
(2014) 10 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 12279 of 2011 (H)

The Commissioner for Examinations

APPELLANT

Vs

K. Karunakaran

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 KL CK 0053

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Nisha Bose, Government Pleader, Advocate for the Appellant; M.V. Thamban, R. Reji, Thara Thamban and B. Bipin, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—Ext. P7 order dated 21st February 2011 passed by the Kerala Lok Ayukta on Complaint No. 904 of 2010A preferred by the respondent herein is under challenge in this writ petition.

2. The respondent, a retired Professor, who demitted his office as Director, Department of Audit Education, Calicut University on 31.3.2005, filed an application for correction of his date of birth as 12.12.1947 instead of the wrong entry in the SSLC Book as 13.1.1945. The request was rejected by the Joint Commissioner for Government Examinations, Pareeksha Bhavan, Thiruvananthapuram. The respondent filed an appeal which was dismissed. Though a review petition was filed against the same, the same was also dismissed. Thereafter the respondent filed another petition styled as review petition before the Government which was allowed as per Ext. P1 order dated 17.10.2005. Alleging that the wrong entry in the SSLC book was not corrected in spite of Ext. P1 order, the respondent filed Ext. P2 complaint before the Lok Ayukta. The said application was allowed by the Lok Ayukta under Ext. P7. The petitioners allege that Ext. P1 order is the order passed by the Government reviewing an earlier Government order on a review petition rejecting the claim of the respondent.

3. The petitioners allege that Rule 3 of Chapter 6 of the KER does not permit a second review. Therefore, according to the petitioners, Ext. P1 is ab initio void.

4. The petitioners further allege that on facts also, the respondent is not entitled to get the entry corrected as he has not produced any evidence to prove his date of birth. It is with this background, the petitioners have come up before this Court.

5. In the counter affidavit, the respondent has contended as follows:

During the pendency of the complaint, one Deputy Secretary as the authority of the Government issued Ext. P6 letter on 3.8.2010 saying that Ext. P1 Government order is found to be invalid. Ext. P6 had not been extended to the respondent. A letter signed by Deputy Secretary on behalf of the Secretary to the Government is insufficient to cancel the earlier Government order issued under the authorization of the Governor of Kerala. Therefore, according to the respondent, Ext. P6 is of no consequence. Ext. P6 was issued to defeat the respondent's legitimate claim to get the date of birth in the SSLC book corrected; it was contended. It is further contended that the Government have subsequently issued G.O. (Rt) No. 1933/2011/G.Edn. dated 26.5.2011, i.e. after the lapse of more than 5 years and 7 months, a copy of which is produced and marked as Ext. R1(a). This Government order is totally vitiated by mala fides. No one was aggrieved by Ext. P1 Government order. There was never any complaint against the same; it was contended.

It was further contended that the respondent retired from service as Director in the cadre of University Professor, Department of Audit Education, Calicut University on 31.3.2005. That retirement was on the basis of the erroneous date of birth which is 13.1.1945. As per G.O.(MS) No. 107/76/G.Edn. dated 12.6.1976 (Ext. R1(b), the Commissioner for Government Examination is the authority to decide the request for alteration of entries as to the date of birth of employees/ persons (refer Appendix-I of the G.O.). In any case, the Joint Commissioner, the 2nd petitioner exceeded his jurisdiction by declining the claim of the respondent by order No. EX B3/5939/98/K.dis dated 18.8.1998. Since the respondent's appeal and revision were rejected, respondent was compelled to move the petition for review and the Government have rightly issued Ext. P1 order allowing the request of the respondent inviting the special jurisdiction of the Government under Rule 3 Chapter I KER. Further no rule in Chapter VI of KER restrict the Government to review their earlier decision on correction of date of birth. But, later they were unwilling to implement the same. Therefore, the respondent was compelled to move the Lok Ayukta, after a lapse of five years; it is contended.

It was also contended that there was no misrepresentation or suppression of any facts or decisions of the Government against the respondent earlier. Ext. P1 G.O. was issued after considering all the earlier orders.

The respondent had filed an application before the first petitioner on 29.11.2005 for carrying out the decision in Ext. P1 G.O. But, even after a lapse of nearly five

years, the first petitioner did not implement Ext. P1 nor was he able to offer any valid reason. It was then that the respondent had moved the Lok Ayukta. The letter Ext. P6 was invented to get over the situation some how or the other while the complaint was pending before the Lok Ayukta. Such a letter cannot cancel or vary Ext. P1 order. Rule 3(3) in Chapter VI KER, appeal is provided to a person aggrieved by the decision of the petitioners herein invoking Rule 3(1) Chapter VI KER. The rules do not prevent the Government from entertaining a revision petition or a review petition as the Government is the highest authority having inherent powers in such matters. Further, Rule 3 of Chapter I KER gives the authority to Government to dispense with or relax the requirement of any rule in KER, if the Government are satisfied that the operation of the rule causes undue hardship to any particular case without prejudice to the right of any other citizen. There is no sufficient reason to withdraw or cancel the same after a lapse of more than 5 years. Ext. P6 letter and the subsequent Government order Ext. R1(a) are vitiated by mala fides and designed only to harass the respondent; it is contended.

