
(2014) 10 MAD CK 0229
In the Madras High Court
Case No : Writ Appeal No. 1756 of 2013

S.K. Suseela

APPELLANT

Vs

The Director of Collegiate Education

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0229

Hon'ble Judges : P.R. Shivakumar, J;N. Paul Vasantha Kumar, J

Bench : Division Bench

Judgement

N. Paul Vasanthakumar, J.—Heard Mr.P.Ganesh, learned counsel appearing for the appellant and Mrs.A.Sri Jayanthi, learned Special Government Pleader appearing for the respondents.

2. This writ appeal is filed against the order made in W.P.N.7082 of 2009, dated 03.4.2013, wherein the appellant has sought for writ of mandamus directing the respondents to grant the benefits of pay revision as per the recommendation of IV, V and VI Pay Commission and all other monetary benefits for the period 28.2.2005, 31.5.2007 and pay the said various entire benefit to him.

3. Facts leading to the filing of writ petition is that originally the appellant was appointed as Lecturer (Economics) in Government Arts College for Women, Kumbakonam in 1986 and after six years, she worked on contract basis and thereafter, for six months, she worked as Lecturer in Government Arts College, Krishnagiri. Subsequently, she was transferred to Arts College for Women, Namakkal and while she was serving there as Lecturer, her service was regularised with effect from 26.3.1993. Thereafter, the appellant has submitted a representation on 4.4.1996 to the 1st respondent stating that her date of birth was wrongly entered in the Service Register as 01.3.1947, instead of 18.10.1948. Thereafter, the appellant was transferred to Government Arts College, Salem-7 as Senior Lecturer. According to the appellant, only in 2001, the Principal of the Government Arts College for Women, Namakkal issued the letter dated 8.2.2001 informing that the representation dated 4.4.1996 could not

be forwarded due to administrative reason to the 1st respondent, however, forwarded the same to the Principal, Government Arts College, Salem-7. Hence, the appellant has filed the writ petition, seeking the above said prayer.

4. The 1st respondent has filed the counter-affidavit stating that the 1st respondent has rejected the application on the ground that application for alteration of date of birth stated to have been submitted by the appellant on 4.4.1996 had not been received in the 1st respondent's office and that she had not submitted the application in time. According to the 1st respondent, the revision of pay claimed by the appellant is not maintainable and the appellant is eligible to draw the revised pension from 1.1.2006 by making an application to the competent authority.

5. It is the contention of the appellant before the learned single Judge that since the appellant's date of birth in the SSLC Book having been corrected, which was also communicated by the Director of Collegiate Education, Chennai to the Principal, Government Arts College, Salem-7, the appellant should be treated to be in service upto 18.10.2006.

6. It is not in dispute that the date of birth of the appellant was corrected, after the appellant's retirement that was on 28.2.2005. The learned single Judge dismissed the writ petition, by applying the statutory rule, namely, Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules, 1961, which states that a person who has the grievance to alter his/her date of birth in the Service Register, has to make an application within five years of entry into service. In this case, the appellant has applied for correction of date of birth, after ten years of entry into service.

7. The contention of the appellant is that after his service being regularised, within five years, she has submitted an application seeking correction of date of birth in the Service Register.

8. Rule 49(c) of the Tamil Nadu State and Subordinate Service Rules, 1961 clearly states that any application received after five years after entry into service or any application, which is not supported by entries in Secondary School Leaving Certificate, School, College or University records, birth extract from records of local bodies or military discharge certificates, shall be summarily rejected.

9. The Hon"ble Supreme Court, in the decision reported in Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, , it is held thus:-

"9. The Tamil Nadu Service Manual contains Rules 49 and 49-A, which are the provisions in respect of alteration and correction of the date of birth. Whenever any application is filed by persons governed by those service rules, procedures prescribed therein have to be strictly followed, including the time-limit prescribed for making such an application. Clause (b) of the aforesaid Rule 49 provides that

after a person has entered in service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry in service.... It need not be pointed out that if an application is made for correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in a much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier. In the facts and circumstances of the case, it is not possible to uphold the finding recorded by the Tribunal."

10. Same is the view taken in the subsequent decision reported in State of T.N. Vs. T.V. Venugopalan, , wherein in paragraph 7, it is held thus,

?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 an 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 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. 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 GO.Ms.No.271 and rejected the claim on 31-3-1993. 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 superannuation even as per his own case and given all conceivable directions 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."

(Emphasis Supplied)

11. The Hon"ble Supreme Court, in the following decisions held that even application submitted for correction of the date of birth on the verge of retirement, shall be summarily rejected.

- (i) State of Orissa and Others Vs. Brahamarbar Senapathi, ;
- (ii) Union of India (UOI) Vs. Ram Suia Sharma, ;
- (iii) G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, ;
- (iv) State of Punjab and Others Vs. S.C. Chadha, ;
- (v) State of U.P. and Another Vs. Shiv Narain Upadhyaya, ;
- (vi) U.P. Madhyamik Shiksha Parishad and Others Vs. Raj Kumar Agnihotri, ;
- (vii) State of Uttaranchal and Others Vs. Pitamber Dutt Semwal, ;
- (viii) (2005) 12 SCC 201 (Coal India Ltd. v. Ardhendu Bikas Bhattacharjee); and
- (ix) State of Gujarat and Others Vs. Vali Mohmed Dosabhai Sindhi,

12. In the decision reported in State of M.P. and Others Vs. Premlal Shrivastava, , the Hon"ble Supreme Court dealt with the case where an application for correction of date of birth was made after 25 years of induction in service, in which the Madhya Pradesh High Court allowed the petition of the petitioner therein for correction of the date of birth. The appeal filed by the State of Madhya Pradesh, was allowed by the Hon"ble Supreme Court, by reversing the order of the Madhya Pradesh High Court and in Paragraph 9 of the said decision, the Hon"ble Supreme Court held thus:-

9..... Time and again this Court has expressed the view that if a Government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he 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. No Court or the Tribunal can come to the aid of those who

sleep over their rights.

(Emphasis supplied)

13. Applying the said decisions to the facts of this case, the learned single Judge was perfectly right in dismissing the writ petition. There is no merit in this writ appeal and the same is dismissed. No costs.