rule 171, after the words "or is an obvious clerical error" the following shall be added namely :

"Requests made for alteration of date of birth should not be entertained after the preparation of the service books of the Government servants concerned and in any event not after the completion of the probation period of five years" continuous service whichever is earlier. In the case where there is no probation period such request should not be entertained after the completion of five years" continuous service. The date of birth may, however, be permitted to be altered at a later stage if the Government is satisfied that a bona fide clerical mistake has been committed and that it should be rectified."

5. This Court was required to consider a question of amendment of Rule 171 in the case of B.K. Suthar Vs. State and Another, , and it was held therein that Rule-171 nowhere provides for any limitation for making such an application for correction of entry. It is, therefore, beyond the powers and the authority of the Government to introduce a rule of limitation by an executive direction containing in the Government resolution since the Bombay Civil Services Rules are enacted in exercise of powers conferred by Art. 309 of the Constitution of India.

6. Let's assume that the Govt. notification in the Finance Department amending Rule 171 of the B.C.S.R. is applicable to the facts of the present case. In that event also the Govt. is vested with the power to alter the birth date at a later stage provided the Government is satisfied that a bona fide clerical mistake has been committed and that it should be rectified. It is true that the first part of the amending rule clearly refers the period of limitation, and no request for alteration of date of birth can be entertained after preparation of the service book of the Government servant concerned, and in any event, not after the completion of probation period of five years. It further provides that in case where there is no probation period, such request should not be entertained after the completion of five years continuous service. In short, Govt. servant can apply for alteration of date of birth before preparation of the service book and before completion of five years of service. However, a discretion is vested with the authorities in the later part of the Rules whereby the authorities may permit to alter the date of birth even at a later stage provided that a bona fide clerical mistake has been committed which requires rectification. The learned Counsel for the petitioner relying on the later part of the Rules submitted that the present case is a clear case of clerical mistake and, therefore, the authorities ought to have rectified the

same.

7. Mr. Pujari, learned A.G.P. has submitted that the request of the change of birth date is made of a belated stage and, therefore the authorities have rightly rejected the same.

8. As stated above, on the basis of the Certificate of Secondary School Certificate Examination Board, wherein the date of the petitioner is shown to be 28-2-1937 the said date of birth was entered in the service book of the petitioner. However if we look into the School Leaving Certificate - Annexure-C, the date of birth is shown as 28-2-1938. In the extract of the birth register, the birth dates shown as 1-3-1938. When two important documents namely the extract of birth date register and the School Leaving Certificate tally with each other, it can be safely concluded that the petitioner was born in the year 1938 and, mentioning of 1937 in the Certificate of Secondary School Examination, when the date and month i.e 28th February, are also same, is nothing but an obvious typing mistake. On the basis of this date i.e. 28-2-1937, the entry was effected in the service book. It is true that the petitioner could not point out this obvious mistake to the authorities immediately. However, by not doing so, only on that ground can the period of one year of the service be taken away? The answer is certainly "no", especially in view of the fact that, when the authorities are vested with a power to correct the date of birth even at a later stage in case of any clerical mistake, there cannot be a better case of clerical error than the present one. When instead of 1938, 1937 is typed in the certificate of Secondary Examination Board, unfortunately. in none of the correspondence, the authorities carried this aspect of the case and on the contrary stated that the application is at a belated stage. The final reply given on behalf of the State-Annexure-L, is too general and vague wherein it is stated that the request of the petitioner is against the present Government policy. In absence of any particulars, it is not possible for me to accept the same.

9. Mr. Pujari, learned A.G.P. however, relied on certain decision namely; Chief Medical Officer v. Khadeer Khadri, reported in 1995 I CLR 771. The Supreme Court after considering the Rule 2(5) of the Andhra Pradesh Public Employees (Recording and Alteration of Date of Birth) Rules, 1984 has held that the mistake of recording in 1951 of the date of birth as 1933 was neither clerical nor bona fide and subsequent belated attempt to rectify the date of birth to his advantage was not bona fide. Considering the facts of the case, Supreme Court has ruled against the employee. However, the circumstances in the present case, wherein the clerical mistake is so glaring and especially when the rules give powers to the authority to rectify the birth date and the same is not exercised by the authority, the present case is distinguished from the judgment of the Supreme Court, and therefore, the said authority will not be helpful to the respondent. Mr. Pujari further relied on the decision of the Supreme Court in the case of Union of India v. Hamam Singh, reported in 1993 II CLR 193. That was a case of unexplained and inordinate delay and therefore, the Supreme Court reversed the decision of

the Tribunal and allowed the appeal of the Union of India. The Supreme Court observed that the application for correction of date of birth, entered in the service-book in 1956, for the first time made in September, 1991, was hopelessly belated. It had not been made even within the period of five years from the date of coming into force of note-5 to FR 56(m) in 1979. His inaction for all this period of about thirty five years from the date of joining service, therefore precluded him from showing that the entry of his date of birth in service record was not correct. As stated above, in the present case, there is a specific provision in the rules under which the civil servant can apply for correction of the birth date even at a later stage, provided the case falls in the category of bona fide clerical error, and the authorities bound to consider the same. Having not considered the case of the petitioner on the ground of clerical error, am therefore of the view" that the facts of the present case are clearly distinguishable from the facts of the case of Supreme Court.

10. In view of what is discussed above, the petition is allowed and is hereby allowed. The respondents are directed to correct the date of birth of the petitioner as 1-3-1938 or 28-2-1938 as the date of birth in his service record; and they are further directed to calculate the year of superannuation of the service of the petitioner on the basis of the said date of birth. In view of this the decision dated 21-5-94 of the State Government Annexure-L is hereby set aside. Rule is made absolute with costs. The petitioner may be given operative portion of the order today for the purpose of serving upon the respondents. Mr. Pujari, learned AGP requests for the stay of this order. The request is rejected. D.S. permitted.