

(2012) 01 MAD CK 0141
In the Madras High Court
Case No : Writ Petition No. 718 of 2012

M. Arivalagan

APPELLANT

Vs

The Divisional Railway Manager, Bangalore Division, Senior
Divisional Personnel Officer, Union of India and The Deputy
Registrar (Judicial), Central Administrative Tribunal

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 13(3)
Tamil Nadu Registration of Births and Deaths Rules, 2000 — Rule 225(4), 281, 8

Citation : (2012) 01 MAD CK 0141

Hon'ble Judges : N. Kirubakaran, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : L. Chandrakumar, for the Appellant;

Final Decision : Dismissed

Judgement

Justice Elipe Dharma Rao

1. Challenging the order passed by the Central Administrative Tribunal, Bangalore Bench, dated 13.09.2011, made in O.A. No. 422 of 2010,

dismissing the original application, which was filed by the petitioner herein against the order, dated 10.03.2010, passed by the second respondent

refusing the claim made by the petitioner for alteration of his date of birth, the present writ petition has been filed, seeking a direction to the

respondents 1 to 3 to reinstate the petitioner back into the service by duly correcting his date of birth as mentioned in the birth certificate issued by

the competent Revenue Authority with all attendant service benefits.

2. It is the case of the petitioner that he was engaged as a Piece Rate Labourer by the Railways in the year 1979 and continued the said post till

1988 intermittently. It is the grievance of the petitioner that when the decision of the Hon"ble Supreme Court to treat the petitioner and other

similarly situated employees as temporary railway employees was not implemented by the Railway Administration, they had approached the

Central Administrative Tribunal, Bangalore Bench, and on judicial intervention, the Railway Administration engaged the petitioner as a Substitute

Traffic Hamal against a Group-D vacancy in the Traffic Department in the pay scale of Rs. 2550-3500/-, as per order dated 09.09.2003.

3. It is the further case of the petitioner that at the time of appointment, i.e., 10.09.2003, he was not in a position to submit any record in support

of his date of birth and the concerned authority of the Railways gave him a draft affidavit and asked him to swear it before a Notary and thereafter,

the petitioner has preferred M.P. No. 2773 of 2007 before the learned Judicial Magistrate, Harur, seeking a direction to the Tahsildar, Harur, to

issue a Birth Certificate in his favour and as per order dated 31.12.2007, the petitioner has approached the Revenue Public Authority, Government

of Tamil Nadu, who issued a Birth Certificate on 24.01.2008 under the Registration of Births and Deaths Act, 1969 read with Rule 8 of the Tamil

Nadu Registration of Births and Deaths Rules, 2000, recording his date of birth as 13.10.1962, based on which, the petitioner has made a

representation dated 25.01.2008 to the second respondent to alter his date of birth from 15.11.1950 to 13.10.1962.

4. It is the further case of the petitioner that the second respondent, instead of processing his representation, called for explanation from the

petitioner to explain as to why he did not represent the issue of correction of his date of birth for the last five years from the date of his appointment

and the petitioner was also required to submit the the Community Certificate and the Birth Certificate, which were in his possession at the time of

his appointment, viz., 10.09.2003. It is also the case of the petitioner that he sent a legal notice through his Advocate to the second respondent

seeking alteration of his date of birth, but the second respondent, as per order dated 10.03.2009, rejected his request by stating that the date of

birth furnished by the petitioner at the time of appointment in 2003 is binding on him, against which, the petitioner filed O.A. No. 422 of 2010

before the Central Administrative Tribunal, Bangalore Bench.

5. The Tribunal, on consideration of the facts and circumstances of the case, dismissed the original application by holding that the request made by

the employee for alteration of date of birth as recorded in his service record/register should not be considered, far less allowed, at the fag-end of

his service career. Aggrieved by the said order, the present writ petition has been filed.

6. Heard the learned counsel for the petitioner and perused the entire materials placed on record.

7. It is mainly contended by the learned counsel for the petitioner that when petitioner has made a representation before the second respondent to

alter his date of birth from 15.11.1950 to 13.10.1962, based on the certificate issued by the Tahsildar, dated 24.01.2008, and Section 13(3) of

the Registration of Births and Deaths Act, 1969 empowers the First Class Magistrate or a Presidency Magistrate to register the same, after

verifying the correctness of the birth or death and payment of the prescribed fee, when any birth or death, which has not been registered within one

year of its occurrence, the action of the second respondent in rejecting the aforesaid representation made by the petitioner to alter his date of birth

is contrary to Rule 225(4) (iii) of the Indian Railways Establishment Code and hence, the impugned order made in O.A. No. 422 of 2010, dated

16.09.2011, is liable to be set aside.

8. On the other hand, it is seen from the perusal of the records that when the respondents have issued a list of employees, who were to

superannuate between 01.01.2008 an 3.12.2010, on 03.10.2007, for information of the employees, the petitioner has raised the issue about the

correction of his date of birth complaining that his date of birth was not altered from 15.11.1952 to 13.10.1962 on the basis of the Birth Certificate

issued by the Tahsildar, as directed by the learned Judicial Magistrate, Harur. It is also relevant to note that as per the recorded date of birth, the

petitioner is to retire from service only in the year 2010. Whereas, it is submitted by the learned counsel for the petitioner, by relying on Section

13(3) of the Registration of Births and Deaths Act, 1969, that there is no time limit prescribed to approach the Magistrate to register the date of

birth, but time limit is prescribed to a person only to register the date of birth within a period of one year of its occurrence and therefore, the

learned Magistrate is correct in entertaining the application and passing the order.

9. We are unable to accept the contention raised by the learned counsel for the petitioner. If, for any reason, no time limit is prescribed for filing the above said application u/s 13(3) of the Registration of Births and Deaths Act, 1969, the application has to be filed within a reasonable time. In the case of the suits, under the procedural law, three years limitation is prescribed depending upon the issue. It is settled principle of law that when under the statute, no time limit is prescribed, the time limit has to be considered as a reasonable time.

10. This Court, in similar circumstances, as per order dated 30.11.2010 made in W.P. No. 2406 of 2007, held as follows:

As per Rule 281 of P&T FHB Manual Vol. I, the date of birth of a Government servant once recorded cannot be altered except in case of clerical error. That apart, the Supreme Court, in a catena of judgments, has held that the requests for change of date of birth should not be entertained at the fag end of the official career of a Government servant. In the present case, even at the time of filing of the writ petition in the year 2007, the petitioner was about to attain the age of superannuation. As such, it is clear that the petitioner has made representation when he was 58 years old and filed the Original Application at his 59 years. More over, the petitioner is not able to produce any document to show his date of birth as 07.5.1946. Therefore, in the absence of any material to establish the age of the petitioner, we are not in a position to take a different view from that of the Tribunal, which is based on facts.

11. In the present case on hand, there is an abnormal delay in taking steps by the petitioner and at the fag end of his service, he took steps to correct his date of birth after using the provisions of law as a weapon to gain his service by 12 years. Therefore, on a perusal of Section 13(3) of Registration of Births and Deaths Act, 1969, we consider it appropriate that within a reasonable period of one year, an application has to be moved before the First Class Magistrate or a Presidency Magistrate for registration of his date of birth. We also made it clear that thereafter, the Magistrates are directed to follow the above said procedure while entertaining the petitions u/s 13(3) of the Registration of Births and Deaths Act, 1969 in the interest of the Public.

12. In view of the above, we see no reason to interfere with the order passed by the Tribunal. The writ petition fails and the same is dismissed.

However, there will be no order as to costs.