
(1997) 01 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 6507 of 1997

K.R. Sukumaran Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 LLJ 136

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : K.R.B. Kaimal, for the Appellant; H.B. Shenoy, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—The petitioner has approached this Court challenging Exts.P4 and P10 declining his request for correction of his date of birth in Service Book as well as in School records.

2. The date of birth of the petitioner as entered in the S.S.L.C. Book is 13.11.11 l1(ME). This was carried over to his service book when it was opened on his entry in service.

3. While continuing in service, the petitioner could know that there was a mistake in the date of birth in his school records as well as in Service records. He submits that the actual date of birth is 14.11.1112(ME). Seeking correction the petitioner made an application on June 25, 1986 to Government. In that the petitioner applied for the correction of the date of birth in service records. The petitioner produced Ext.P3 certificate in support of this claim. That is the birth certificate issued to the petitioner. His request was rejected in Ext. P4. The petitioner was informed in Ext.P4 that only after correcting the S.S.L.C. Book, application for corresponding correction in Service Book can be entertained. Later the petitioner on May 9, 1988 again approached the Government seeking

correction of date of birth without corresponding correction in School records. The petitioner pointed out orders granted in favour of other persons without such correction in School records. This was rejected in 1989. In the meantime the petitioner applied to the commissioner for Government Examination under Rule 3 Chapter VIKER for correction of date of birth in the S.S.L.C. book; that was on June 27, 1989. But it was not in the statutory form. The petitioner was asked to submit an application in the statutory form. The petitioner submitted it as per Ext. P5 on June 15, 1990. That was rejected on September 10, 1990 stating that it could not be entertained due to delay. As per Rule3(1)(A) Chapter VI KER, the period of limitation was fixed as 15 years at that time. It was in the above circumstances the petitioner's request was rejected on the ground of delay. Thereupon the petitioner submitted an application for condonation of delay before Government. It was rejected by a cryptic order Ext. P8. Exhibit P8 was challenged before this Court. That was quashed in Ext.P9 judgment and directed reconsideration. Government reconsidered it and passed Ext. P10 order, again rejecting it, on the ground of delay. Exhibit P 10 is dated May 25, 1991. By that time a note was introduced under Rule 3(1)(A) Chapter VI KER providing for condonation of delay. But that will be allowed, as per the said note, only in respect of those who have not crossed the age of 50 years. Thus when Ext. P10 was issued though there was provision for condonation of delay the petitioner was not entitled for condonation, because he had crossed the age of 50 years. So I see no reason to interfere with Ext.PIO order whereby the petitioner's request for condonation of delay is rejected. Before introduction of this note there was no provision for condonation of delay.

4. Petitioner further submits that even independent of the correction of date of birth in the S.S.L.C. book, the entry of date of birth in Service records can be corrected. So his application dated June 25, 1986 ought to have been entertained and his request could not have been rejected by Ext.P4, directing him to obtain correction in the S.S.L.C. Book. He further submits that orders like Ext.P11 had been issued in the case of similarly placed persons correcting the entry of date of birth in Service Book without the corresponding correction in the S.S.L.C. Book. The petitioner also points out that similar treatment as given in Ext. P11 to other persons is not given to the petitioner. Thus there is discrimination. The petitioner also points out, relying on the decision reported in Ramachandran Nair v. State of Kerala 1990(2) KLT 18, that the correction of date of birth in the School records can only be treated as a piece of evidence to support his claim that the date of birth entered in the service records is not correct one.

5. Thus the petitioner contends that even without the correction of date of birth in School records, his date of birth shall be corrected in the Service Book based on Ext.P3 Certificate of Birth.

6. This contention cannot be accepted in the light of the instructions under Rule 143 in Part III KSR.

Instruction thereunder reads as follows:

"1. The entry in the service book regarding the date of birth should indicate on what evidence the date of birth was accepted. The following documents shall be considered as satisfactory proof of date of birth;

(i) in the case of the persons who have attended a recognised School/College, the School Leaving Certificate or an authenticated extract of admission register of School or College where the employee last studied."

7. The petitioner is a person who had attended the School. Therefore going by the statutory provision under Rule 143 Part III KSR, in the case of the petitioner, the entry of date of birth in his School Leaving Certificate alone shall be the document for the purpose of entering the same in the Service Book. When this Rule is there, naturally, unless the entry of date of birth in the School record is corrected, the petitioner cannot claim correction of date of birth in Service Book, whatever be the force of other supporting evidence in his favour. Therefore the petitioner's contention that his request for correction of date of birth in Service Book shall be allowed independent of the entry of date of birth in the S.S.L.C. Book cannot be accepted. The decision reported in *Ramachandran Nair v. State of Kerala* (supra) does not refer to the impact of Rule 143 III KSR and the Statutory instructions contained under the said rule, because, there was correction of date of birth in the S.S. L.C. Book in that case. When this Rule is adverted to, naturally the irresistible conclusion is that without correction of date of birth in School records, a person who had attended in School or College, cannot seek correction of date of birth in Service Book independently.

8. The petitioner further contends, pointing out Ext.P11, that Government in other cases had not insisted for correction of date of birth in S.S.L.C. Book to effect correction of date of birth in Service Book. But when the statutory rule provides that, in the case of those who had attended a School, the entry of date of birth in the School Leaving Certificate shall be the evidence to accept the date of birth to be entered in the service book, the petitioner cannot rely on Ext.P11. If any infraction of Rule had been committed by Government in Ext.P 11, that cannot be cited as discrimination. In the decision reported in *Union of India and Another Vs. Kirloskar Pneumatic Company Limited*, , the Supreme Court pointed out that the power conferred by Article 226 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In *R.B.I. v. Peerless General Finance & Investment Co.Ltd.* 1996(1) SCC 647, the Supreme Court pointed out that the guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of an individual, the others cannot invoke the jurisdiction of the High Court that the same illegality or irregularity be committed by the State.

9. In Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, , the Supreme Court held that the rational relationship and the legal back up are the foundations to invoke the doctrine of equality in cases of persons similarly situated. If some persons derived benefit by illegality and had escaped the clutches of law, similar persons cannot plead, nor Court can countenance that benefit had from infraction of law must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultravires act ? Answer is obviously No.

Therefore the plea of discrimination also cannot be accepted.

O.P. fails. It is dismissed. No costs.