

(2013) 11 AP CK 0145

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31350 of 2012

Sree Seetha Rama Chandra Swamy Vari Devasthanam

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 2 ALD 63 : (2014) 1 ALT 660

Hon'ble Judges : L. Narasimha Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Satish Kumar, for the Appellant; S.A. Chari, for the Respondent

Final Decision : Allowed

Judgement

Challa Kodanda Ram, J.—This writ petition is filed by Sree Seetha Rama Chandra Swamy Vari Devasthanam, Badrachalam, Khammam District, represented by its Executive Officer hereinafter referred to as "Devasthanam" questioning the award dated 11.05.2012 passed in P.L.C. No. APSLSA/PLA/7683/2008 by the Pension Lok Adalat constituted under Legal Services Authorities Act, 1987 & Amendment Act, 1994 in so far as it directed release of consequential monetary benefits such as Pay & Allowances, increments to the 3rd respondent from the date of retirement of 3rd respondent on 31.07.2005 till the date of reinstatement. The 3rd respondent joined the service of Devasthanam in the year 1965 and the Devasthanam came under the control of Endowment Department in the year 1997.

At the time of joining the service, the date of birth of the 3rd respondent was recorded as 21.07.1940 in his Service Register and in terms of the service regulations, the 3rd respondent was retired on 31.7.2005 on attaining the age of superannuation of 65 years. The 3rd respondent had approached the authorities seeking the correction of his date of birth in the Service Register as 21.07.1946 and initially the said request of the 3rd respondent was not acceded to by the Government and in fact the Government by issuing a Memo in RC. No.

C2/1233/2011 dated 21.08.2012 rejected the claim of the 3rd respondent. Questioning the said Memo. the 3rd respondent filed W.P. No. 27903 of 2007 before this Court. While admitting the writ petition, an interim order on 21.01.2008 in W.P.M.P. No. 36495 of 2007 directing the Devasthanam to continue the 3rd respondent herein as "Archaka", was passed. Pursuant to the said orders of this Court, the 3rd respondent was reinstated as "Archaka" on 06.10.2008. Subsequently on reconsideration of the request of the 3rd respondent, the 1st respondent issued G.O.Ms. No. 1078 dated 02.09.2008 directing the 2nd respondent to correct the date of birth of the 3rd respondent in his Service Register as 21.07.1946 in the place of originally recorded date of birth i.e., 21.07.1940. In the course of time, the 3rd respondent was retired from service on attaining the age of superannuation treating his date of birth as 21.07.1946. The 3rd respondent approached the Pension Adalat seeking the relief of:

- a) Payment of consequential benefits as ordered by the Government vide G.O.Ms. No. 1078, dated 02.09.2008;
- b) To record the date of Birth as 21.07.1946;
- c) To fix the pay of the 3rd respondent in R.P.S. 1999 and 2005 on regularization but not notional pay fixation.

2. The Pension Adalat, through its order dated 11.05.2012 directed the payment of salary for the period commencing from 01.07.2005 to 06.10.2008.

3. The contention of the learned counsel for the 3rd respondent is that inasmuch as the date of birth in the Service Register is corrected as 21.07.1946 by G.O.Ms. No. 1078 dated 02.09.2008 accepting his claim, the 3rd respondent is entitled to receive salary and other benefits even if he has not worked as "Archaka" for the period between 01.08.2005 to 06.10.2008. He contends that his client being retired on 31.07.2005 was on account of wrong entry of the date of birth, made at the time of entry into the service, and non consideration of his request by the authorities, and as such he is not at fault.

4. We have perused the original Service Register of the 3rd respondent which was produced before the Court.

5. On the other hand, the learned counsel for the petitioner Devasthanam would submit that in terms of the regulations the percentage of overall establishment expenses of the temple including pensions, cannot exceed statutory limit of 30% and the temple does not have regular source of income except the donations given by the devotees. It is also pleaded that there is no certainty of receipts by way of the donations and it is also impossible for the temple to meet the demand of the 3rd respondent. He contends that the 3rd respondent would not be entitled to any monetary benefits, on the principle of "no work no pay". The learned counsel further submits that the Pension Adalat constituted under the Legal Services Authorities Act has no jurisdiction to pass the orders of the

nature, impugned in the writ petition and that the same is liable to be set aside as ultra vires, the Legal Services Authorities Act.

6. A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 (for short, "the Rules") govern the issue relating to change of date of birth in the Service Records of the employees of the state and its agencies. For better appreciation, the Rules, with amendments from time to time, are extracted as under:

1. Short title, application and commencement:-

(1) These Rules may be called the Andhra Pradesh Public employment (Recording and Alteration of Date of Birth) Rules, 1984.

