

(2003) 04 AP CK 0130
In the Andhra Pradesh High Court
Case No : Writ Petition No. 836 of 2001

P.S. Bheemeswara Rao

APPELLANT

Vs

Regional Joint Director of Intermediate Education and Others

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 — Rule 2(5), 4(2)

Citation : (2003) 4 ALT 333

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Jogayya Sarma, for the Appellant; Govt. Pleader for Higher Education, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner was appointed as a junior lecturer in History in Andhra Kesari Tanguturi Prakasam Satayajanthi Junior College, Dumpagadapa, Bhimavaram, West Godavari District, (hereinafter referred to as "The College") vide proceedings dated 14-11-1973 of the President and Correspondent. His date of birth was recorded in the service register as 18-1-1943 on the basis of the date of birth as entered in the S.S.L.C. register. He studied S.S.L.C. in R.C.M. Elementary School, Palaconda, Srikakulam District. According to the petitioner, his actual date of birth was 18-4-1945 and on account of a clerical mistake it was entered as 18-1-1943.

2. The petitioner states that he made representation as early as on 8-12-1973 to the Director, School Education, Government of A.P., Hyderabad for correction of the date of birth and that after prolonged correspondence, the correction was made in the S.S.L.C. register. He filed this writ petition seeking a declaration that the action of the respondents in not correcting the date of birth from 18-1-1943 to 18-4-1945 in the service register on the basis of the entries in the S.S.L.C. register is illegal, arbitrary and unsustainable in law.

3. By the time the writ petition came to be filed, the petitioner was about to retire from service. He filed W.P.M.P. No. 977 of 2001 seeking direction to the respondents to continue him in service. This Court through its order dated 25-1-2001 declined to accede to the request of the petitioner.

4. Pending writ petition, the second respondent issued proceedings dated 17-2-2001 informing the petitioner that his request for change of date of birth in the service register is not feasible of compliance. The petitioner filed WPMP 5338 of 2001 challenging the proceedings dt. 17-2-2001. This Court ordered the same. Hence, the prayer in the writ petition as it stands now is to declare the proceedings of the second respondent dated 17-2-2001 refusing to correct the date of birth in the S.S.L.C. register.

5. Sri V. Jagayya Sarma, the learned counsel for the petitioner submits that the birth register maintained by the competent Revenue Authorities constitutes the basis and primary evidence in the matter of date of birth of an individual; and the birth extract of the petitioner issued by the competent authority reflects the date of birth of the petitioner as 18-4-1945. The learned counsel submits that once the entry in the S.S.L.C. register was corrected on the basis of birth extract and in that view of the matter, the respondents ought to have corrected the date of birth in the service register.

6. Learned Government Pleader for Higher Education, on the other hand, submits that it is only at the verge of the retirement that the petitioner has come forward with the plea as regards correction of date of birth in the records. It is also his contention that the Government had framed the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 by amendment through G.O.Ms.No. 94, dated 15-3-1994 prescribing the procedure for correction of date of birth of Government servants and according to the same, even if there exists any conclusive proof to the effect that the date of birth in the school records was not correct, the date of birth cannot be altered in the service register, once the petitioner came to be appointed to the public service. The learned Government Pleader also raised another contention as to the maintainability of the writ petition itself on the ground that the institution in which the petitioner was employed is a Government College and his only remedy is to approach the Andhra Pradesh Administrative Tribunal.

7. Before proceeding with the discussion of the matter on merits, the question as to the maintainability needs to be dealt with. The college was taken over by the Government through its orders in G.O.Ms.No. 939, dated 20-9-1978 and G.O.Ms.No. 303, dated 31-12-1996. Had these orders been given effect to and the college stood taken over by the Government, the contention of the learned Government Pleader would have been correct. However, this Court had suspended the said G.Os. In that view of the matter, the taking over did not take place. Therefore the college cannot be said to be a Government college. Hence, the Writ Petition is maintainable.

