

(1990) 07 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 6630 of 1990

V. Ramachandran Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-07-1990

Acts Referred:

Citation : (1990) 2 KLJ 335

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : Cyriac Joseph, for the Appellant; P.V. Mohanan Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—Petitioner was working as Overseer Grade - III in the Public Works Department. His date of birth as entered in the S.S.L.C. and service book was 19-9-1934 corresponding to 2.2.1110 M.E. According to him, the actual date of birth is 26-9-1935 corresponding to 10-2-1111 M.E. To have the date of birth corrected in the service records he submitted an application before the Government way back on 3-9-1987. At that time the date of birth in the S.S.L.C. was not corrected. After obtaining orders from Government condoning the delay in approaching the Commissioner for Government Examinations to correct the date of birth in the school records, he approached the Commissioner and got the date of birth corrected in the school records as per order dated 24.3.1988. On getting that date so corrected he informed the Government of that fact as well. But the Government by Ext. P3 order dated 7-9-1989 rejected the application to correct the date of birth in the service records on the ground that the petitioner's application dated 3-9-1987 was filed without getting the date of birth corrected in the school records as stipulated in the circular dated 3-12-1987. That order was set aside in O.P. No. 8041/89 and directed the Government to dispose of the petitioner's application afresh in accordance with law and in the light of the observations in the judgment. Since the Government did not pass final orders within a reasonable time petitioner moved this court by tiling O.P.

4491/90. By judgment dated 28-5-1990 this court directed the Government to pass final order within two weeks there from in compliance with that order, the Government have now issued Ext. P8 order dated 11-6-1990 rejecting the petitioner's prayer for correction of the date of birth in the service records on the ground that the correction in the school records was effected within two years of the date of retirement as per the date entered in the service records and so his application dated 3-9-1987 is devoid of merit. Hence this Original Petition. A Copy of this petition was served on the learned Government Pleader. According to him, as per the Government Orders, a Government servant who has attended school can get his date of birth corrected in the service records only after getting orders from the Commissioner for Government Examinations for correcting the date of birth in the school records. Since the petitioner got the date of birth in the S.S.L.C. and school records corrected within two years of his date of superannuation as per the date entered in the service records, he is not entitled to have the date of birth corrected in the service records.

2. The Government as well as the learned Government Pleader rely on Circular dated 3-12-1987 to deny the petitioner's claim for correcting the date of birth in the service records According to Government Pleader, Ext. P9 circular has been understood by them as meaning that the correction of the school records is a condition precedent for getting the date of birth corrected in the service records. On going through Ext. P9 circular dated 3-12-1987. I find it difficult to accept this stand taken by the Government and the learned Government Pleader. For a proper understanding of the provision, I will read clause (1) of that circular:

In the case of persons who have attended a recognised school, the School Leaving Certificate or an authenticated extract of the admission register of the school or college where the officer last studied. If the date of birth entered in the school or college record is alleged to be incorrect the person concerned may adduce satisfactory evidence to prove the correct date of birth. Such evidence will be considered on merits and appropriate orders issued by Government.

As per this clause, a Government servant whose date of birth has been entered in the school records, is entitled to get the date corrected in the service records if he can adduce satisfactory evidence to prove that the date entered in the school records is not the correct one. This right of a Government servant is independent of the correction of the date of birth in the school records. The correction of the date of birth in the school records can only be treated as a place of evidence to support his claim that the date entered in the service records is not the correct one. Viewed in this light, the fact that the petitioner got the date of birth corrected in the school records within two years of the date of his retirement is of no consequence and that fact cannot stand against his claim for correcting the date of birth in the service records because even, as per Ext. P9, he had filed the application for correction on 3-9-1987 prior to the two years of the date of retirement as per the date entered in the service records. As per the date entered in the service records he was to retire only on 30-9-1989. So the

application was filed beyond the two years of his retirement and it cannot be summarily rejected as barred by limitation as per the circular. An identical question came up for consideration before this court in Prabhakaran Nair Vs. State of Kerala (1990(1) KLT 858). This court stated the law in the following terms:

These facts make it abundantly clear that the petitioner had submitted his application for correction of the date of birth in the service book beyond the period of two years of his retirement as per the entries in the service book. It is also evident that the Government was willing to consider his application for correction of the date of birth on the basis of Ext. P6 on production of the SSLC book as corrected. It is not the case of the Government that only such applications as were made along with the SSLC book as corrected would be entertained. I do not find any justifiable reason for the change of attitude as indicated in Ext. P11 order. Apart from this, it appears to me, that the petitioner is right in his submission that the Government proceeded to reject the request for correction of the date of birth on the assumption that the petitioner was due to retire on 25-11-1989 and his application for correction in the service book was filed only on 15-11-1988. This assumption is factually incorrect. I do not find anything in the relevant Government Orders. Which justifies the stand now taken by the Government in Ext. P11, that the application for correction of the date of birth submitted more than two years prior to the date of retirement would not be entertained unless it is accompanied by the SSLC Book as corrected. If that be so, Government is bound to consider Ext. P6 supplemented by Ext. P9 and P10 as sufficient compliance with the requirement of producing the SSLC Book as corrected for enabling the Government to pass orders on the application for correction of the date of birth in the service book.

This has been upheld by a Division Bench of this court in Writ Appeal No. 198/1990. In view of what has been stated above, the only course that is now open to this court is to set aside Ext. P8 order and to direct the Government to take back petitioner's application dated 3-9-1987 and to dispose of the same in accordance with law within two weeks from the date of receipt of a copy of the judgment. I do so. In case the Government finds that the petitioner's correct date of birth is 26-9-1935 as now entered in the school records and his date of birth in the service records corrected accordingly, his retirement on 30-9-1989 has to be ignored and he is to be treated as continuing in service according to the correct date of birth. He should be given all service benefits including monetary benefits consequent on the correction of the date of birth. Reference may be made to the decision in Writ Appeal No. 198/1990.

The Original Petition is disposed of in the above terms.