
(1993) 02 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 205 of 1993

K.M. Jariwala

APPELLANT

Vs

Indian Petrochemicals Corporation Ltd.

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Births, Deaths and Marriages Registration Act, 1886 — Section 9

Citation : (1993) 2 GLR 1481 : (1994) 1 LLJ 735

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Judgement

Parikh, J.—The respondent's proposed action of superannuating the petitioner on his completion of 58 years as on January 31, 1993 on the

basis of treating his birth date to be 29th January, 1935, came to be challenged by the petitioner in this petition under Art. 226 of the Constitution

of India; and the bone of the contention is the petitioner's birth date.

2. The petitioner's birth date is 5th February, 1937 as per the birth certificate, the certificate of age, nationality, domicile, etc., issued by the Sub-

Divisional Magistrate, Surat, vaccination certificate, pass-port, insurance policy, identity card issued by the respondent-Corporation and even in

the service record of respondent before it came to be corrected by scoring the said birth date. At this very stage it should be noted that such

correction was made immediately as contended as by the respondent, whereas it was made at a later point of time as contended by the petitioner.

Be that it may, it can hardly be disputed that the petitioner came to know much late about the correction leaving him to be at the mercy of the

respondent-Corporation for the purpose of restoring the birth date as it stood before its correction in the service record.

3. Brief Facts : The petitioner, an Engineer holding qualification of B. E. (Mech), joined service of the respondent-Corporation pursuant to the appointment order dated 24-2-1971. In his application for the post of Senior Engineer (Mech.) the petitioner gave his birth date to be 5th February, 1937 and the same was accordingly noted in the service record. Prior to that, the petitioner was working with Vijay Engineering and Trading Company and still prior to that with Hindustan Steel Ltd., Rourkela, and at both these places his birth date was accordingly recorded to be 5th February, 1937. The petitioner obtained life insurance policy in the year 1968 and a pass port on 8th May, 1972. Both the documents contained the birth date of 5th February, 1937. The petitioner has then made reference to the aforesaid documents, out of which important documents are the original birth certificate, vaccination receipt and the certificate of domicile issued on 10-5-1956 by the Sub-Divisional Magistrate, Surat, showing the birth date as 5th February, 1937. The receipt of the vaccination administered to the petitioner was also dated 9th March, 1938 and shows the petitioner's name in order to connect the birth certificate.

4. Sometimes in the second half of 1985 the petitioner noticed that his annual performance appraisal report contained the date of birth of 25-1-1935 as per the S. S. C. certificate. Thinking that was a mistake, he corrected the same, but in the subsequent annual performance appraisal report also said dated 25-1-1935 appeared. The petitioner, therefore, learnt that it was not a mistake, but according to the petitioner, a deliberate attempt made on his back to correct his birth date. The petitioner, therefore, wrote a letter dated 19-7-1988 to the respondent-Corporation pointing out the true position. Reply dated 2-8-1988 received by the petitioner only indicated that for all official purposes the date of birth as shown in S. S. C. certificate only was acceptable. According to the petitioner there is and there can be no rule for unilaterally correcting the birth date in the service record and that too behind the back of the employees. The petitioner has set-out what were the documents which the petitioner was required to submit at the time of applying the post initially and S. S. C. certificate being one of the certificates, according to the contention of the petitioner, the same has been sought to be relied upon by the respondent-Corporation. However, according to the contention of the petitioner,

when he joined the service of the respondent, there was no policy or rule requiring that date of birth would be as per S. S. C. certificate only.

Having received the reply dated 2-8-1988 (Annexure "E") the petitioner sought intervention of the higher authorities but the General Manager by

his communication dated 5-11-1990 (Annexure "F") rejected the petitioner's case. The communication reads as under :

The issue was earlier examined and it was inter alia intimated to you vide C. M. (P & A)-B C's IOM No. PL/5/211 dated 2-8-1988 (copy

enclosed) that for all official purposes the date of birth as shown in S. S. C. Certificate is only acceptable.

Certificate dated 1-7-1954 of Secondary School Certificate Examination Board available on official records shows your date of birth as ""29-1-

1935"" Since the same is considered as conclusive proof your date of birth is reckoned as ""29-1-1935"" for all official purposes.

