

**(2016) 09 KAR CK 0036**

**In the Karnataka High Court**

**Case No : Writ Petition No. 203786 of 2016 (S-KAT)**

Pandurang Dawal Suryavanshi

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision : 19-09-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 16

Karnataka State Servants (Determination of Age) Act, 1974 — Section 5

**Citation : (2016) 4 AirKarR 618**

**Hon'ble Judges : B.S. Patil and Mrs. B.V. Nagarathna, JJ.**

**Bench : Division Bench**

**Advocate : Maruti Gaonkare, K.H. Heroor, Advocates, for the Petitioners; A. Syed Habeeb, AGA, for the Respondent**

**Final Decision : Disposed Off**

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## **Judgement**

B. S. Patil, J. - Though this matter is listed for preliminary hearing, with the consent of learned counsel for both parties and having regard to the short question that falls for consideration, we have taken up this matter for final disposal.

2. Challenge in this writ petition is to the order dated 02.02.2016 passed by the Karnataka Administrative Tribunal thereby dismissing the application filed by the petitioner herein. Petitioner was appointed as a Police Constable in Bidar District on 24.06.1988. He was later on promoted as a Civil Head Constable and was working as such at Basava-kalyan Town Police Station. His case was that in the Service Register his date of birth was rightly recorded as 01.02.1958, but the same was subsequently tampered and altered as 01.02.1956 without notice to him and without his knowledge. According to him, his SSLC marks card, transfer certificate and other records also disclosed his date of birth as 01.02.1958. However, his date of superannuation was notified as 31.01.2016. Therefore, he challenged the memorandum dated 04.07.2015 where under while informing his date of superannuation it was directed to take action for preparing papers for

settling the terminal benefits due and payable to him.

3. The Tribunal, after hearing both parties has dismissed the application holding that in the original Service Register date of birth of the applicant had been mentioned as 01.02.1958 but the same was subsequently corrected as 01.02.1956 which had been attested by the then Superintendent of Police on 29.07.1988. It held that if at all applicant was aggrieved by the same, he ought to have moved the Court seeking alteration of his date of birth in terms of the provisions contained in Section 4 of the Karnataka State Servants (Determination of Age) Act, 1974. The Tribunal has further held that as per Section 5 of the said Act, applicant ought to have moved the Court within three years seeking alteration of the date of birth or if he was aggrieved by the alteration of the date of birth. Hence, his application was dismissed by the Tribunal. Aggrieved by the same, the applicant is before this court.

4. On 01.09.2016, this Court, after hearing the matter for sometime, issued a direction to the learned AGA to produce original seniority list of the year 1988 by the next date of hearing. Original service book was also directed to be kept ready for perusal of the Court. Accordingly, learned AGA has made available the original service book pertaining to the applicant but not the original seniority list. He points out that the original seniority list? is of the year 1990 and the Xerox copy of the same produced before the Court by the counsel for the petitioner reflects the correct position.

5. It is seen from the original service record of the applicant that date of birth of the applicant has been altered to show that he was born in the year 1956 (01.02.1956) the numeral "8" has been altered to read as "6". That means earlier his date of birth was shown as 01.02.1958 which has been altered as 01.02.1956. Even the year written in words is also altered. The Superintendent of Police, Bidar has put his seal and signature at the left hand column endorsing such correction. Admittedly, such correction in the date of birth was not preceded by any enquiry conducted. There is no order passed holding that actual date of birth of the applicant as furnished at the time of his entry into service was not correct and therefore it had become necessary to alter his date of birth to show it as 01.02.1956 instead of 01.02.1958.

6. Indeed the original SSLC marks card which is made available by the learned AGA for perusal of the Court also discloses the date of birth of the applicant as 01.02.1958. Genuineness of the marks card is not in dispute. Indeed learned AGA submits that the Deputy Director of Public Instructions, Bidar vide his communication dated 13.01.2016 informed the Superintendent of Police, Bidar that duplicate marks card of the applicant issued on 08.01.2015 was genuine so also the Transfer Certificate.

7. Even in the Transfer Certificate date of birth of the applicant has been mentioned as 01.02.1958. The Transfer Certificate is issued by the Principal, Shivaji Composite Junior College, Bhalki, Bidar District. It is thus evident that

entry in the service register as originally made disclosing the date of birth of the applicant as 01.02.1958 was consistent with the other public records such as SSLC marks card and Transfer Certificate of the applicant - petitioner.

8. There was absolutely no justification for the Superintendent of Police to unilaterally correct or alter, the date of birth of the applicant by meddling with the Service Register. Even though; the said alteration was done on 29.07.1988, as already noticed above it was not preceded by any enquiry nor is there anything to show that applicant was informed of such correction and alteration of his date of birth. Therefore, there was no occasion for the applicant to challenge the same. Hence question of declining the relief sought by the applicant on the ground that he did not approach the Civil Court within three years from the date of alteration would not arise.

9. This is not a case where alteration of date of birth was effected after holding an enquiry and after hearing the applicant. This is a case of manipulation in the service record by altering the date of birth behind the back of the applicant. Therefore, applicant could not be denied the relief as sought by him. Applicant cannot be robbed off his valuable two years of service by forcing him to retire even before he attained the age of superannuation. He will attain the age of superannuation in the year 2018. Though the applicant has been now forced to retire with effect from 31.01.2016 he has to be restored back into service to complete Ms term. Hence, we pass the following order:

Order passed by the Tribunal is set aside. Respondents are directed to reinstate the applicant-petitioner into service along with back wages, other financial benefits with continuity of service. His date of birth shall be treated as 01.02.1958 as was originally recorded in the service register.