

(2009) 08 MAD CK 0367

In the Madras High Court

Case No : Writ Petition No. 1867 of 2005

M. Vijayaraghavan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Citation : (2009) 8 MLJ 975

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : L.P. Mouriya for R. Parthiban, for the Appellant; S.N. Kribanandam, Spl. GP, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The prayer in the Writ Petition is to call for the records relating to the order of the third respondent in Proceedings in Na.Ka. No. 16670/2000/Pa.I dated 22.11.2000, quash the same and for a consequential direction on the respondents to alter the date of birth of the petitioner from 17.1.1948 to 14.9.1948.

2. According to the petitioner, at the time of filing of the Writ Petition, he was working as a Special Grade Forest Ranger at Coimbatore. He claims that his original date of birth is 14.9.1948 and on that basis, he would retire from service on 30.9.2006. Since the petitioner's parents wanted to admit the petitioner in a school at an early date, they had given his date of birth in the School as 17.1.1948 and hence the petitioner would retire from service on 31.1.2006.

3. It is his case that he entered service in the Forest Department as Forester in December 1973. He applied for alteration of date of birth within five years of his entry into service when he was working in Cuddalore Forest Division. The District Forest Officer, Cuddalore Division, Trichy Circle required certain details and the details were also furnished by him. But his personal file was missing and it could not be traced out and because of that, follow up action in this regard could not

be taken. During 1982, the petitioner was promoted as Forest Ranger and since then he has been working in that post. At the time of his original request for alteration of date of birth, he was relying upon his horoscope. Subsequently he applied for Birth Certificate and the Sub Registrar, Mannarkudi gave a certificate to the effect that the petitioner's correct date of birth is 14.9.1948. Thereafter he made an application for alteration of date of birth on 29.12.1997 to the third respondent, but the same was rejected by the third respondent by an order dated 22.11.2000 under F.R.49 and hence this petition.

4. In the counter filed by the respondents, it is stated that the Writ Petition is not maintainable either on facts or on law. The petitioner has entered into service in December 1973 as Forester and as per F.R. 49, an application for alteration of date of birth should be given within 5 years of entry into service. But the writ petitioner failed to make any application to the authority concerned within the stipulated period requesting for alteration of date of birth. Therefore, on this ground, the writ petition is liable to be dismissed.

5. It is also stated in the counter that the petitioner made an application in the year 1999 requesting the authority to alter the date of birth along with the certificate obtained from the Sub Registrar, Mannargudi dated 23.12.1996. The said application was rejected by the third respondent in his proceedings in Na.Ka. No. 16670/2000 dated 22.11.2000. Therefore, the order impugned in this writ petition is valid and in accordance with the Rules and Regulations.

6. It is further stated in the counter affidavit filed by the respondents that the petitioner has not produced any documentary proof to show that he has made an application to the authority requesting to alter his date of birth and the Writ Petition is only an after thought and benefit of facts. Therefore, they prayed for dismissal of the Writ Petition.

7. I have heard the learned Counsels on either side on the facts pleaded and also the submissions made.

8. The only contention of the petitioner is that the application was made within five years after the date of his joining service and therefore the rejection of the request of the petitioner is contrary to the Fundamental Rules. The said contention has been refuted by the learned Counsel for the respondents stating that there is nothing on record to suggest that an application was made within the time as prescribed in the Rule 49 of the Fundamental Rules. If any application is made beyond the period prescribed, the respondents have no authority or power to entertain such an application for alteration of date of birth, as it may cause hardship to the Department.

9. I have carefully considered the above submissions and the relevant materials annexed in the typed set of papers. It is seen that the petitioner has joined the service of the Department as Forester in December 1973 and he was promoted as Forest Ranger in the year 1982. From the pleadings of the petitioner, it could be seen that he has applied for birth certificate and obtained the same from the

Sub Registrar Office at Mannargudi on 23.12.1996 to the effect that his date of birth is 14.9.1948 and thereafter he applied for alteration of date of birth to the third respondent on 29.12.1997. Therefore, it is admitted by the petitioner that he made the application for alteration of date of birth on 29.12.1997 only to the third respondent and it was rightly rejected by the impugned order.

10. As per Rule 49 of the Fundamental Rules, an application for alteration of date of birth should be given within 5 years of entry into Government service. But, in this case, the petitioner made the application on 29.12.1997 belatedly, contrary to the Fundamental Rules.

11. In a catena of decisions of the Supreme Court, the Supreme Court held that if any application is made at the fag end of service, the same cannot be entertained, as it would cause hardship and difficulties to the Department in giving such consideration.

12. The above principle has been reiterated in a ratio laid down in the case of State of T.N. Vs. T.V. Venugopalan, , wherein the Supreme Court held as follows:

... 7. As held by this Court in Harnam Case, Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force, i.e., 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12.01.1952, and only when he was due for superannuation at the age of 58 years on 31.08.1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30.08.1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in the G.O.Ms. No. 271 and rejected the claim on 31.03.1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or Court just to gain time to continue in service and the Tribunal or Courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is

one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs. 3000

From the above Rulings, it is made clear that no application can be entertained at the fag end of service.

13. In the instant case, the petitioner joined the service in the Forest Department in December 1973 and he made the application for alteration of date of birth to the third respondent only on 29.12.1997, after obtaining a certificate from the Sub Registrar in the year 1996. Therefore, prima facie, he has not made the application within the period as prescribed under the Fundamental Rules, namely within five years after the date of entry into Government service.

14. In the light of the above ratio laid down by the Supreme Court and the provisions contemplated under Rule 49 of the Fundamental Rules, the claim of the petitioner cannot be sustained as the impugned order is perfectly valid and the same is upheld.

15. In the above circumstances, the Writ Petition deserves no merit and the same is dismissed. No costs.