

(2013) 02 KAR CK 0091

In the Karnataka High Court

Case No : Writ Petition No. 60577/2012 (S-RES)

Sri. Chandrayya

APPELLANT

Vs

The Registrar, Karnataka University

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 02 KAR CK 0091

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Judgement

A.N. Venugopala Gowda, J.—Petitioner joined service of the respondent as a Junior Assistant on 28.03.1976, on the strength of having passed SSLC examination. While joining service, petitioner produced School Leaving Certificate, as at Annexure - R-1, wherein his date of birth has been entered as 01.06.1948. The petitioner having completed the age of superannuation - 58 years, the respondent issued Annexure-H, regarding retirement of the petitioner from service with effect from 31.05.2006. The respondent issued an office order dated 12.05.2006 as at Annexure-H, whereunder, the petitioner was notified of his retirement with effect from 31.05.2006. Questioning the office order as at Annexure-H and direct the respondent to consider the date of birth of the petitioner as 06.10.1949 and extend all service benefits, this writ petition was filed on 21.01.2012. Petitioner claims that his correct date of birth is 06.10.1949 and the same was reflected in the seniority lists dated 01.06.1982, 09.11.1987, 07.08.1993 and 09.01.1996 and that he submitted repeated representations to correct his date of birth in the Service Register, which was not attended and replied and that he was prematurely retired with effect from 31.05.2006, based on the entry in the School Register showing his date of birth as 01.06.1948, which was not the correct date of birth and on account of the said action of the respondent vide Annexure-H, there is loss of 17 months service and as per the government service conditions, he was entitled to further extension of two years service and in the circumstances, the respondent should extend all the service benefits, treating his date of birth as 06.10.1949.

2. Respondent filed statement of objections and has contended that the petitioner's date of birth was entered in his Service Register as 01.06.1948, based on the School Leaving Certificate produced by the petitioner at the time of joining service as a Junior Assistant, in the year 1976. It has been stated that, Section 4(2) of the Statutes, regarding determination of age of Karnataka University Employees, no alteration to the advantage of a University Employee shall be made, unless he made an application for the said purpose within three years from the date on which his age and date of birth is accepted and recorded in the Service Register or any other record of service or within one year from the date of commencement of the Statutes, whichever is later. It has been stated that the petitioner did not make any representation to rectify his date of birth as 06.10.1949, though he claims that he is in possession of the birth extract issued by the Tahasildhar, showing his date of birth as 06.10.1949. It has been stated that the petitioner's service conditions was regulated as per the School Leaving Certificate produced by him while joining service and since, inadvertent typographical mistakes had occurred in the seniority lists published, wherein the petitioner's date of birth was shown as 06.10.1949, the same was rectified subsequently. It has been further stated that O.S. No. 145/2006 filed by the petitioner in the Court of Principal Civil Judge (Jr. Dn.), Dharwad, contending that his retirement from service on 31.05.2006 is illegal has stood dismissed for default on 05.06.2007 and that there is suppression of material fact. It has been further stated that petitioner submitted Form 20 to the University on 08.08.2005 for availing the LTC benefits and that the petitioner in his own hand has shown his date of birth as 01.06.1948 and has availed the LTC benefits. The writ petition has been resisted on more than one a ground.

3. Shri P.S. Kadadevar, learned advocate appearing for the petitioner contended that the office order of the respondent, as at Annexure-H is arbitrary and illegal, since the petitioner's correct date of birth is 06.10.1949, which appears from the seniority lists published by the University, as at Annexures-B to F and that the petitioner has been illegally prematurely retired, on account of which the petitioner has been deprived 17 months of service as of a right and two years more service as extended under the Government Policy, which has also bearing on the pensionary benefits of the petitioner. He submitted that on account of the wholly wrong and illegal approach of the respondent, this writ petition has been filed to direct the respondent to extend all the service benefits by treating the date of birth of the petitioner as 06.10.1949 and refix the pension and terminal benefits.

4. Shri Mallikarjun S. Hiremath, learned advocate appearing for the respondent on the other hand submitted that the service conditions of the petitioner was regulated by taking into consideration the SSLC certificate produced at the time of joining into service of the University. He further submitted that there is will-full suppression of material fact by the petitioner, in that the filing of O.S. No. 145/2006 to pass a decree of declaration that the act of University taking the decision of retiring the petitioner on 31.05.2006 is illegal and to direct the

respondent - University to continue his service till 31.10.2007 and extend the consequential benefits and the dismissal of the suit has been deliberately suppressed. Learned counsel submitted that there is inordinate delay and laches in filing the writ petition and that apart the writ petition is totally frivolous and vexatious and hence, the same be dismissed with exemplary costs.

