

Eshwarappa and Another Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Aug-04-2000

Reported in : ILR2000KAR3597; 2000(6)KarLJ418

Judge : Chandrashekaraiah, J.

Acts : Karnataka State Servants (Determination of Age) Act, 1974 - Sections 3(4) and 5(2)

Appeal No. : Writ Petition Nos. 10529 and 10530 of 2000

Appellant : Eshwarappa and Another

Respondent : State of Karnataka and Others

Advocate for Def. : Sri M.B. Prabhakar, High Court Govt. Pleader

Advocate for Pet/Ap. : Sri Ratnagiriswaminathan, Adv.

Judgement :

ORDER

Chandrashekaraiah, J.

1. The petitioners in these writ petitions have sought for a direction to the respondents to correct their dates of birth by substituting the dates of birth as mentioned in the School Leaving Certificates which are produced as Annexure-B

and C respectively.

2. The petitioners were employed as Group D employees in the year 1968 on daily wages. Thereafter, pursuant to the judgment rendered by the Supreme Court in case of Dharwad Daily Wages Association, their services were regularized with effect from 1-1-1990 by Government order dated 24-8-1991. From this order, it is seen that the monthly rated and daily rated workers who have completed 10 years of service as on 31-12- 1989 were absorbed into regular establishment with effect from 1-1-1990 and appointed against supernumerary post. At the time when they joined the service the dates of birth furnished by the petitioners have been mentioned in their service registers on the basis of the horoscope furnished by them. The date of birth of the 1st petitioner has been mentioned in the service register as 12-3-1942 and the date of birth of the 2nd petitioner has been mentioned as 7-6-1942 on the basis of the horoscope furnished by them. This fact is reflected in the letter written by the Executive Engineer to the Chief Engineer in his letter dated 18-7-1998 (Annexure-D).

3. The case of the petitioners is that which their services were absorbed during the year 1991 due to the rush of work, mistake has crept in, in mentioning the dates of birth of the petitioners in their service registers, though they were born on 20-8-1950 and 12-6-1947 respectively as per the School Leaving Certificates and therefore, they have made representations in the year 1992 to the respondents requesting them to rectify the defect by correcting the wrong entries in their respective service registers. The further case of the petitioners is that on the basis of the said representations the Executive Engineer has recommended to the Chief Engineer to correct the dates of birth of the petitioners in the service registers by entering the dates of birth as found in the School Leaving Certificates. The petitioners have School Leaving Certificates. The petitioners have also relied upon the Government order dated 6-8-1990 directing all the subordinate officers to correct the date of birth of the Government servants on the basis of the School Leaving Certificate for the purpose of considering their tenure of service in the Government. On the said representations, since the respondents have not taken any steps to correct the dates of birth of the petitioners, they have filed these petitions for necessary direction to enter the respective dates of birth as found in

the School Leaving Certificates.

4. The learned Government Advocate relying upon the decision of the Court and the Supreme Court and also in view of the provisions of the Karnataka State Servants (Determination of Age) Act, 1974 (hereinafter referred to as the 'Act') opposed the relief prayed for by the petitioners in these petitions.

5. Section 3(4) of the Act, reads as follows:

'(4) Bar of alteration of age except under the Act. Notwithstanding anything contained in any law or any judgment, decree or order of any Court or other authority, no alteration of the age or date of birth of a State servant as accepted and recorded or deemed to have been accepted and recorded in his service register or book or any other record of service under Section 3 shall, insofar as it relates to his conditions of service as such State servant, be made except under Section 5'.

Section 5(1)(2) of the Acts reads as follows:

'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'.

Under sub-section (1) of Section 3 every person on appointment as a State servant shall declare his age along with the date of birth and support of such declaration shall furnish to the Appointing Authority documentary evidence, namely, authenticated extract from the birth or baptismal register, original horoscope or correspondence contemporaneous with the time of birth. As seen from Annexure-D, which is a letter written by the Executive Engineer to the Chief Engineer the dates of birth of the petitioners have been mentioned in the service register on the basis of the horoscope furnished by them. Horoscope is also one of the documents which can be relied upon. Accordingly, the dates of birth of the petitioners have been accepted by the State at the time of their appointment either on daily wages or at the time of regularisation. The date of birth so recorded is subject to any alteration made under Section 5 of the Act. Sub-section (2) of Section 5 of the Act provides a remedy for the State servant to make an application for the purpose of alteration of the date of birth entered in the service register within three years from the date on which his age and date of birth is accepted and recorded in the service register or book within one year from the date of commencement of the Act whichever is later. It is not the case of the petitioners that they have made any application before the Competent Authority seeking for alteration of their age as provided under Section 5 of the Act. If that is so, they have no legal right to ask the respondents to change their dates of birth in the service registers on the basis of the School Leaving Certificate. Normally when a person is employed his tenure of service will be counted on the basis of the date of birth given by him at the time of joining the service. Therefore, in view of the provision referred to above, the date of birth given by the employees which was accepted and entered in the service register is binding both on the employer and the employee unless altered in the manner provided under the Act. In the absence of any order as provided under Section 5 of the Act, the petitioners have no legal right to ask the respondents to alter the dates of birth, in their service registers.

6. The learned Counsel for the petitioner relying upon a decision of the Division Bench of this Court in the case of *Mullaiah v State of Karnataka and Others*,

submitted that it is a fit case to direct the respondents to determine the dates of birth of the petitioners in the first instance with a further direction to the respondents not to retire the petitioner from service on the basis of their disputed dates of birth. This decision has no application to the facts of this case. In that case, the petitioner had made application/representation to the competent authority for alteration of his date of birth as required under Section 5(2) of the Act well-within the period of limitation, but no steps were taken to consider the said application. In the case on hand it is not the case of the petitioners that they have made any application within time for correction or alteration of their dates of birth. Further, it is also not the prayer of the petitioners in this petition for a direction to competent authority to consider and dispose of their applications which were said to have been filed before the competent authority. Therefore, the decision referred to above is of no assistance to the petitioners.

7. The Supreme Court in the case of *Burn Standard Company Limited and Others v Dinabandhu Majumdar and Another*, has held as follows:

'Ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement'.

The Supreme Court in the case of *Secretary and Commissioner, Home Department and Others v R. Kirubakaran*, has held as follows:

'If an application is made for correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the event of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the

Tribunal concerned should be more cautious because of growing tendency amongst a section of public servants to raise such a dispute, without explaining as to why this question was not raised earlier'.

The petitioners joined the service in the year 1968 on daily wage basis. Their services were regularized in the year 1991, whereas these petitions have been filed in the year 2000, when they were about to retire from service on the basis of their dates of birth mentioned in the service register. Even assuming that the petitioners have made an application for correction of their dates of birth in the service registers in the year 1992, nothing prevented the petitioners to come to this Court within a reasonable time, whereas these petitions have been filed when they are about to be retired from service. As stated earlier the moment a person is employed, the contract will be based upon the date of birth and age given by the employee, which determines the period of service. Therefore, since these petitions have been filed at the fag end of their service and in view of the law laid down by the Supreme Court referred to above, these are not fit cases which call for interference in exercise of the discretionary writ jurisdiction under Article 226 of the Constitution of India.

In the result, I pass the following order.-

Writ petitions are rejected.

No costs.

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