5. The petitioner was surprised for the non-consideration of the materials by the respondent-authorities and he, therefore, again submitted his

appeal requesting that his representation might be considered in the light of the evidence which he has presented. It may be noted here that most of

the aforesaid pieces of the evidence were submitted by the petitioner for consideration. On 20-10-1992 the petitioner received a reply dated

October 20, 1992 rejecting his appeal because ""as per the practice of the Corporation in vogue, the date of birth is recorded as per

SSC/Matriculation Certificate, which is treated as conclusive for the purpose."" The grievance of the petitioner is that it was not clarified as to when

the practice came into vogue and why the petitioner's record was sought to be altered unilaterally. According to his say the identity card issued to

him by the respondent-Corporation as late as on 20-7-1988 reflected his birth date to be 5th February, 1937. Under the aforesaid circumstances

he approached this Court for correction of the record and restoring his original date of birth of 5th February, 1937 for continuing him in service till

28th February, 1955 on the basis of the said birth date and directing the respondent-Corporation to continue him in service accordingly.

6. During the pendency of this petition the petitioner received an order dated 15-1-1993 passed by the Chairman-cum-Managing Director of the

respondent-Corporation which is reproduced below :

I have carefully considered your appeal dated December 11, 1992 as well as your letter of December 24, 1992.

In the light of the sound and establishment practice and precedents of the Company and the relevant records scrutinised by me, I have come to the

conclusion that your date of birth (29th January, 1935) as indicated in the certificate dated 1st July, 1954 (which incidentally bears your signature

as well issued by the Secondary School Certificate Examination Board, Bombay evidencing your having passed the Secondary School Certificate

Examination of March, 1954 has been rightly accepted by the Company for all official purposes including the determination of the date on which

you will attain the age of superannuation. Incidentally, the ""Certificate of age, nationality, domicile, etc."" issued by the Sub-Divisional Magistrate,

Surat on 10th May, 1956 and produced by you at the time of your joining this Company in May, 1971 also cited the School Leaving Certificate

among the ""Particulars of proof submitted."" You had also not taken any action to get the date of birth indicated in your School Leaving Certificate

(29th January, 1935) remedied to reflect the date of birth indicated in the Certificate issued by the Sub-Divisional Magistrate Surat (5th February,

1937) if at all the latter is the true date of birth as claimed by you.

There is, therefore, no case for changing your date of birth to 5th February, 1937 as requested by you. The date of birth indicated in your

successive pass-ports or in your Insurance Policies or in the certificate issued by the Surat Municipal Corporation on December 2, 1992 copies of

all of which have been produced by you at this stage, cannot have a binding force on the Company nor can it confer on you the right to claim

rectification as the Company had accepted 29th January, 1935 as your date of birth on the basis of the Certificate of Secondary School

Examination Board.

In accordance with my foregoing conclusions, the following are my orders in this regard :

(a) Your appeal for rectification of your date of birth in the official records of the Company stands rejected.

(b) As you will be attaining the age of superannuation (58 years) in the month of January, 1993 in accordance with the currently applicable

provisions in this regard, you will retire from the services of the Company on

January 31, 1993 (AN)

(c) The Company will not be in a position to consider your candidature for any higher post as you would be retiring on January 31, 1993 (AN)

(d) The Company has no objection to your seeking redressal of your grievances in a Court of Law provided that :

(i) such Court is the Civil Court at Vadodara or the High Court of Gujarat at Ahmedabad;

(ii) you shall send to the Company a copy of your petition before it is filed; and

(iii) you shall not seek an ex-parte injunction against the Company.

Your request for furnishing to you nothings of the Corporation in this case along with legal opinion sought ""is hereby rejected as these are

considered to be confidential documents.

7. The petitioner, therefore, prayed for amendment for challenging the said order also alongwith the earlier orders in order to get the aforesaid

substantive reliefs in this petition.

8. The stand taken by the respondent is reflected in the affidavit-in-reply of the respondent. It is contended that the petition is now maintainable

because there are disputed questions of facts with regard to the petitioner's birth date and that since the respondent-Corporation had only

recognised 29th January, 1935 as the petitioner's birth date on the basis of the S. S. C. certificate, the respondent-Corporation was justified in

finding that no probative value could be attached to the documents produced by the petitioner before the respondent-Corporation and finally that

the administrative decision of the respondent could not be reviewed by this Court.