5. Carefully perused the record of the writ petition in the light of the submissions made by the learned advocates appearing for the parties. Petitioner while joining the service of the respondent has produced the SSLC certificate, as at Annexure - R-1, which shows his date of birth as 01.06.1948. The same has remained uncorrected in the manner provided under law. Petitioner has submitted Form - 20 on 08.08.2005 to avail LTC benefits. In the said Form, the petitioner in his own hand has shown his date of birth as 01.06.1948 and in the covering letter his age as 57 years (Annexure - R-4). Petitioner had filed O.S. No. 145/2006 in the Court of Principal Civil Judge (Jr. Dn.), Dharwad, to pass decree of declaration, declaring that the act of the defendant - University taking decision of retiring him on 31.05.2006 is illegal and consequently to direct the defendant - University to continue his service till 31.10.2007 and grant incidental relief. In the said suit, an ex-parte ad-interim injunction was passed on 21.04.2006, which was challenged by the defendant in Vacation Miscellaneous Petition No. 05/2006 on the file of the District Court at Dharwad. The said petition was allowed by an order dated 27.05.2006 (Annexure - R-2). The said suit has been dismissed for non-prosecution on 05.06.2007. The petitioner, in this writ petition has not even made a mention regarding filing of the said suit, the proceedings therein and its dismissal for non-prosecution on 05.06.2007. The contention of Shri Mallikarjun S. Hiremath that there is willful suppression of material fact is well founded.

6. Annexure-H was issued on 12.05.2006 and the petitioner having attained the age of 58 years - superannuation, was retired with effect from 31.05.2006 and his terminal benefits was settled. This writ petition filed on 21.01.2012 is certainly hit by delay and laches. No explanation of whatsoever nature has been offered for the inordinate delay and laches in filing the writ petition. On account of the inordinate delay and unexplained laches also the petition is liable to be rejected. Be that as it may.

7. Petitioner has not got his date of birth shown in his SSLC certificate ? Annexure - R-1, corrected from 01.06.1948 to 06.10.1949. The SSLC certificate having been produced at the time of joining service, the date of birth of the petitioner has been entered in the Service Register by the respondent as 01.06.1948. The petitioner based on the said date of birth attained the age of 58 years as on 31.05.2006. Hence, the respondent has not committed any error or illegality in retiring the petitioner with effect from 31.05.2006 by issue of Annexure-H. I do not find any arbitrariness or illegality on the part of the respondent in regulating the service conditions of the petitioner, based on the date of birth entered in the Service Register. Inadvertent and typographical errors in the seniority lists have been subsequently rectified by issue of office

orders. Even otherwise, the entry made in the Service Register prevails over the date of birth entry shown in the seniority lists. The petitioner has not got his date of birth corrected in the manner provided under the Statutes of the University.

8. In the case of Union of India Vs. Harnam Singh, , it has been held as follows:-

7. A 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 stands 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 grounds of laches or stale claims, is generally applied 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. Indeed, as held by this Court in State of Assam & Anr. v. Daksha Prasad Deka & Ors., a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. This court said:

... The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record, and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the

date of birth entered in the service record.

9. In the case of Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another, , it has been held as follows:-

13. Undisputedly, the date of birth of Respondent 1, who joined service in March 1973 was recorded in his service book as 27-3-1936. This was done keeping in view the declaration made by him in the application form submitted for the purpose of recruitment to the service and his matriculation certificate. Being a law graduate, Respondent 1 must have been aware of the date of birth i.e. 27-3-1936 recorded in his matriculation certificate and this must be the reason why he mentioned that date in the application form submitted to the Public Service Commission. If the correct date of birth of Respondent 1 was 27-3-1938 and this was supported by the certificates issued by the schools in which he had studied before appearing in the matriculation examination, then he would have immediately after joining the service made an application to the University for change of the date of birth recorded in the matriculation certificate and persuaded the authority concerned to decide the same so as to enable him to move the State Government and the High Court for making corresponding change in the date of birth recorded in his service book in terms of Para 1 of Annexure A to Chapter II of the Punjab Civil Service Rules, Volume I. However, Respondent 1 waited for more than ten years after entering into service and submitted an application dated 27-10-1983 to the University for effecting change in the date of birth recorded in the matriculation certificate by citing the school certificates as the basis for his claim.

15. The High Court or for that reason the State Government did not have the power, jurisdiction or authority to entertain the representation made by Respondent 1 after more than twelve years of his entering into service. Therefore, neither of them committed any illegality by refusing to accept the prayer made by Respondent 1 on the basis of change effected by the University in the date of birth recorded in his matriculation certificate. Unfortunately, the trial court, the lower appellate court and the learned Single Judge of the High Court totally misdirected themselves in appreciating the true scope of the embargo contained in the relevant rule against the entertaining of an application for correction of the date of birth after two years of the government servants entry into service and all of them committed grave error by nullifying the decision taken by the State Government in consultation with the High Court not to accept the representation made by Respondent 1 for change of the date of birth recorded in his service book.

10. In the case of State of U.P. and Another Vs. Shiv Narain Upadhyaya, , it has been held as follows:-

6. Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book,

relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the date of birth recorded is corrected or not.

9. An application for correction of the date of the birth should not be dealt with by the courts, Tribunal or the High Courts keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be

compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

11. Keeping in view the well settled principles of law, noticed supra, the SSLC certificate of the petitioner having not been corrected in the manner provided under law, the action taken by the respondent vide Annexure-H, being neither arbitrary nor illegal, does not warrant interference. The claim of the petitioner is false and he is guilty of suppression of material facts. In the circumstances, petitioner has to pay exemplary costs.

In the result, writ petition being devoid of merit is dismissed with costs. Advocate fee is quantified at Rs. 5,000/-.