

**Vinaya Kumar. R., vs Ire. Mining Area CIVIL Contract Workers Welfare Forum,**

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**SooperKanoon Citation : [sooperkanoon.com/1389868](https://sooperkanoon.com/1389868)**

**Court : Kerala**

**Decided On : Oct-18-2023**

**Judge : Honourable Mr. Justice Raja Vijayaraghavan V**

**Appeal No. : WP(C)/26465/2021**

**Appellant : Vinaya Kumar. R.,**

**Respondent : Ire. Mining Area CIVIL Contract Workers Welfare Forum,**

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE 18TH DAY OF OCTOBER 2023 / 26TH ASWINA, 1945 WP(C) NO. 26465 OF 2021 PETITIONER/S: VINAYA KUMAR. R., AGED 49 YEARS S/O. RAMESAN, WORKER, IRE. MINING AREA CIVIL CONTRACT WORKERS WELFARE FORUM, IRE WELFARE FORUM, CHAVARA P.O. KOLLAM, PIN- 691 583. RESIDING AT KUNNUMPURATHU HOUSE, VELLANATHURUTHU, CHERIAZHEEKAL P.O., ALAPPADU VILLAGE, KARUNAGAPPALLY TALUK, KOLLAM 690 573. BY ADVS.

M.V.THAMBAN R.REJI THARA THAMBAN SUNEESH KUMAR R. B.BIPIN ARUN BOSE RESPONDENT/S: 1 IRE. MINING AREA CIVIL CONTRACT WORKERS WELFARE FORUM, IRE WELFARE FORUM, CHAVARA P.O. KOLLAM 691 583. REPRESENTED BY ITS SECRETARY. 2 THE PRESIDENT, IRE. MINING AREA CIVIL CONTRACT WORKERS WELFARE FORUM, IRE WELFARE FORUM, CHAVARA P.O. KOLLAM 691 583. BY ADVS. M.GOPIKRISHNAN NAMBIAR, SC FOR IRE. MINING AREA CIVIL CONTRACT WORKERS WELFARE FORUM K.JOHN MATHAI JOSON MANAVALAN KURYAN THOMAS PAULOSE C. ABRAHAM RAJA KANNAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C.) No.26465 of 2021 2

## **JUDGMENT**

The petitioner has approached this Court seeking a declaration that the respondents are bound to correct the date of birth of the petitioner in the service records kept under the 1st respondent as 13.11.1971 instead of 19.4.1971 and for incidental reliefs. He has also challenged the order by which his request stands rejected.

2. The short facts of the case are as under:

The petitioner states that he became a member of the 1st respondent on 11.7.2002. Though the original date of birth of the petitioner is 13.11.1971, in the school records, it was erroneously entered as 19.4.1971. He states that his parents were illiterate, and it was in the said circumstances that such a mistake had occurred while furnishing the information. He states that when the petitioner realized that the date of birth was wrong, he approached the local authority, and based on his request, Ext.P1 birth certificate was issued showing his date of birth as 13.11.1971 instead of 19.4.1971. Armed with Ext.P1 birth certificate, the petitioner approached the Commissioner of Government Examinations and filed an application seeking to correct the entries as regards the date of birth in the SSLC Book, which request was allowed. According to the petitioner, the date of

birth of the petitioner is wrongly entered in the service records of the 1st W.P.(C.) No.26465 of 2021 3 respondent as 19.4.1971. In the said circumstances, he approached the concerned respondent and filed Ext.P3 representation. However, by Ext.P4, the request was rejected, holding that the date of birth cannot be changed in the service records. It is in the afore circumstances that this writ petition is filed seeking the following reliefs:

i) To issue a declaration that the respondents are duty bound to correct the date of birth of the petitioner in the service records kept under the 1st respondent as 13.11.1971 instead of 19.4.1971 and that the impugned order Ext.P3 issued by the 2nd respondent is illegal, arbitrary, without any authority of law, against the Rules of natural justice and thus unsustainable.

(ii) To issue a writ of certiorari or any other appropriate writ order or direction, calling for the records leading up to Exhibit P4, scrutinize and quash the same.

(iii) To issue a writ of mandamus or other writ or order or direction,

directing the respondents to allow the request of the petitioner in Exhibit P3 application and correct the date of birth of the petitioner in the service records kept under the 1st respondent as 13.11.1971 instead of 19.4.1971.

3. A counter affidavit has been filed by respondents 1 and 2. It is stated

that at the time of joining the service of the 1st respondent, the petitioner had submitted an affidavit stating that his date of birth is 19.4.1971. He had also submitted a certificate issued by the Government High School, Cheriazheekal, to substantiate the same. It is stated that the petitioner, as a matter of right, W.P.(C.) No.26465 of 2021 4 cannot seek correction of the date of birth in the service records since the entry was made on the basis of the educational certificates submitted by the petitioner, and the same was accepted by the employee. It is further stated that the application filed by the petitioner after almost two decades after his induction into the 1st respondent forum cannot be entertained.

