

(2014) 01 AP CK 0119

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29001 of 2010

The Govt. of A.P. and Others

APPELLANT

Vs

Md. Burhanuddin and Another

RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:

Constitution of India, 1950 — Article 309
Penal Code, 1860 (IPC) — Section 465 468 471

Citation : (2014) 6 ALD 339 : (2014) 2 ALT 770 : (2014) LabIC 1716

Hon'ble Judges : R. Subhash Reddy, J;A. Shankar Narayana, J

Bench : Division Bench

Advocate : J. Sudheer, for the Respondent

Judgement

R. Subhash Reddy, J.—This Writ Petition is filed by the respondents in O.A. No. 4356 of 2009 before the A.P. Administrative Tribunal, Hyderabad (for short "the Tribunal") aggrieved by the order dated 08.07.2010. By the aforesaid order, the Tribunal allowed the application filed by the 1st respondent-applicant, wherein he had questioned proceedings Rc. No. 36/ME-3/2008, dated 19.04.2008, by setting aside the said proceedings, with a further direction to the petitioners herein to alter the date of birth of the 1st respondent-applicant in the Service Register as 01.01.1957 instead of 04.04.1953 and to extend all consequential benefits. The 1st respondent-applicant was appointed as Police Constable on 03.02.1975 pursuant to his application dated 18.11.1974. At the time of entry into service, his date of birth was recorded as 04.04.1953 in the Service Register. While he was in service, he was prosecuted for the alleged offences under Sections 465, 468 and 471 IPC in C.C. No. 133 of 1978 on the file of the III Metropolitan Magistrate, Hyderabad on the allegation that he had altered his date of birth from 01.01.1957 to 04.04.1953. By judgment dated 31.08.1978, he was acquitted from the charges by recording a finding that prosecution has not proved the charge framed against him and there was no necessity for him to alter the date of birth as contended by the prosecution. During the pendency of the proceedings, he was also discontinued from service and subsequently

reinstated. While it is the case of the 1st respondent-applicant that only on initiation of criminal proceedings, he was discontinued and on acquittal he was reinstated into service, but the same is disputed by the petitioners stating that his probation was terminated. In this Writ Petition, it is not necessary to go into such controversy.

2. On acquittal in criminal proceedings, he was reinstated in the service on 28.10.1978. He started making representations from 24.06.2002 to alter his date of birth in the Service Register as 01.01.1957 instead of 04.04.1953. On his request, the Commissioner of Police, Cyberabad, Hyderabad, addressed letter dated 20.11.2007 vide letter No. 124/207/A1/CYB/2004-07, to the Director General of Police, Andhra Pradesh, Hyderabad, who, in turn, issued proceedings Rc. No. 36/ME-3/2008, dated 19.04.2008, rejecting the request of the 1st respondent-applicant, for alternation of his date of birth in the Service Register. Questioning such rejection proceedings and seeking further consequential relief to alter the date of birth in the Service Register by extending all consequential benefits, he approached the Tribunal. It was his case before the Tribunal that that though he submitted original Transfer Certificate to the authorities at the time of his appointment, showing his date of birth as 01.01.1957, but, the petitioners have entered his date of birth as 04.04.1953. Before the Tribunal, petitioners filed counter-affidavit. In the counter-affidavit, while denying the various allegations made by the 1st respondent-applicant, it was the case of the petitioners that the 1st respondent-applicant was appointed as Police Constable pursuant to his application dated 18.11.1974 wherein he has shown his date of birth as 04.04.1953 and after completion of recruitment process, he was appointed as such. It was the specific case of the petitioners that at the time of his application dated 18.11.1974, he had not completed 18 years of age and only to gain entry into service, he had altered his date of birth and having got benefit of the same, he is now seeking alteration of date of birth. In the counter-affidavit filed before the Tribunal, reference is also made to the undertaking given by the 1st respondent-applicant, wherein he had confirmed his date of birth as 04.04.1953. While pleading that, in the criminal proceedings, he was acquitted on the benefit of doubt, petitioners sought dismissal of the O.A., alleging that no case is made out for seeking alteration of date of birth, at the belated stage.