9. It is contended that the vaccination certificate was never produced at any time before the respondent and it has been produced for the first time

before this Court. However, all the documents did not in any way reduce the probative value of the birth date recorded in the S. S. C. certificate.

It is contended that there was no alteration in the date of birth in the service record as alleged. By way of further affidavit-in-reply, it has been

contended that the birth date recorded in the service card is 29th January, 1935 on the basis of the S. S. C. certificate, which was produced by the

petitioner at the time of his appointment in the service of the respondent-Corporation in 1971, and therefore, it was erroneous to contend that there

was alteration in the said date of birth. However, the correction appears to be there in the service card all throughout and it was not altered as contended by the petitioner at any time. Since the petitioner's representations have been considered by the appropriate authorities of the respondent-Corporation, natural justice is not violated. By way of further affidavit-in-reply the respondent has come out with a case that it is only when the petitioner has himself prepared Annual Performance Appraisal Report, that he mentioned subsequently the date of birth to the 5th February, 1937.

10. On merits Mr. Shelat, learned Advocate for the respondent-Corporation had made reference to the list under the title "Indian Public Enterprises" Top Management Cadres" as on 1st January, 1983, which shows the petitioner's birth date to be 29th January, 1935. However, on a look at the date appearing on the left hand side, there appears date January 30, 1993. It is not clear as to when this list was prepared. Mr. Shelat also made reference to the service card, kept ready in the Court with xerox copy placed on record. This is where the attention of Mr. Shelat was drawn for the simple reason that the date of birth written as 5th February, 1937. When this correction is made, was the question and Mr. Shelat frankly answered that it must have been afterwards that the date 5th February, 1937 was written. But according to the say of the respondent, this correction was made immediately thereafter and to substantiate this submission, Mr. Shelat further referred to service book-II showing the date of birth of the petitioner to be 29th January, 1935; second page showing service particulars shows the date commencing from 1st July, 1980. From this, the submission of Mr. Shelat is that the service book-II showing date 29-1-1935 would indicate that the alteration or the correction in the birth date of the petitioner must have been done as per the respondent's policy to recognise the S. S. C. certificate at least prior to 1st July, 1980 and if that be so the petitioner's say that he came to know about the alteration somewhere in the year 1985 would not be correct on the face of it. He therefore, submitted that respondent was justified in taking into consideration the S. S. C. certificate as the basis for asserting the petitioner's birth date as 29-1-1935 and not 5-2-1937.

11. From the rival contentions it is not difficult to find, as a matter of fact that

there is an alteration in the petitioner's birth date appearing in the service record/service card of the petitioner and the same is apparent on the face of the record and for doing so mere placing of reliance on the policy would not be legal, just and proper. Even with regard to the set of documents relied upon by the petitioner, the respondent has displayed total negative attitude which would ultimately mean that the respondent did not want to apply its mind to all to the petitioner's cause. It is submitted that in accepting the petitioner's cause based upon the above referred documents the Court would be denying opportunity to the respondent in scrutinising the petitioner's birth date as appearing in the S. S. C. certificate and in the School Leaving Certificate; that would according to submission of Mr. Shelat, leave the matter in the field of disputed facts to be established on evidence. This submission cannot be accepted for this is one of those clear cases where there is, in the substance no scope for adducing any evidence worth the name. The birth date 29-1-1935 appearing in the School Leaving Certificate and for that matter in the S. S. C. certificate, is apparently not correct. The error is apparent on the face of record. Even if it be assumed that petitioner's parents or one of the parents got registered the petitioner's birth date 29-1-1935 in the school for the purpose of seeing that the petitioner got admission in the school at an earlier point of time than the usual point of time, that would be also untrue state of affairs on the face of it and cannot go beyond the finding that it is the error, on the face of record. These facts, as just now noted have to be particularly borne in mind in the circumstances of the case with regard to the alteration in the service record of the petitioner. The same has been set-out at length hereinabove and need not be stated again.

