
(2002) 03 AP CK 0121

In the Andhra Pradesh High Court

Case No : Writ Petition No. 846 of 1992

T.N. Ramakrishnan

APPELLANT

Vs

Bank of India Ltd. and Others

RESPONDENT

Date of Decision : 28-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALT 617

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : N. Ramamohana Rao, for the Appellant; T. Anantha Babu, General, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—The petitioner has hailed from Kerala State. He has his early education at the Government Lower Secondary School, Nadavaramba, Trichur District, Kerala State. He had his high school education from the Government Boys' High School, Irinjalakuda, Trichur District, Kerala State during the years 1946 to 1949. He passed his Metriculation Examination that was conducted in April 1949. Trichur District was forming part of the Princely State of Cochin. Secondary School Leaving Certificate bearing Serial No. 46844 was issued by the Director of Public Instruction, Trichur. The 1st page of the SSLC certificate was prepared in the school and in so far as his date of birth is concerned, the entries were made by the Headmaster of the institution in his own hand while the rest of the information against the other columns was recorded by the office staff of the said school. Against column-4 viz., "Date of Birth (to be written in words also)", "8-6-1108, Eighth Makaram, Eleven Hundred and Eight" is endorsed by the Headmaster of the said school. This was signed by the Headmaster on 29-02-1123 which is also in Malayalam Era. Thus, it is clear that his date of birth was entered in Malayalam Era and not in Christian Era. The Transfer Certificate which was issued to him also contains the same i.e.,

8-06-1108. He joined the service of the Bank on 1-03-1951. In the year 1969, the Bank of India was one of those Nationalized by the Government of India and thus came to be a Public Sector Undertaking. There was no fixed pattern of recruitment or procedure at the time of his appointment. However, he has absolutely no idea as to how his date of birth came to be recorded as 21-01-1932. Normal age of superannuation was sixty years under Private sector and as a result, he was sought to be continued and retained in service till he attained the age of sixty years. On the basis of the alleged date of birth viz., 21-01-1932, attempts were made for his superannuation retirement at the end of January 1992. When he realised that there is some mistake in this regard, he looked up the old Malayalam Almanac for the year 1108 and when he converted 8th Makaram 1108 into Christian Era, it came to 21-01-1933, but not 21-01-1932, and then he realised that a mistake is crept in the records. He submitted an application to the 2nd respondent along with the photo stat copy of page 10 of Malayalam Almanac for the year 1108 to rectify the mistake, but the same was rejected. 8th Makaram 1108 of Malayalam Era could only correspond to 21-01-1933. Despite his representation to the Chairman and Managing Director, so far no orders are passed. Hence, this writ petition is filed seeking for a direction in the nature of Writ of Mandamus to declare the action of respondents-1 and 2 in refusing to correct the clerical error with reference to the date of birth of the petitioner in his Service Records maintained by the respondent-Bank as 21-01-1933 instead of 21-01-1932 as arbitrary and illegal and to direct the respondents to correct the error by duly recording the date of birth as 21-01-1993 and accord all consequential benefits.

2. In the counter filed by the respondents, it is contended that the petitioner applied on 28-02-1951 for appointment in the 1st respondent Bank and in his application form, in his own handwriting, he mentioned his date of birth as 20th January 1932. He was appointed as a temporary typist with effect from 1-03-1951 and since then, he has been in the service of the Bank and was serving as Deputy Zonal Manager at the time of filing of the writ petition. The petitioner was intimated that he would retire on 31-01-1992 after attaining the age of superannuation. On 8th October, 1991, the petitioner addressed a letter to the General Manager, requesting to treat his date of birth as 21-01-1933. He enclosed a photo copy of his SSLC Certificate page 1, in which his date of birth was mentioned as 8th Makaram 1108, which according to him, is equivalent to 21-01-1933. The Bank rejected his request on the ground that the date of birth was mentioned as 20-01-1932 in his application. Reliance was also placed on the Indian Bank Association Guidelines that the date of birth furnished by the employee at the time of his appointment and accepted and entered in the records, cannot be changed subsequently. The allegation that the petitioner has absolutely no idea as to how his date of birth came to be recorded as 21-01-1932, is patently incorrect. Till 8th October, 1991 when he was on the verge of retirement and had been so intimated by the Management, he never claimed that his date of birth was wrongly recorded. The circumstances, under

which he discovered the mistake, are also not clearly indicated. It is not the case of the petitioner that he has mentioned his date of birth in Malayalam Era at any time. The question as to whether the petitioner has completed the age of 60 years, is a disputed question of fact, which cannot be conveniently adjudicated in the proceedings under Article 226 of the Constitution of India. The petitioner is estopped by conduct and representation from raising the present plea. If the petitioner is continued in service by way of interim order, the 1st respondent-Bank will be adversely affected. As such, this writ petition is liable to be dismissed.