(2) They shall apply to all persons appointed to Public Services and posts in connection with the affairs of the State of Andhra Pradesh.

(3) They shall come into force with immediate effect.

2. Recording of the date of birth:- (1) Every Government employee shall within one month from the date on which he joins duty, makes a declaration as to his date of birth.

(2) On receipt of the declaration made under sub-rule (1), the Head of Office or any other officer who maintains the service records in respect of such Government employee shall, after making such enquiry as may be deemed fit, with regard to the declaration and after taking into consideration such evidence, if any, as may be adduced in respect of the said declaration, make an order within four months from the date on which the Government employees joins service, determining the date of his birth:

Provided that in cases where the date of birth as determined under this sub-rule is different from the one declared by the Government employees concerned under sub-rule (1), he shall be given an opportunity of making a representation, before a final order is made.

(3) Where a Government employee fails to make a declaration within the time specified in sub-rule (1), the Head of Officer of the officer who maintains the service records shall, after taking into consideration such evidence as may be available and after giving an opportunity of making a representation to the Government employee concerned, determines the date of birth of the employee within six months from the date on which the Government employee joins service.

(4) The date of birth determined under this rule shall be entered in the service records of the employee concerned duly attested by the Head of the officer or the officer who maintains the service records and the date of birth so entered shall be final and binding and the Government employees shall be estopped from disputing the correctness of such date of birth.

(5) the date of birth as determined on the basis of the school records of 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 bonafide clerical error, under the orders of the Government.

2-A. "Civil Courts" Decree not to be taken into consideration:- In any proceedings before the Government or any Court, Tribunal or other authority for the alteration of date of birth in the service records, the decree of a Civil Court in regard to alteration of the date of birth in the School or the University records of the contents in the Judgment leading to such decree, or the effect of its implantation shall not be taken into consideration in derogation to these rules and it is hereby declared that these rules shall have effect notwithstanding anything contained in any Judgment, Decree or Order of a Civil Court in regard to the alteration of date of birth in the School or the University records whether or not the Government is a party to such proceedings.

3. Procedure in recording date of birth of employees appointed before the commencement of these rules:- the date of Government employee who has been appointed before the commencement of these rules and whose service register has not been opened, shall be recorded in the manner laid down in Rule 2.

4. Alteration of date of birth in past cases:- (1) No Government employee in service, before the commencement of these rules:

(a) whose date of birth has been recorded in the Service Register in accordance with the rules applicable to him; or

(b) whose entry relating to date of birth became final and binding under the rules in force prior to the commencement of these rules, shall be entitled to claim alteration of his date of birth.

(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.

5. Cases pending on the date of commencement of these rules:- The cases in which the Government employees have already applied for alteration of their date of birth and which are pending on the date of commencement of these rules, shall be dealt with on the basis of recorded age in school and college records at the time of entry into service.

6. Effect to the rules:- No rule made or deemed to have been made under the proviso to Article 309 of the Constitution of India shall, in so far as it is inconsistent with any of the provisions of these rules, shall have any effect.

7. Sub Rule (5) of Rule 2 of Rules permits the change of date of birth which was

entered in the Service Register, based on the school records which was otherwise found to be entered erroneously on account of clerical error. A conjoint reading of Rules 4 and 5 of the Rules would go to show that except in cases pending as on the date of commencement of the Rules, the date of birth as entered in the service register shall be final and is unalterable for all purposes of public employment.

8. This aspect of the matter has attained finality in view of the judgment of Supreme court reported in Government of Andhra Pradesh and Another Vs. M. Hayagreev Sarma, In the light of the law laid down by the Supreme court, alteration of date of birth, contrary to the Rules, becomes, impermissible.

9. Reliance is placed upon G.O.Ms. No. 1078 dated 02.09.2008. It is evident that the G.O. was issued after the 3rd respondent's retirement from service on 31.07.2005. Therefore, he is not entitled to receive any remuneration for the period during which he has not worked. It may also be noted that the 3rd respondent, for the first time, approached the Commissioner-2nd respondent by letter dated 25.06.2005, that is barely one month before his retirement.

10. In that view of the matter, the very validity of the G.O. directing alteration of date of birth in the service register becomes questionable. Since the impugned order is based on the G.O. which itself is unsustainable, the impugned order is liable to be set aside.

11. Accordingly, the writ petition is allowed setting aside the Award dated 11.05.2012 passed in P.L.C. No. APSLSA/PLA/7683/2008 by the Pension Lok Adalat constituted under Legal Services Authorities Act, 1987 & Amendment Act, 1994 in so far as it directed the release of consequential monetary benefits such as Pay & Allowances, increments to the 3rd respondent from the date of retirement of 3rd respondent on 31.07.2005 till the date of reinstatement. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.