

(1994) 10 KL CK 0023
In the High Court Of Kerala
Case No : W.A. No. 852 of 1991

Ramakrishnan Nair

APPELLANT

Vs

Guruvayoor Devaswom

RESPONDENT

Date of Decision : 11-10-1994

Acts Referred:

Citation : (1995) 1 ILR (Ker) 457 : (1995) 2 LLJ 225

Hon'ble Judges : K. Sreedharan, J; D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : O.V. Radhakrishnan, for the Appellant; K.P. Dandapani and V. Bhaskara Menon, Govt. Pleader, for the Respondent

Judgement

Sreedharan, J.—Writ petitioner in O.P. No. 3231 of 1991 is the appellant. He was an employee of the Guruvayoor Devaswom. He was working as Devaswom Inspector. He entered service under the Guruvayoor Devaswom on October 1, 1960. His date of birth as entered in the school records and the service records was August 2, 1932. As per that date, he was to retire on superannuation on completing the age of 55 on August 31, 1987. Four days prior to the said date of retirement, he filed an application before the Devaswom for correcting the date of birth in his service records as February 3, 1935. Devaswom, by its decision dated May 26, 1990 (Resolution 25), decided to reject the petitioner's application for correction of date of birth. He approached this Court for getting the date of birth corrected by moving O.P. No. 3231 of 1991. A Learned Single Judge of this Court by judgment dated March 22, 1991 dismissed the Original Petition. Hence this appeal.

2. As stated earlier, the original date of birth of the petitioner as recorded in the school registers and the service records was August 2, 1932. He moved the Commissioner for Government Examinations for correcting the date of birth in the school records. That application was rejected by the Commissioner for Government Examinations. He took up the matter in appeal before the Government. Government by G.O. (Rt). 2548/87/G. Edn. dated August 26, 1987

took the view:-

"Government find that the request of the petitioner for correction of date of birth in the SSLC Book from August 2, 1932 to February 3, 1935 deserves consideration and hence it is allowed. The orders of the Commissioner for Government Examinations in his proceedings read as first paper above (No. Ex-4 2499/86 dated April 21, 1987 of the Commissioner for Government Examinations) is set aside. The Commissioner for Government Examinations will make necessary corrections in his SSLC Book accordingly".

Pursuant to the above order, Commissioner corrected the date of birth in the school records on August 26, 1987. On August 27, 1987, i.e., four days prior to his due date of retirement as per the date of birth entered in the service records, moved the Devaswom for correcting the date of birth in the service records. That was, as stated earlier, rejected by the Commissioner first and then by the Committee of the Guruvayoor Devaswom.

3. Petitioner entered the service of the Guruvayoor Devaswom on October 1, 1960 as Senior Karyasthan. He got his legitimate promotion to the higher cadres and became Devaswom Inspector. He had the opportunity to see his service records many a number of time during his tenure from October 1, 1960 upto 1987. On those occasions he had no case that the date of birth entered in the service records is wrong. He became aware of the alleged error in the date of birth only at the fag end of his official career. In Union of India Vs. Harnam Singh, Their Lordships of the Supreme Court had to consider the case of a Government servant who sought correction of his date of birth at the fag end of his official career. The short facts of that case are as follows. Respondent therein joined Government service as a Peon on February 22, 1956. At the time of entry into service his service book was prepared and date of birth was recorded as May 20, 1934. Though date of birth of this officer as recorded in the matriculation certificate was April 7, 1938 the entry relating to date of birth in the service records was not altered. On being notified about his date of superannuation as May 31, 1992 he made representation in September 1991 for alteration of his date of birth as April 7, 1938 to bring it in conformity with the entry in the matriculation certificate. This request having been rejected by the department, he approached the Central Administrative Tribunal which directed to correct the date of birth as per the entry in the matriculation certificate. While reversing the decision of the Tribunal, Their Lordships observed:-(pp. 320-321):

"Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is thus of utmost importance for the reason that the right to continue in service stand decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not

precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on ground of laches or stale claims, is generally applied to by the Courts and Tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age".

This decision, according to us, applies on all fours to the facts in this case.

4. Inordinate and unexplained delay or laches on the part of the appellant to seek correction of the date of birth in his service records should necessarily disentitle him from getting the date corrected. He entered service on October 1, 1960. For more than two and a half decades petitioner had no case that his date of birth was wrongly entered in the service records. It is only by 1985, i.e., after 25 years of service under the Devaswom, he moved an application before the Commissioner for Government Examinations to get the date of birth corrected in the school records. When the Commissioner rejected that application, he moved the Government and got a favourable order, Ext. P-2. On the basis of that, he got the date of birth in the school records corrected. Four days prior to the due date of retirement as per the date of birth in the service records he moved the Devaswom for correcting the date of birth. That application was first rejected by the Commissioner. It was again considered by the Committee at its meeting held on May 26, 1990 and decided to reject the prayer of the petitioner. He then approached this Court for getting the date altered. This Court by judgment dated March 22, 1991 in O.P. No. 3231 of 1991 rejected the petitioner's prayer. Thereafter by Annexure-1 minutes of the meeting held on May 30, 1992 of the Managing Committee of the Guruvayoor Devaswom, it was decided to correct the date of birth of the appellant as February 3, 1935. No provision of the Guruvayoor Devaswom Act or of the Regulation made thereunder was brought to our notice which authorises the Guruvayoor Devaswom Managing Committee to review its own decision. The decision taken by the Managing Committee on May 26, 1990 which was confirmed by this Court in OP. 3231/1991 in its judgment dated March 22, 1991 was sought to be got over by the Devaswom Managing

Committee at its meeting held on May 30, 1992. The action of the Devaswom Managing Committee in correcting the date of birth of the petitioner, to say the least, was unwarranted. It was beyond their powers. We express our displeasure in the manner in which the Managing Committee acted in passing Annexure-1 resolution.

In view of what has been stated above, the petitioner-appellant must be deemed to have retired from service on August 31, 1987. His pensionary benefits are to be computed on that basis and disbursed to the appellant. The decision taken by the Board in Annexure I must be treated as non est.

Writ appeal is dismissed with the above observations.