8. The grievance of the petitioner is about the correction of his date of birth in the service record as well as the correction in S.S.L.C. register. The basis for seeking such correction is the date of birth extract. He was appointed as Junior Lecturer in the year 1973 through orders dated 1-12-1973 in the college. As on the date of appointment, his date of birth in S.S.L.C. record was 18-1-1943. The same was entered into his service record also. The petitioner claims to have made a representation on 18-12-1973, i.e., within one week from the date of his appointment for correction of date of birth from 18-1-1943 to 18-4-1945. The college was admitted to grant-in-aid with effect from 1-7-1977. Obviously, on account of this, the petitioner appears to have renewed his request for change of his date of birth by submitting representations dated 9-3-1978 and 15-5-1981. The petitioner states that his date of birth was corrected in the S.S.L.C. record and that the same was intimated to him by the Head Master of K.D.P.M.C. High School, Chinawaltair, Visakhapatnam, through proceedings dated 18-1-2000. Hence, his contention that once the date of birth in the S.S.L.C. register is changed, the correction ought to have been carried out in the service register also.

9. The Government framed Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 to regulate the matters relating to correction of date of births of its employees. Being a lecturer working against an aided vacancy, the petitioner is to be treated as Government employee for all practical purposes. Sub-rule (5) of Rule 2 and Sub-rule (2) of Rule 4, which were amended through G.O.Ms. No. 94, dated 15-3-1994 read as under:

"Rule 2(5) The date of birth as determined on the basis of the school records or any proof produced at the time of entering into service and entered in the service record shall be final and no subsequent variation of date of birth in the school records for any reason, shall be relevant for the purpose of service and on that basis the date of birth entered in the service records shall not be altered except in the case of bona fide clerical error, under the orders of the Government.

Rule 4(2) No subsequent variation of the date of birth in the school records shall be relevant for the purpose of service nor shall such variation be a valid ground for ordering an alteration of the date of birth by any Court, Tribunal or other authority."

10. The impugned order dated 17-2-2001 was passed on the basis of the rules referred to above.

11. A reading of the rules extracted above, reveals that the date of birth entered in the service records shall be final and any variation or alteration of the date of birth in the school record does not constitute any basis for corresponding change of birth in the service records. Even, the exception provided in Rule 2(5), is to be treated as the one relating to clerical error while making the entries in the Government records. That view becomes fortified with the language employed in Rule 4(2). There is a definite object behind these rules. Instances of employees

coming forward with the requests for alteration of dates of birth at the fag end of service are in the increase. It should not be forgotten that age of a person, while entering the service or when being selected will, certainly constitute an important factor, particularly when the selection is on the basis of merit. There may be instances where, if, the date of birth as altered were to have been taken into account at the time of appointment, the candidate would not have been eligible at all. In the decision reported in State of T.N. Vs. T.V. Venugopalan, the Supreme Court held that it is impermissible for an employee to seek correction of date of birth in the service records at the fag end of service. The judgment of the administrative tribunal permitting such correction was set aside.

12. At the time of appointment, the candidates are required to give a declaration as to the correctness of various particulars furnished by them, including the one relating to date of birth. One can understand the situation, where a person considered for employment against an unskilled post is an illiterate or semiliterate person and his date of birth is entered not on the basis of record, but on guesswork without his knowledge. In such cases, there may be semblance of justification for such employees to come forward with a plea, if supported by records. The petitioner is a postgraduate. He was aware of his date of birth at least on the date when he was leaving his school. If there existed any basis for correction of his date of birth, he ought to have taken steps immediately. The date of birth cannot be permitted to gain importance only when a person is employed or when he is about to retire. In the case referred to above, the Supreme Court observed as under:

"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 superannuating, 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."

13. The said observation applies with all its force to the facts of the case on hand.

14. Whatever be the merits or otherwise of the matter, the petitioner did not choose to challenge the rule on the basis of which his request was not acceded to. As long as the rule stands, even the second respondent has no alternative. That being a situation, no exception can be taken to the orders passed by the 2nd respondent. Therefore, viewed from any angle, the Writ Petition does not deserve any consideration and the same is accordingly dismissed.