

State of Karnataka Vs. C. Thimmaiah

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Court : Karnataka

Decided On : Aug-26-1988

Reported in : ILR1988KAR3105; 1988(2)KarLJ365

Judge : Prem Chand Jain, C.J. and ;Shivashankar Bhat, J.

Acts : Karnataka State Servants Act, 1974 - Sections 5, 5(1) and 5(2)

Appeal No. : W.A. No. 1749 of 1985

Appellant : State of Karnataka

Respondent : C. Thimmaiah

Advocate for Def. : S.S. Mudalgi, Adv. for M. Narayanaswamy, Adv.

Advocate for Pet/Ap. : Chandrasekharaiah, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Shivashankar Bhat, J.

1. The respondents in the Writ Petition are the appellants. The writ petitioner sought the quashing of an order of the second respondent dated 16th June, 1982 whereby the preliminary objection raised by the writ petitioner against the enquiry in respect of the alteration of the date of birth, was overruled. The said enquiry

was being held under the provisions of the Karnataka State Servants (Determination of Age) Act, 1974 (for short 'the Act'). The learned single Judge allowed the Writ Petition.

2. The facts in brief are:

The petitioner was a Government servant and his date of birth was entered as 13-6-1926 in the service register. However, on 31-3-1979 the Director of Public Instructions sent a communication to the petitioner informing him that his date of birth has been ascertained as 13-6-1922 and sought his explanation as to why he should not be retired on the basis of the said ascertained date of birth. This was challenged by the petitioner in an earlier Writ Petition, which was allowed on 12th September 1980. Writ was issued to treat 13-6-1922 as the date of birth of the petitioner, unless it was corrected according to law i.e., according to the provisions of the Act. Thereafter, the petitioner was permitted to retire on 24th September 1980 with effect from 30th June, 1981. It may be noted here that the age of superannuation at the relevant time was 55 years. Thereafter, the petitioner received a notice on 25th April, 1981 informing him that the enquiry was fixed on 30th May 1981, in respect of the alteration of the date of birth of the petitioner. The petitioner raised a preliminary objection about the jurisdiction to initiate proceedings under the Act after the retirement of the Government servant. According to the petitioner, on retirement, he ceases to be a Government servant and therefore, the provisions of the Act cannot be applied. The learned single Judge accepted the contention of the petitioner and allowed the Writ Petition.

3. In the appeal before us, the learned Government Advocate Sri Chandrasekharaiah, relied upon a decision of a Division Bench of this Court in R.S. KOLOLIMATH v. STATE OF MYSORE, 1970(2) Mys.L.J. 432 wherein, it was held that the Government had the power to hold an ordinary enquiry into the correctness of the date of birth of a Government servant even after the retirement of the said Government servant from service. Relying upon this decision, the learned Government Advocate, wants us to reverse the order of the learned single Judge.

4. The aforesaid decision was rendered prior to the enactment of the Act. There was no particular statute governing the determination of the age of a Government servant and therefore the determination of the age of a Government servant by the Government was subject to any decision of a Civil Court. In the aforesaid case, the decision of the Government superannuating the Government servant concerned from service was invalidated by the Civil Court. The Civil Court had declared that the petitioner was still in service and directed the Government to accept the date of birth as entered in the service register of the petitioner. On an appeal by the State Government to this Court the direction was modified and the direction given by the trial Court to accept the date of birth given by the petitioner as correct was set aside; liberty was given to the Government to hold an appropriate enquiry. Certain amounts were due to the petitioner depending upon the fact whether the petitioner was in service and for the said purpose, his date of birth had to be determined; but when the Government proceeded to determine the date of birth, the same was challenged in the Writ Petition. This challenge was negatived by this Court, firstly, on the ground that the power of the Government was recognised in the decision of this Court in the earlier first appeal. The petitioner therein contended that the determination of the date of birth was on par with a disciplinary proceedings and since the disciplinary proceedings cannot be continued (as the Rules then stood), the enquiry regarding the date of birth also cannot be continued or be held. The contention of the petitioner in the said case, is stated at para-13 of the decision, thus:

'It will be seen from the summary of the arguments given above that the one and only basis thereof is that an enquiry into the correctness of the date of birth of a Government servant is a disciplinary enquiry which may result in the imposition of a penalty or punishment on him. The question is whether such an inference can properly be made.'

This contention was rejected and the conclusion is found at para-15 :

'It is clear, therefore, that the enquiry into the correctness of the date of birth of the petitioner with a view to determine the correct date of his superannuation cannot be regarded as a disciplinary enquiry likely to result in the imposition of penalty.'

It is on this basis, the Division Bench held that the Government had the power to hold an enquiry into the correctness of the date of birth even after the retirement of a Government servant.