4. Sri. R. Reji, the learned counsel appearing for the petitioner, submitted

that Ext.P4 note issued by the 2nd respondent cannot be sustained. According to the learned counsel, the petitioner is aged 52 years and that he is due to retire only when he attains the age of 60 and therefore, it cannot be said that the application was filed at the fag end of his career. He would contend that now that the date of birth in the records maintained by the local authority as well as the relevant entry in the SSLC book, has been corrected, there is no justification on the part of the respondents in refusing the correct date of birth in the service records. He would further contend that by seeking correction in service records, the rights of third parties would not be affected as there are no promotion avenues.

5. The learned counsel for the respondents would point out that the issue

as regards correction of date of birth in the service records is no longer integra. The learned counsel would reiterate the contentions in the counter affidavit and would also rely on the law laid down by the Apex Court in Karnataka Rural W.P.(C.) No.26465 of 2021 5 Infrastructure Development Limited vs. T.P. Nataraja and Others [2021

(12) SCC 27], Bharat Coking Coal Limited and Others vs. Shyam Kishore Singh [2020 (3) SCC 411] and Life Insurance Corporation of India and Others vs. R. Basavaraju Alias Basappa [2016 (15) SCC 781].

6. I have heard the learned counsel for parties and have considered the submissions advanced.

7. The petitioner became a member of the 1st respondent on

11.07.2002. His grievance is that at the time of joining the 1st respondent, he had provided his date of birth as 19.4.1971 instead of 13.11.1971. He has managed to get his date of birth as well as the entries in the SSLC book corrected. However, his request for correction of the date of birth in the service records stands rejected on the grounds of long delay. The only question for consideration is whether the same can be sustained under law.

8. It has to be stated at the outset itself that there is no specific Rule or order that puts up an embargo in correcting the date of birth in the service

**records. However, the Apex Court, in a series of binding precedents, has held**

that amendment in the date of birth cannot be claimed as a matter of right, and once the date of birth is entered in the service record as per the educational certificates or documents and accepted by the employee, the same cannot be changed. W.P.(C.) No.26465 of 2021 6

9. In State of Maharashtra and Anr. v. Gorakhnath Sitaram

Kamble & Ors. [(2010) 14 SCC 423] wherein a series of the earlier decisions of this Court were taken note and was held as hereunder : "16. The learned counsel for the appellant has placed reliance on the

**judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj**

Kumar Agnihotri [(2005) 11 SCC 465 : 2006 SCC (L&S) 96]. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

10. In Home Deptt. v. R. Kirubakaran [1994 Supp (1) SCC 155], it was held as under in para 7 :

"7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. 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 their promotion forever. ... According to us, this is an important 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, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal

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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. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book."

11. In *Bharat Coking Coal Ltd. and Ors. v. Shyam Kishor Singh* [2020(3) SCC 411], while considering identical issues, it was observed as under:

Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is *ex facie* fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since R.84 of the M.P. Financial Code does not prescribe the time - limit within which an

application is to be filed, the appellants were duty - bound to correct the clerical error in recording of his date of birth in the service book."

12. In *Karnataka Rural Infrastructure Development Limited v. T.P. Nataraja and others* (2021 (12) SCC 27), it was held under paragraphs Nos. 11 and 12 : W.P.(C.) No.26465 of 2021 8

11. Considering the aforesaid decisions of this Court the law on

changes of date of birth can be summarised as under: i. application for change of date of birth can only be as per the relevant provisions/regulations applicable; ii. even if there is cogent evidence, the same cannot be claimed as a matter of right; iii. application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end service and/or when the employee is about to retire on attaining the age of superannuation.

12. Therefore, applying the law laid down by this Court in the aforesaid

decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled

**to the decree of declaration and therefore the impugned judgment**

and order passed by the High Court is sustainable and not tenable at law. In view of the law laid down by the Apex Court, the application of the petitioner for a change of date of birth is liable to be rejected on the grounds of delay and laches. He is also not entitled to a declaration that the respondents are legally bound to correct the date of birth in the service records. This Writ Petition is accordingly dismissed. RAJA VIJAYARAGHAVAN V, JUDGE NS/19/10/2023 W.P.(C.) No.26465 of 2021 9 APPENDIX OF WP(C) 26465/2021 PETITIONER EXHIBITS : Exhibit P1 TRUE COPY OF THE BIRTH CERTIFICATE ISSUED BY THE SUB REGISTRAR OF BIRTHS AND DEATHS KOLLAM MUNICIPAL CORPORATION.

Exhibit P2 TRUE COPY OF THE RELEVANT PORTION OF THE SSLC BOOK OF THE PETITIONER. Exhibit P3 TRUE COPY OF THE REPRESENTATION DATED 25.08.2021 OF THE PETITIONER. Exhibit P4 TRUE COPY OF THE NOTE NO WF/PON/01 DTD. 08.10.201 ISSUED BY THE 2ND RESPONDENT. Exhibit P6 TRUE COPY OF THE AADHAR CARD NO.3372 8754 Exhibit P7 TRUE COPY OF THE PAN CARD NO. CKUPR0408M RESPONDENT EXHIBITS : Exhibit R1a TRUE COPY OF THE AFFIDAVIT SUBMITTED THE PETITIONER ON 10.6.2002 TO THE 1ST RESPONDENT Exhibit R1b TRUE COPY OF THE CERTIFICATE DATED NIL ISSUED BY GOVT HIGH SCHOOL, CHERIAZHEEKAL TO THE PETITIONER

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