12. Mr. Shelat, however submitted, that the management of the respondent was justified in accepting the one of the two birth dates displayed in the documents of petitioner himself. It was competent for the management to reply upon the date as stated in the S. S. C. certificate. The decision so taken was on the strength of policy adopted by the respondent. Such decision cannot be said to be unreasonable. He, therefore, submitted that judicial review of such an administrative decision cannot be permitted. He placed reliance on the following decisions :

1. G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, .

2. Government of Andhra Pradesh and Another Vs. M. Hayagreev Sarma, .

3. Rasul Adam Votra Vs. Oil and Natural Gas Commission and Another, .

In G. B. Mahajan's case (supra) reliance was placed on para 19, where the Hon'ble Supreme Court said as under :

It is a truism, doctrinally, that powers must be exercised reasonably. But as Prof. Wade points out :

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the

discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which

the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must therefore, resist the temptation to

draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding

authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be

legitimate. But if the decision is within the confines of reasonableness, it is not part of the Court's function to look further into the merits. With the

question whether a particular policy is wise or foolish the Court is not concerned, it can only interfere if to pursue it is beyond the powers of the

authority...." (See : Administrative Law : H. W. R. Wade 6th Edn. p. 407).

The Supreme Court proceeded further dealing with the scope of "reasonableness" - test in administrative law and quoting some of the notable

authorities on the question. the conclusion, however appearing in para 20 assumes importance and the same may be reproduced below :

While it is true that principles of judicial review apply to the exercise by a Government body of its contractual powers, the inherent limitations on

the scope of the inquiry are themselves a part of those principles. For instance, in a matter even as between the parties, there must be shown a

public law element to the contractual decision before judicial review is invoked. In the present case the material placed before the Court falls for

short of what the law requires to justify interference.

In the present case unreasonableness, if at all the same word is required to be used, lies in formulating a policy (if at all such a policy retrospectively

and then adhering it with close eyes when an appropriate case is brought for

decision. In my opinion, in the present case the respondent's action is clearly hit both by unreasonableness and arbitrariness in the context of the aforesaid facts and circumstances of the case. To make it clear the concerned authorities of the respondent have refused to lend their ears to the petitioner's causes, which is not merely about the correction of the birth date in the service record, but which in substance relates to the restoration of the date which was earlier recorded and that too on the basis of unimpeachable document regarding petitioner's birth.

In Government of Andhra Pradesh's case (supra) Rules 4 and 5 of the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984, were under scrutiny by the Hon'ble Supreme Court. Rule 4 laid down a salutary principle to prohibit reopening of the question of correction of date of birth which may have become final prior to the enforcement of 1984 Rules. Rule 5 laid down that where the application of a Government employee for alteration of his date of birth was pending on the date of the commencement of 1984 Rules, the same will be dealt with on the basis of date of birth recorded in the School and College records at the time of the entry of the employee into service. It was held that 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 provided 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. Incidentally, it was further held that Rule 5 could not be said to be repugnant to Section 9 of Births, deaths and Marriages Registration Act, 1886. Section 9 merely relates to admissibility of documents, it does not seek to regulate service conditions of a State employee.

In my opinion even this decision would have no application to the facts and circumstances of the present case, particularly bearing in mind the very prayer of the petitioner for restoration of the date of birth recorded in the service book.

In *Rasul Adam v. O. N. G. C.* (supra) a Division Bench of this Court presided over by Mr. Gokulkrishnan, C.J. as then he was and Mr. Justice R.

A. Mehta held that where the age as noted in the record at the time of entry into

service was subsequently sought to be corrected on the basis of some other birth date to be a correct birth date, that should be done within the prescribed period of limitation and period of limitation if reasonableness laying down period of limitation if reasonableness laying down period of limitation were held to be not retrospective and despite such rules "clerical mistake" or "bona fide clerical mistake" could be corrected. Paras 28 and 29 of the citation were read. In my opinion what has been stated in those paras, will be of no assistance to the respondent. As a matter of fact, in the present case the service record is corrected without following a just and proper procedure and quite in violation of natural justice. Merely because recourse in the form of restoration or the original date prayed for and such a representation has been dealt with by the respondent, it cannot be said that natural justice was followed at the time of original correction.