5. The situation stood altered after the enactment of the Act in the year 1974 as the preamble of the Act states 'it is expedient to provide for the determination of the age of State servants in so far as it relates to their conditions of service as such State servants'. Section 2 defines the 'State servant' as a person, who is a member of a civil service of the State of Karnataka or who holds a civil post under the State of Karnataka. Section 3 states that every person, on appointment, shall declare his age along with the date of birth, supported by appropriate documentary evidence. Section 3(2) empowers the appointing authority to hold an appropriate enquiry on this question while accepting the age and date of birth. Section 4 imposes a bar against alteration of the age or date of birth, as recorded in the service register, except as provided under the provisions of the Act. The procedure for alteration is found in Section 5, relevant provisions of which are extracted below:

5. Alteration of age or date of birth of State Servants :-(1) Subject to Sub-section (2), the State Government may, at any time, after an inquiry alter the age and date of birth of a State servant as recorded or deemed to have been recorded in his service register or book or any other record of service :

Provided that no such alteration shall be made if the age and date of birth of a State servant has been accepted and recorded or deemed to have been accepted and recorded in the service register or book or any other record of service in pursuance of a decree of a Civil Court obtained by the State servant after he became such servant against the State Government.

Provided further that no such alteration shall be made without giving the State servant concerned a reasonable opportunity of being heard.

(2) No such alteration to the advantage of a State servant shall be made unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book

or any other record of service or within one year from the date of commencement of this Act, whichever is later.'

6. If the alteration of the date of birth has to be made to the advantage of a State servant, the same will have to be sought only as provided under Section 5(2) of the Act. There is a finality attached to the age and date of birth accepted and recorded in the service register etc., if the alteration is not sought within three years from the said date of recording.

It is not necessary to refer to the last clause in the said sub-section for the purpose of this appeal.

7. No similar provision is made under the Act when the alteration as to the date of birth is to be effected to the disadvantage of the State servant. From this, the contention advanced by the learned Government Advocate was that there was no bar at all for the Government to hold an enquiry at any time for which purpose, the learned Counsel refers to Section 5(1) of the Act.

8. We are of the opinion that the contention of the learned Government Advocate has to be answered in the context of the Act and the effect of a decision as to the date of birth of a Government servant. Suppose, the Government servant's year of birth is entered in the service register as 1930, resulting in his retirement in 1988. The Government comes to know that this year of birth is 1925 and he should be retired in 1983 and takes action to correct the date of birth in the year 1982, but is not able to decide the question by 1983. Naturally, until the decision is arrived at, the Government servant has to be in service. If on any day prior to 1988, the decision is arrived at, that the year of birth was 1925, the said Government servant will immediately be superannuated. Since he had rendered service, salary paid to him cannot be recovered back. In this illustration, the upper limit to complete the enquiry will be the year 1988 in which year, whether the enquiry is completed or not, the Government servant will have to be retired. If for any reason, the Government servant retires prior to 1988, again, the enquiry as to the date of birth becomes academic, because, the service rendered by the Government servant even after the correct date of retirement, till he was actually retired, cannot be nullified and payments made to him cannot be recovered back. Having regard to

this effect of the determination of the date of birth, on the relationship between the parties, the scope of the Act has to be understood. Thus, an enquiry after the retirement of the Government servant as to his date of birth will be a futile exercise.

9. The position is not the same, when the date of birth requires alteration at the request of the Government servant, when the existing entry in the service register is to his disadvantage, in the sense, the date of birth entered is an anterior date of his real date of birth. A Government servant, who would continue in service for a longer period, loses the benefit by such an erroneous date. If ultimately he succeeds in establishing the real date of birth, even if he was not working by virtue of the retirement based on illegal date of birth, he may claim the service benefits such as, salary etc. Government servant prematurely, thus retired may argue that in the eye of law, he was still a 'State servant' if the correct date of birth is considered for retirement. This will result in loss to the Government. Therefore, the Act provides a period of limitation under Section 5(2), within which the Government servant should seek alteration of his date of birth.

In the case of a Government servant, who retired much after the real date of retirement, situation is different, as already stated. Further, on such retirement by no stretch of imagination, he can be deemed to be a 'State servant' as defined under the Act. Thus, the Act purposely confines its application to a 'State servant' as defined under Section 2 and the power of the Government under Section 5(1) can be exercised only in respect of a 'State servant' as defined. A retired person cannot be considered to be a member of civil service of the State and he does not hold a civil post. If so, he ceases to be a 'State servant'. In such a situation, Section 5 will not be applicable at all.

10. For the above reasons, we are in agreement with the view expressed by the learned single Judge, Consequently, the appeal fails and is dismissed without any order as to costs.