3. The Tribunal, by recording a finding that the 1st respondent-applicant had been making representations seeking correction of his date of birth from the year 2002 onwards and by relying on the judgment in the case of M. Vijaya Bhaskara Reddy Vs. High Court of Andhra Pradesh, allowed the O.A., with a further direction to correct his date of birth in his Service Register as 01.01.1957 instead of 04.04.1953 with all consequential benefits.

4. We have heard learned Government Pleader for Services I for the petitioners, Sri J. Sudheer, learned counsel for the 1st respondent-applicant and perused the Service Register of the 1st respondent-applicant produced by the learned Government Pleader, including the declaration filed by him.

5. It is contended by the learned Government Pleader appearing for the petitioners that the 1st respondent-applicant was appointed as Constable pursuant to his application on 18.11.1974 and if his date of birth is taken as 01.01.1957, he was not eligible for appointment itself as he was below 18 years of age. It is submitted that, having gained entry into service by showing date of birth as 04.04.1953, he is not entitled to seek correction at this stage. It is further contended that the Tribunal committed an error by applying the ratio of the judgment in the case of M. Vijaya Bhaskara Reddy Vs. High Court of Andhra Pradesh, inasmuch as the 1st respondent-applicant has had the benefit of appointment by making a wrong declaration of his date of birth while entering into service; as such he is not entitled to seek correction. It is further contended that though the 1st respondent-applicant furnished an undertaking by way of declaration as early as on 31.01.1976, acknowledging his date of birth as 04.04.1953, he is making a belated attempt, so as to continue in service contrary to the entries made in the Service Register. In support thereof, learned Government Pleader relied on the following decisions:

G. Krishna Mohan Rao Vs. Registrar, Andhra Pradesh Administrative Tribunal and Others, Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, State of Gujarat and Others Vs. Vali Mohmed Dosabhai Sindhi,

6. On the other hand, it is submitted by Sri J. Sudheer, learned counsel for the 1st respondent-applicant that the date of birth of the 1st respondent-applicant is 01.01.1957, but at the time of entry into service, an error had crept in; as such correction is permissible as per A.P. Public Employment (Recording & Alteration of Date of Birth) Rules, 1984. It is further submitted that the certificate/declaration given by him will not take away his right to seek correction as his claim for alteration of date of birth from 04.04.1953 to 01.01.1957 is supported by cogent evidence. It is further submitted that there is no time-limit fixed for correction of bona fide clerical errors. In support of his submissions, he relied on the decisions in R. Vijaya Kumari v. Govt. of A.P., and others 2009 (1) ALD 470 (DB) and C. Thimmaiah v. State of A.P., and ors. 2010 (4) ALD 16 (DB).

7. Upon a perusal of the Service Register of the 1st respondent-applicant, it is clear that he had not filed the original Transfer Certificate at the time of entry into service. It is submitted by the learned Government Pleader for the petitioners that tampered Transfer Certificate is filed before the competent criminal Court when the 1st respondent-applicant was prosecuted on the allegation that he has corrected the date of birth. We have perused the judgment of the criminal Court in C.C. No. 133 of 1978. In the said judgment, he was acquitted from the charges on the ground that there is no specific evidence brought on record by the prosecution. On the allegation of the petitioners that the 1st respondent-applicant has altered the date of birth only to gain entry into service, by showing that he was more than 18 years of age on the date of his application, the Tribunal has recorded the following finding:

