

(2015) 06 KL CK 0121

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5808 of 2015 (A)

O. Chandramathi

APPELLANT

Vs

The National Institute of Technology and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) LabIC 3783

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : S.M. Prasanth, for the Appellant; Millu Dandapani, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner was appointed as Part Time Sweeper under the 1st respondent Institute on 06.06.1989. She was thereafter promoted as a Sanitation worker with effect from 26.06.1997 and continues as such under the services of the 1st respondent. The facts in the writ petition would disclose that, at the time of entry into service, the petitioner had shown her date of birth as 01.07.1955. It is her case that, in January, 2012, she discovered that her actual date of birth was 29.02.1960. This was based on information that she received from relatives, and a subsequent verification conducted with the School authorities. She, therefore, approached the respondents with a request for correcting her date of birth in the service records. By Ext. P2 dated 29.03.2012, the said request was rejected by the respondent Institute stating that a request for correction of date of birth could be considered only if it was made within five years from the date of entry into service. It is aggrieved by the said rejection order of the respondent Institute that the petitioner has preferred this writ petition wherein, a direction is sought to the respondent Institute to effect the correction in the date of birth in the service records and permit the petitioner to continue in service beyond 30.06.2015, the

date on which she would otherwise retire on superannuation.

2. A counter affidavit has been filed on behalf of the 1st respondent wherein reference is made to Ext. R1(a) office memorandum dated 19.05.1993 issued by the Government of India, in the Ministry of Personnel, Public Grievances and Pension, which indicates that the policy regarding acceptance of application for correction of date of birth, that is followed in the Government Departments, is to permit such applications only within five years from the date of entry into service by the employee concerned. It is the stand of the 1st respondent that, inasmuch as it is also an Institute that comes under the administrative jurisdiction of the Human Resources Department of the Government of India, Ext. R1(a) office memorandum would apply to the employees under the 1st respondent Institute. It is pointed out that, insofar as the application by the petitioner was made beyond the period of five years from entry into service, and towards the fag end of her career in the organisation, it was not possible to accede to the request for correction of date of birth in the service records.

3. I have heard the learned counsel for the petitioner and the learned Standing counsel for the respondent Institute.

4. On a consideration of the facts and circumstances of the case as also the submission made across the bar, I am of the view that, the writ petition must necessarily fail. This is a case where the petitioner had, at the time of entry into service under the 1st respondent Institute, declared her date of birth as 01.07.1955. It was on the basis of the said declaration that the petitioner was appointed as a Part Time Sweeper with effect from 06.06.1989. Thereafter, the petitioner states that she become aware of the fact that her actual date of birth was 29.02.1960 only in January, 2012. Immediately thereafter, she appears to have approached the 1st respondent with a request for correction of the date of birth in the service records, which request, as already noted, was rejected by Ext. P2. The issue in this case is with regard to the legality of the stand taken by the 1st respondent in Ext. P2 order. I note in this connection that even in the absence of any specific rules which provide for an entertainment of applications for correction of date of birth within a specified time., the general principle is to the effect that the request for correction of date of birth preferred by employees should not be entertained lightly, and much less at the fag end of the service of the employee concerned. In the decision of the Supreme Court in *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, AIR 1995 SC 1499 : (1995) 71 FLR 282 : (1995) 4 JT 23 : (1995) LabIC 1825 : (1995) 3 SCALE 37 : (1995) 4 SCC 172 : (1995) 3 SCR 712 , in the context of a similar application for correction of date of birth that was preferred by an employee, and which was rejected by the employer, the Supreme Court observed as follows:

"8. The importance of the date of birth of an employee given to his employee and accepted as correct by the latter and entered in the "Service and Leave Record" of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer has to be necessarily regulated according

to such date of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even where the persons so appointed fail to produce the certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or dates of birth. When, on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his "Service and Leave Record" to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality. When such entry is made in Service Record of the employee the only way in which the employer, Government or its instrumentality can get over such entry, because of subsequent disclosures as to its incorrectness, is to hold an inquiry into the matter by affording an opportunity to the employee concerned to have his say in the matter. But when once the employer, the Government or the instrumentality concerned accepts the date of birth of an employee as declared by him and supported by certificates or documents produced by him and allows him to enter into its service and continue on such basis, is it open to such employee to claim that the date of birth declared and authenticated by him was incorrect and, therefore, the employer, be it the Government or its instrumentality, should correct his date of birth in his "Service and Leave Record" according to what he claims to be true and if the Government or its instrumentality concerned refuses to accept such claim, can the High Court in exercise of its discretionary extraordinary writ jurisdiction entertain a writ application, to consider the merit of such claim?

9. No doubt, there may be special law or rules which permit a person appointed in the service of the Government or its instrumentality to seek correction of his date of birth which might have been accepted by the Government or its instrumentality, as the case may be, as correct at the time of his appointment. But, the special law or rules governing the service of an employee after its acceptance by the Government or its instrumentality, its subsequent correction at the instance of such employee, becomes impermissible. However, in the absence of such special law or rules it may be open to the employee concerned to seek correction from the Government or its instrumentality, of the date of birth declared by him and accepted by the Government. Even where such correction is sought, the Government or its instrumentality, as the case may be, could be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction. If that be the legal position, can it be said that it is open to a High Court in exercise of its extraordinary writ jurisdiction to entertain a writ application of an employee of the Government or its instrumentality, as the case may be, for correction of his date of birth entered in his "Service and Leave Record" at the time of his appointment and direct the Government or its instrumentality concerned to correct such date of his birth in his "Service and Leave Record" and continue him in service beyond the date of

his normal retirement, is the question. It is true that the High Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution can even enter upon disputed question of fact, if the case in which the extraordinary jurisdiction is invoked warrants adoption of such inevitable course and decide upon the same for giving relief to the concerned party. But, the question is that if an employee of the Government or its instrumentality, who is at the fag end of his service and due for retirement from his service shortly, accordingly to his date of birth found in his "Service and Leave Record" files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for the High Court to entertain such application to enquire into disputed facts pertaining to his date of birth for correcting it and extend his period of service?

10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his "Service and Leave Record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date

of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement."

Thus in the light of the pronouncement of the Supreme Court in the decision referred to above, I am of the view that the prayers sought for by the petitioner in the writ petition cannot be granted. Accordingly, the writ petition fails, and is accordingly dismissed.