3. The controversy that arises for consideration is as to whether the furnishing of corresponding Christian Era of 8-06-1108 (Malayalam Era), basing on the school records, as 21-01-1932 instead 1933, is a recognized bona fide mistake or not.

4. Heard Mr. N. Ramamohanarao, the learned counsel for the petitioner and Mr. T. Ananthababu, the learned Advocate General for the respondents.

5. The learned counsel for the petitioner would contend that a clerical mistake had occasioned in noting down the date of birth of the petitioner in Christian Era and it is a recognized bona fide one and the Staff Regulation does not provide any contingency for conversion. There is no dispute as to the conversion of Malayalam Era to Christian Era. He would further contend that when 8th Makaram 1108 of Malayalam Era, which is not in dispute, is translated to Christian Era, the corresponding date of birth will be 21-01-1993, but not 21-01-1932.

6. In *G.P. Pillai v. Union of India*, 1981 Lab. I.C. 1393 (Allahabad) the Division Bench of Allahabad High Court has dealt with the similar circumstances of the case on hand. The Division Bench has observed that where the petitioner-while giving out his year of birth to be 1103 in Malayalam Era, committed an error in disclosing the comparative Christian Era, due to non-availability of almanac and gave out his date of birth as 1926 instead 1927, the mistake was merely a clerical error liable to be rectified by the competent authority. It is further observed therein that on a later occasion, the petitioner has found from the school records that his date of birth was 22nd August, 1103, but not 22nd March 1103 (Malayalam Era) corresponding to 9th November, 1926 of Christian Era as entered in the proforma. Two aspects i.e., one is with regard to the mistake in furnishing the date of birth (Malayalam) in the proforma by the petitioner as 22-03-1103 instead of 22-08-1103 and the second is with regard to the mistake in furnishing the corresponding Christian Era of 22-03-1103 (Malayalam Era), as 1926 instead 1927, have been considered by the Division Bench as a bona fide one. In the instant case, the facts and circumstances of the judgment, are similar to that of the case on hand wherein basing on the date of birth (Malayalam) mentioned in the School records, the petitioner furnished the corresponding Christian Era of 8-06-1108 (Malayalam Era) as 21-01-1932 instead 1933. Therefore, the mistake in question, is a recognized bona fide one and viewed in any angle, there are no mala fides on the part of the petitioner in

approaching this Court.

7. At this stage, the learned Advocate General would contend that since the petitioner has furnished all the particulars while joining in service and gave his date of birth in his own handwriting while filling up the Application form, and as such the alleged mistake does not fall within the ambit of clerical error and it is also not a fit case falling under exceptions. In support of the contention, he has drawn my attention to the judgment of the Apex Court reported in *Union of India v. Harnam Singh* 1994 (II) LLJ 318 (SC) wherein it is held thus:

"The date of birth entered in the service records of a civil servant is of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Govt. Servant who has declared his age at the initial stage is not precluded from making a request later on for correcting his age. He can do so if he is in possession of irrefutable proof 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. It is competent for the Government. To fix a time limit in the service rules, the law of limitation may operate harshly, but it has to be applied with all its rigour and the Courts and Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire."

8. With due respect to the principles laid down by the Apex Court, in my considered opinion, the facts and circumstances therein, are quite different from that of the case on hand, and, as such, it has no application to the present facts of the case.

9. There is no dispute as to the date of birth mentioned in the school records as 8-06-1108 (Malayalam). Admittedly, the petitioner furnished the corresponding Christian Era of the same as 21-01-1932 instead 21-1-1933, which according to him, is a clerical mistake. As already held in the foregoing paragraphs, the alleged mistake, is nothing but a recognized bona fide one and there are no mala fides in filing this writ petition and apart from that, this is a fit case wherein the interpretation under the exceptions, can be inferred in favour of the petitioner. There is also no dispute that in respect of the date of birth of the petitioner as 8-06-1108 (Malayalam), the comparative Christian Era of the same, would be 21-01-1933. I have perused the extract of page 10 of the Malayalam Almanac of Malayalam year 1108, which is translated into English and certified by the Assistant Research Officer, A.P. Engineering Research Laboratories, Himayat Sagar, Hyderabad. It discloses the English year as 1933, the month as January and the date as 21 corresponding to the Malayalam year 8-06-1108. As such, the mentioning of the date of birth in Christian Era at the time of appointment as 21-01-1932, instead 21-01-1933, is a recognized bona fide mistake, which can be rectified even by the Competent Authority inasmuch as it does not amount to any alteration or correction of date of birth, but is only a rectification of a bona fide mistake. In this view of the matter, the petitioner is entitled to the relief sought for in the writ petition.

10. Accordingly, this writ petition is allowed directing the respondents to effect rectification of clerical error with regard to the date of birth of the petitioner in his service records as 21-01-1933 instead 21-01-1932 and accord all the consequential benefits accordingly.