It is an admitted fact that the applicant was appointed on 03.02.1975 as Police

Constable and as per his School Certificates, his date of birth is 01.01.1957 and he has also produced the original School Certificate at the time of his appointment showing his date of birth as 01.01.1957, but subsequently, the respondents lodged a criminal case against the applicant stating that he tampered his date of birth in the Xerox copy of the Transfer Certificate produced by him at the time of his appointment as Police Constable as 04.04.1953 and the concerned Police registered a case in C.C. No. 132 of 1977 for the offence under Sections 465, 468 and 471 IPC and filed a charge sheet against the applicant before the III Metropolitan Magistrate, Hyderabad. Before the III Metropolitan Magistrate, Hyderabad, as many as 10 witnesses are produced and 18 documents were marked. The learned Magistrate considering the evidence produced before him and also the documents, came to the conclusion that there is no necessity for the applicant to tamper the transfer certificate and also held that there is no evidence to show that the applicant has forged the transfer certificate by mentioning his date of birth as 04.04.1953.

8. From a reading of the aforesaid judgment of the criminal Court, it is clear that the 1st respondent-applicant was given benefit of doubt and was acquitted from the offences levelled against him. It is fairly well settled that insofar as criminal prosecution is concerned, unless there is strict proof, one cannot be punished. Insofar as other proceedings are concerned, viz., either departmental proceedings or if any application is filed seeking correction of entries, the same is to be adjudicated on the probabilities. From the entries made in the Service Register, it is clear that his date of birth is recorded as 04.04.1953 and the original file also contains a declaration filed by him as early as on 31.01.1976, wherein he had declared his date of birth as 04.04.1953. Filing of such declaration is not in dispute. Recording and alteration of date of birth in Government service is governed by A.P. Public Employment (Recording & Alteration of Date of Birth) Rules, 1984, framed in exercise of powers under proviso to Article 309 of the Constitution of India. Rule 2 of the said Rules reads as under:

2. Recording of date of birth:

(1) Every Government employee shall, within one month from the date on which he joins duty, make 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 record 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 employee joins service determining the date of 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 employee 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 Office or 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, determine 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 Office 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 stopped from disputing the correctness of such date of birth.

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

9. From a reading of the aforesaid Rule, it is clear that in case of bona fide clerical errors only, correction is permissible, but not in any other circumstances. In view of the aforesaid rule position, what is required to be considered is whether the date of birth of the 1st respondent-applicant as entered in his Service Register as 04.04.1953 is a clerical error so as to permit correction at this point of time. It is also well settled that, with regard to correction of date of birth in the Service Register, it cannot be permitted after considerable length of time, after entry into service. It is the case of the petitioners, that at the time of entry into service, the 1st respondent-applicant produced copy of the Transfer Certificate, showing his date of birth as 04.04.1953. It is true, that he was prosecuted on the allegation that he has altered his date of birth from 01.01.1957 to 04.04.1953, so as to gain entry into service, but the criminal court has acquitted the respondent-accused by giving benefit of doubt, on the ground that there is no specific evidence on record to that effect. Even if he is acquitted in the criminal proceedings by extending the benefit of doubt, that, by itself, is not a ground to entertain his application for correction as prayed for. In addition to the entry made in the Service Register with regard to the date of birth as 04.04.1953, the 1st respondent-applicant has already furnished an undertaking confirming the said date. There is no explanation on such declaration filed by him, confirming his date of birth as 04.04.1953. It is also not in dispute that the 1st respondent-applicant was appointed pursuant to the application dated 18.11.1974, by which time he has not completed 18 years of age. It is quite probable that only to show that he has completed 18 years of age, he made such

correction and entered into service. With regard to the said plea of the petitioners, the III Metropolitan Magistrate, Hyderabad in C.C. No. 133 of 1978, has recorded a finding that there was no necessity for the 1st respondent-applicant making correction by computing the period from the date of his appointment. It is not in dispute that the appointment of the 1st respondent-applicant is pursuant to his application dated 18.11.1974 and in the absence of any notification, his age is to be computed from the date of his application but not with reference to the date of his appointment. On the date of making application, i.e. 18.11.1974, he was below 18 years of age. It is also not in dispute that minimum age to gain entry into Government service is 18 years during the relevant point of time. Having regard to the aforesaid facts, it cannot be termed as a bona fide clerical error, so as to permit correction at this point of time.

