

(2010) 09 KL CK 0126

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 28511 of 2010

Kotnis

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Education Rules, 1959 — Rule 10(B), 3, 3(2), 5
Registration of Births and Deaths Act, 1969 — Section 17

Citation : (2010) 4 KLT 447

Hon'ble Judges : K.T. Sankaran, J

Bench : Single Bench

Advocate : M.K. Pradeepkumar, for the Appellant; Nisha Bose, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The Petitioner applied before the Commissioner for Government Examinations, Thiruvananthapuram for correction of the date of birth recorded in the SSLC Book. The date of birth entered in the SSLC Book was 1.5.1962. According to the Petitioner, his correct date of birth is 18.5.1963. Before the Commissioner, the Petitioner produced Ext.P1 certificate of birth, issued by the local authority u/s 17 of the Registration of Births and Deaths Act, 1969. The Commissioner rejected the application as per Ext.P4 order dated 16.7.2009, which is under challenge in this Writ Petition.

2. The Petitioner was admitted in Standard I on 30.5.1967 and his date of birth was shown in the Admission Register as 1.5.1962. This date was shown in the SSLC Book also.

3. The reason stated in Ext.P4 for rejection of the application for correction of date of birth was the following:

The school records relevant in this case have been verified. The Petitioner was

admitted to Std. I at CMS LPS Muhamma on 30.5.1967 with date of birth 1.5.1962. The request of the applicant is to alter the date of birth from 1.5.1962 to 18.5.1963. If the request is allowed the applicant would become an under aged student at the time of admission in Std.I i.e. having only 4 years and 12 days of age.

As per Rule 5 Chapter VI of K.E.R. no child who has not completed five years of age as on 1st June of the year of admission in Std.I shall not be admitted to any school.

In the above circumstances, the request of the applicant to alter the date of birth from 1.5.1962 to 18.5.1963 in the qualification certificate deserves no consideration and hence it is rejected.

4. The learned Counsel for the Petitioner submitted that the reason stated by the Commissioner for rejection of the application is contrary to the provisions of Rule 3 and Rule 10B of Chapter VI of the Kerala Education Rules.

5. The relevant portions of Rules 3, 5 and 10B of Chapter VI of the Kerala Education Rules are extracted below:

3. Alteration of date of birth etc.-- (1) The name of a pupil, his religion and his date of birth once entered in the Admission Register shall not be altered except with the sanction of the authority specified by Government in this behalf by notification in the Gazette. Applications for such alterations and corrections should be submitted by the parent or guardian, if the pupil is still on the rolls of any school and by the pupil himself if he is not on the rolls of any school. All such applications shall be forwarded through the Headmaster with satisfactory evidence. Court fee stamps to the value of One Rupee shall be affixed on such application.

(1A) A time limit of fifteen years from the date of leaving the school or the date of appearing for the S.S.L.C. Examination for the last time whichever is earlier is fixed for entertaining requests for correction of date of birth in school records by the Commissioner of Government Examinations.

Note: The Government shall consider requests for condonation of delay in making application for correction of date of birth in school records, in deserving cases, on merits, provided that the applicant is within 50 years of age as per the original entry in the school records.

(2) If the authority referred to in Sub-rule (1) is satisfied after necessary enquiries that the change applied for could be granted, he will issue an order to make the alteration. The alteration shall then be made in the Admission Register and the other connected records of the schools previously attended by the pupil as well as in the school in which he was studying at the time.

5. Age limits for Admission:- (1) No child who has not completed five years of age as the 1st June of the year of admission shall be admitted to any school

except pre-primary schools.

10B. A pupil admitted to any Standard, if subsequently found to be underaged for admission to that standard, he/she shall not be promoted from the standard in which he/she is studying at the time of detection of the irregular admission till he/she attains the age prescribed for the standard to which he/she is to be promoted and the promotions shall be effected only along with the other pupils provided he/she is otherwise eligible for promotion.

Provided that nothing in this rule shall apply to pupils admitted to any Standard --

(i) before the school year 1973-74, or

(ii) in relaxation of the minimum age rule granted by competent authority.