13. In this connection it was be useful to refer to a decision of the Hon'ble Supreme Court in the case of R.S. Kallolimath Vs. State of Mysore and Another, . Relying upon earlier decision in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , it was held that the State was not precluded merely because of the acceptance of date of birth from holding an enquiry if there existed sufficient reasons for holding an enquiry and refixing the employee's date of birth, but "it passes our comprehension as to why after granting an extension of service to the appellant in terms of Memorandum dated August 14, 1958, the Government retracted its steps and suddenly terminated the services of appellant on March 31, 1959". It has been observed "the course adopted by the Government in not allowing the appellant to continue in service for half of the period of difference between the date of birth as originally recorded in the service register and the revised date of birth has a manifestly resulted in grave injustice to the appellant. This is, therefore, a pre-eminently fit case in which the High Court instead of dismissing in a summary manner the writ petition No. 1662 of 1971 which raised substantial questions of law and fact should have heard it on merits and enforced the directions contained in the aforesaid memorandum dated August 14, 1958. As the impugned order which seems to have been passed by the High Court without the consideration which it merited has undoubtedly resulted in gross injustice.

14. The decision in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, referred to in the above mentioned case, go a step further

and in my opinion provides a clear answer to the technical objection about the non-maintainability of a writ petition under Art. 226 of the

Constitution of India. Para 6 needs be reproduced for that purpose :

(6) It was the case of the first respondent in her petition before the High Court that the State had arbitrarily fixed her date of birth as April 16,

1907 and on that basis had declared her superannuated before she attained the age of 58 years. On behalf of the State it was denied that the true

date of birth of the first respondent was April 10, 1910, and that the authorities of the State had arbitrarily and maliciously chosen to refix her date

of birth. Under Art. 226 of the Constitution the High Court is not precluded from entering upon a decision on question of fact raised by the

petition. Where an enquiry into complicated questions of fact arises in a petition under Art. 226 of the Constitution before the right of an aggrieved

party to obtain relief claimed may be determined, the High Court may in appropriate cases decline to enter upon that enquiry and may refer the

party claiming relief to a suit. But the question is one of discretion and not of jurisdiction of the Court. In the present case the question in dispute

was about the regularity of the enquiry and the High Court was apparently of the view that the question whether the State acted arbitrarily did not

rise any question of investigation into complicated issues of fact. No interference with the exercise of the discretion of the High Court is, therefore,

called for.

15. In the present case the primary admissible piece of evidence in the form of certificate of age, nationality and domicile was before the

respondent. Apart from the question regarding calling upon the petitioner to explain that document, it could have been kept before eyes before

effecting unilateral correction in the service book of the petitioner. Both the aforesaid decisions submitted by Mr. M. R. Anand, learned Advocate

for the petitioner merit application to the present case.

16. Mr. Anand also relied upon para 5 of one more decision of the Supreme Court in the case of Director of Technical Education and another Vs.

Smt. K. Sitadevi, which reads :

5. We would have agreed with Mr. Madhava Reddy if the decree had been made

the Tribunal. But the additional fact that the original certificate was produced and the Tribunal looked into the dates of birth of the other members of the family to find out the reasonableness of the claim of the respondent about her changed date of birth are features which make the dispute factual and the conclusion reached by the Tribunal must therefore, be taken to be one where on facts found the decision has been taken. What exactly is the date of birth of a person is undoubtedly a question of fact and, therefore, the objection raised by learned Counsel for the respondent has to be accepted.

17. In the present case also petitioner has placed on record the date of birth of other concerned member of his family, although it was not necessary to do so his own date of birth reflected in several documents, undoubtedly showed his correct date of birth.

18. In above view of the matter, in my opinion, this is a fit case where extraordinary jurisdiction under Art. 226 of the Constitution of India needs

be exercised. The petition is, therefore, allowed. Annexures E, F, H and J to the petition are hereby quashed and set aside, while directing the

respondent that the petitioner's birth date 5th February, 1937 be resorted in the petitioner's service record and continue the petitioner in service

on that basis. The petitioner accordingly shall not be retired from the service on the basis of the corrected birth date, namely on the basis of the

corrected birth date, namely on the basis of 29th January, 1935. Rule made absolute accordingly with no order as to cost.

19. Mr. Shelat submits that the respondent-Corporation would like to take the matter by way of an appeal under the Letters Patent. He, therefore,

prays for stay of the operation of the above order.

20. On the respondent giving undertaking to this Court that the petitioner's service shall not be broken and that the continuity shall be maintained in

terms of the aforesaid order, the operation of the order is stayed upto 15th February, 1993. Undertaking shall be filed within 3 days from today.