10. There is yet another strong ground to reject the claim of the 1st respondent-applicant for correction of date of birth, i.e. abnormal delay and laches. He entered into service on 03.02.1975 and according to him he started making representations seeking correction of date of birth during the year 2002 only. There is no reason for his not taking any steps for more than 25 years. It is well settled that date of birth entered in the Service Register cannot be permitted to be altered at late stages. There is no explanation at all for such abnormal and inordinate delay on the part of the 1st respondent-applicant in not taking steps for correction. In the reference order reported in *G. Krishna Mohan Rao Vs. Registrar, Andhra Pradesh Administrative Tribunal and Others*, a Full Bench of this Court has held that the claim for change of date of birth of an employee depends on the rules governing the service of the particular employee. In that view of the matter, in view of the A.P. Public Employment (Recording & Alteration of Date of Birth) Rules, 1984, which bars correction of entries except in cases of bona fide clerical errors, the 1st respondent-applicant is not entitled for any correction. As we are of the view that it is not a bona fide clerical error crept in at the time of entry into service, the decision of this Court in the case of *M. Vijaya Bhaskara Reddy Vs. High Court of Andhra Pradesh*, is of no help to the case of the 1st respondent-applicant. Further, in *State of Punjab and Others Vs. S.C. Chadha*, , the Hon''ble Supreme Court has held that claims for correction of date of birth should not be allowed after decades of service, especially on the eve of superannuation. In the judgment in *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, , the Hon''ble Supreme Court has held as under:

When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date

disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage.

11. Further, in the case of *State of Gujarat and Others Vs. Vali Mohmed Dosabhai Sindhi*, , the Hon"ble Supreme Court has held as under:

An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court 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 for ever. 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 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.

12. All the aforesaid judgments support the case of the petitioners. Further, we are of the considered view that the Tribunal erroneously applied the judgment of this Court in the case of M. Vijaya Bhaskara Reddy Vs. High Court of Andhra Pradesh, It is not in dispute that, in the instant case, on the date of filing application, i.e., 18.11.1974, the 1st respondent-applicant was below 18 years of age. Having had the benefit of gaining entry into service by showing that he was aged more than 18 years of age on the date of appointment, he cannot seek alteration of the date of birth after 25 years of entry into service. In the judgment of this Court in the case of M. Vijaya Bhaskara Reddy Vs. High Court of Andhra Pradesh, the Division Bench has held that change of date of birth cannot be rejected on the mere ground of estoppel and estoppel arises only when the employee secured a benefit by making a wrong statement of date of birth. In the instant case, the 1st respondent-applicant had the benefit of entry into service by showing that he was aged more than 18 years of age. In that view of the matter, the said judgment cannot be applied to the facts of the case on hand. Further, in the judgments in R. Vijaya Kumari 2009 (1) ALD 470 (DB) (supra) and C. Thimmaiah 2010 (4) ALD 16 (DB) (supra) relied on by the learned counsel for the 1st respondent-applicant, it is held that there is no time-limit for seeking correction in case of bona fide clerical errors. As we are of the view that in the instant case there is no bona fide clerical error within the meaning of Rule 2 of the A.P. Public Employment (Recording & Alteration of Date of Birth) Rules, 1984 and in view of the prohibition for seeking correction in any other circumstances, the said judgments would not render any support to the case of the 1st respondent-applicant. For the aforesaid reasons, this Writ Petition is allowed and the order dated 08.07.2010 passed by the Tribunal in O.A. No. 4356 of 2009 is set aside. Consequently, the said O.A., stands dismissed. As a sequel, miscellaneous petitions if any pending in this Writ Petition stand disposed of. No order as to costs.