6. Rule 3 of Chapter VI of the Kerala Education Rules enables the applicant to make an application before the appropriate authority. On such application being entertained, the authority shall consider the question whether the date of birth is liable to be corrected, after making necessary enquiries in order to satisfy whether the change applied for could be granted. Sub-rule (2) of Rule 3 mandates that if the authority is satisfied after necessary enquiries that the change applied for could be granted, he will issue an order to make the alteration. The alteration shall then be made in the Admission Register and the other connected records of the school. So the crucial question to be considered is whether the change applied for could be granted. To arrive at such a conclusion, the question to be considered by the authority is what is the actual date of birth of the applicant. If the authority finds that the date of birth of the applicant is different from the date of birth shown in the school records, the authority shall pass an order directing to make alteration in the school records. Rule 5 of Chapter VI of the Kerala Education Rules provides that no child who has not completed five years of age as on the first day of June of the year of admission shall be admitted to any school except pre-primary schools. Rule 10B of Chapter VI of the Kerala Education Rules provides for the consequences of admission of a student in a school, who was under aged on the relevant date. The consequence of such admission would be denial of promotion to the student from the Standard in which he was studying at the time of detection of the irregular admission. The further consequence is that he shall not be promoted till he attains the age prescribed for the Standard to which he is to be promoted. The proviso to Rule 10B specifically provides that the said rule shall not apply to pupils admitted to any Standard before the school year 1973-74. In the present case, the application submitted by the Petitioner shows that he was admitted in the school on 30.5.1967. Therefore, it is clear that Rule 10B will not apply. In a case where the consequence of admission of an under aged candidate as provided in Rule 10B is not available at all in view of the proviso to Rule 10B, the authority would not be justified in relying on the bar under Rule 5 of Chapter VI to deny correction of date of birth on the ground that if the date of birth is corrected as requested, it would have the result of the applicant being under aged at the time

of admission in Standard I.

7. On a consideration of the scheme of the provisions of Chapter VI with reference to Rules 3, 5 and 10B, I am of the view that Rule 5 does not govern Rule 3. Rule 3 can be invoked to correct the date of birth and if an order is passed by the Commissioner to that effect, the correct date of birth could be entered in the school records, notwithstanding that the result of such correction would disclose the admission of the pupil contrary to Rule 5. The maximum consequence that may occur on such correction would be denial of promotion as envisaged under Rule 10B. Rule 10B cannot be invoked in the present case, as the proviso therein applies and since the applicant had completed his course and passed the SSLC Examination. If so, the consequence as provided in Rule 10B cannot be a ground for denial of correction of date of birth, if otherwise the applicant is entitled to the relief. When the authority arrives at the satisfaction, as is referred to in Sub-rule (2) of Rule 3, it mandatorily leads to correction of the date of birth. The relief, which the applicant is legitimately entitled to get, cannot be denied by the authority, by importing Rule 5 of Chapter VI of the Kerala Education Rules while considering an application under Rule 3 of the said Chapter.

8. In *Chandrika A.K. Vs. State of Kerala and Others*, , a learned single Judge of this Court, relying on the decision in *K.K. Nandakumaran v. Joint Commissioner for Government Examinations Trivandrum* (1976 KLN 178 Case No. 158, held thus:

17 It is not the law that when a person's date of birth is allowed to be corrected, the advantage obtained by the said person based on the irregular entry, has to be forfeited. What is provided under the relevant rule is an opportunity to correct the date of birth in the school records on the basis of cogent materials which, if accepted, would lead to the conclusion that the original entry has to be corrected. Going by Rule 3 of Chap.VI K.E.R. a facility has been provided to correct the date of birth in the Admission Register and Sub-rule (1A) also provides for a facility for correcting the date of birth in school records by the Commissioner of Government Examinations. Sub-rule (2) of Rule 3 is important. It provides that "if the authority referred to in Sub-rule (1) is satisfied after necessary enquiries that the change applied for could be granted, he will issue an order to make the alteration....." Therefore, the enquiry is confined to the question whether the original entry requires alteration, in the light of the materials made available by the applicant. If the applicant can conclusively prove that the original entry does not tally with the correct date of birth, based on sufficient materials, power is given to the authority to order an alteration. It is not the law, therefore, that the advantage obtained by the irregular entry, if at all anything is there, will be detrimental to the applicant. The prohibition contained in Rule 5 of Chapter VI have to be understood in the light of the above fact.

9. The learned Government Pleader submitted that the Petitioner has an effective

alternate remedy of an appeal to the Government as provided in Sub-rule (3) of Rule 3 of Chap. VI of the Kerala Education Rules. It is true that an appeal is provided against the order passed by the Commissioner under Rule 3. It is trite that existence of an alternate remedy need not always result in the rejection of the Writ Petition under Article 226 of the Constitution of India: If the order impugned is completely without jurisdiction or opposed to any clear statutory provision or violative of the principles of natural justice or is against the settled principles of law as per a decision of the Supreme Court or jurisdictional High Court, I do not think that the existence of alternate remedy bars this Court from exercising the powers under Article 226 of the Constitution. In the present case, there is no doubt that Ext.P4 order passed by the authority is without jurisdiction, against the statutory provisions and against the dictum laid down by this Court in the aforesaid judgments. Therefore, I quash Ext.P4 order and direct the Commissioner for Government Examinations to consider the application afresh after affording an opportunity of being heard to the Petitioner. The Petitioner would be entitled to produce such other materials and documents before the Commissioner in support of his contentions. The Commissioner shall take a decision in the matter within a period of two months from the date of receipt of a copy of the judgment.

The Writ Petition is allowed as above.