The respondent further contended that Ext. P6 letter was addressed to the first petitioner on the basis of his own request. The same has never been extended to the respondent. It was further contended that Ext. P1 order dated 17.10.2005 was in force when the complaint was filed. Petitioners have not taken any steps to carry out the order except issuing Ext. P6 letter to the petitioners which is unsustainable. Firstly, it was violative of natural justice as there was no notice to him. The Lok Ayukta was pleased to interfere in the matter by order dated 21.2.2011 as evidenced by Ext. P7 whereas the petitioners were not intending to implement Ext. P1 order. The order Ext. P1 was issued on the basis of clear evidence in respondent's favour. That cannot be varied or cancelled by Ext. P6 letter. Even the subsequent Government order is unsustainable as it was issued without any notice. The authority who effects correction of the entries relating to the date of birth in SSLC Book, is the Secretary, Board of Public Examination who is subordinate to the petitioners. The SSLC book of the respondent is still pending with the Secretary. He has not even cared to return the same. Ext. P1 order was issued directing the Secretary, Board of Public Examination as is the usual practice as evidenced by Ext. R2(a) Government order, Commissioner for Government Examination, the delegated authority to decide the request of the correction of the entires in relation to the date of birth of the serving employees. But the 2nd respondent, the Joint Commissioner issued order dated 18.8.1998 declining the requests of the respondent for correction of date of birth to the SSLC Book by which he had exceeded his jurisdiction. Therefore, Ext. P7 order of the Lok Ayukta is liable to be complied with and challenge against the same is unsustainable; it was contended.

6. Arguments have been heard.

7. Admittedly, the respondent has made application for correcting the date of birth of the respondent as 12.12.2014 instead of 13.1.1945. That request was

rejected by the third respondent who is the Joint Commissioner. It was argued by the learned counsel for the respondent that as per Ext. R2(b), the Commissioner for Government Examination is the delegated authority to decide the request for correction of date of birth of serving employees and therefore, the Joint Commissioner has exceeded his jurisdiction. Therefore, the respondent filed an appeal, but the same was rejected by the authority who, originally declined the request. The review petition was also rejected. Yet another petition was filed before the Government styled a review petition which was allowed by Ext. P1.

8. The learned Government Pleader would argue that Ext. P1 is void ab initio. In Ext. P7 which is impugned, the Kerala Lok Ayukta relied on Ext. P1. Ext. P1 was issued by the Government on the specific finding that the year of birth of the immediate elder brother was 1947 and therefore, the respondent's case that his date of birth has to be corrected as 12.12.1947 was accepted. During the pendency of the complaint before the Lok Ayukta, Government issued Ext. P6 letter dated 3.8.2010 saying that Ext. P1 Government order is found to be invalid.

9. The learned counsel for the respondent would submit that Ext. P6 had not been extended to him till date. It was argued that a simple letter signed by the Deputy Secretary on behalf of the Secretary to the Government is insufficient to cancel the earlier Government letter issued under the authorisation of Governor of Kerala. Therefore, it was argued that Et. P6 is of no consequence.

10. The crux of the argument advanced by the learned Government Pleader in support of the decisions of this Court is that there cannot be a further review of an order on a review petition as per Rule 3. Though there cannot be any quarrel against the said proposition, what was done by the State by Ext. P1 was to correct the mistake committed by them. Though the petition on which Ext. P1 order was passed was captioned as review petition, in fact, the respondent was bringing the mistake committed by the Joint Commissioner to the notice of the State Government. The Government realizing the mistake has corrected its stand by Ext. P1.

11. This Court is of the definite view that there is no need to search for technicalities to deny a rightful claim of the respondent. Since the appeal and revision filed by the respondent were rejected, the appellant was compelled to move the Government with a subsequent petition. The same was entertained invoking the special powers of the Government and Ext. P1 was issued. But, later the Government was unwilling to implement the same. It was in this context, the petitioner has approached the Kerala Lok Ayukta.

12. Paragraph-8 of the impugned order which is extracted below is relevant:

"It is significant to note that the defence statement was filed by the third respondent on 4.8.2010 and the Government letter is dated 3.8.2010. As the complainant had submitted his application on 29.11.2005 (Ext. P2) to the third respondent along with Ext. P1 order for carrying out the correction of date of birth in the SSLC book, had the third respondent acted promptly on it, he could

not have relied on the Government letter dated 3.8.2010 as mentioned in the defence statement. Paragraph-6 of the defence statement mentions that Government as per letter No. 36064/G2/2010/G.Edn. dated 3.8.2010 has informed the complainant with respect to correction of date of birth in the SSLC book. This information cannot have any retrospective operation to nullify Ext. P1 order issued by the Government in favour of the complainant. At best it is only a guideline to the authorities to act in future in accordance with it."

13. This Court is of the definite view that the Kerala Lok Ayukta has considered the matter in the correct perspective and has arrived at the correct conclusion which do not call for an interference in exercise of the powers under Article 226 of the Constitution of India.

Therefore, this writ petition is dismissed. The respondent concerned shall implement Ext. P7 within a period of one month from the date of receipt of a copy of this judgment.