

V.Ramachandra Vs. Syndicate Bank, Head Office, Manipal D.K. District and Another

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Court : Karnataka

Decided On : Mar-16-1999

Reported in : ILR1999KAR3971; 1999(6)KarLJ311

Judge : H.L. Dattu, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 4842 of 1997

Appellant : V.Ramachandra

Respondent : Syndicate Bank, Head Office, Manipal D.K. District and Another

Advocate for Def. : Sri Radhesh Prabhu for ;M/s. Tukaram S. Pai, Adv.

Advocate for Pet/Ap. : Sri M.C. Narasimhan, Adv.

Judgement :

ORDER

1. This is not one of those usual cases, where an employee/officer of an organisation goes before his employer, just before his retirement from service seeking correction of his date of birth entered in his service records, but a case of an employer - a nationalised Bank, modifying the date of birth at the fag end oT

the career of the employee/officer as different from the one earlier recorded. This action and the consequent order made, is questioned by the petitioner and his learned Counsel Sri M.C. Narasimhan, primarily on the ground that even if there is no period of limitation prescribed, any action for correction of date of birth entered in the service records by the employer must have been done without any unreasonable delay and this Court exercising its discretionary jurisdiction should not come to the aid of the employer, who had slept over the matter for nearly three decades and the general principle of refusing relief on the grounds of laches or stale claims should be applied and the order made by the employer modifying the date of birth in the service records of the petitioner should be annulled. In the normal circumstances, the assertion of the learned Counsel could not have been denied, but, in the peculiar circumstances of this case, it is difficult to accept the thinking of the learned Counsel. Let me now briefly notice the facts of the case. They are:

On 27-6-1968, petitioner had applied for employment in the respondent-Syndicate Bank as an officer-trainee. In the said application so filed, he had mentioned his date of birth as 8-3-1940 and had also produced the S.S.L. Certificate in proof of his date of birth, where it was mentioned his date of birth as 21-2-1939. Pursuant to the request made in the application, petitioner was appointed as officer-trainee by the Bank and he joined the service of the Bank as officer-trainee on 9-12-1968. At the time of entry into the Bank's service, his service book had been prepared and the date of birth was recorded as 8-3-1940 though S.S.L. Certificate filed by the petitioner specifically mentioned the date of birth of the petitioner as 21-2-1939. Within a month of joining service, the respondent-Bank by its letter dated 15-1-1969 informed the petitioner to produce an attested copy of certificate of birth as there is discrepancy relating to his date of birth mentioned in the application and the S.S.L. Certificate produced. In reply to this communication, petitioner informed the authorities of the Bank that he has approached the jurisdictional Court for rectification of the date of birth and as soon he receives communication from the Court, he will revert back to them. The communication of the petitioner dated 22-1-1969 is relevant for the purpose of the case. It is extracted and reads as under:

'Manipal

January 22, 1969

The Staff Controller,

Syndicate Bank Limited,

Staff Department,

MANIPAL.

Sir,

Date of Birth

With reference to your letter No. 1754 dated 15-1-1969, I wish to state that the correct date of my birth is only 8-3-1940 and not 21-2-1939. I could trace the correct date only in the middle of 1968 from Elementary School records. A petition has been filed by me in the Magistrate's Court, South Arcot, Cuddalore for rectification of the error and the petition is under consideration of the Court. I am pursuing the matter and shall revert as soon as I get Court's communication.

Yours faithfully,

(V. Ramachandran

Officer-Trainee)'.
2. Thereafter, there was total silence on both sides. Though the date of birth recorded in the S.S.L. Certificate was 21-2-1939, the respondents continued to mention the date of birth of the petitioner as 8-3-1940 not only in their service records but in all seniority lists of the officers prepared and published from time to time.

3. It appears, respondent-Bank had prepared the list of officers due to retire from Bank's service in February 1997. Coming to know of this information, petitioner by his letter dated 2-4-1996 informs the Bank by merely reiterating that his correct

date of birth is 8-3-1940 and he should be retired only in March 1998. By yet another letter dated 17-9-1996, petitioner once again informs the Bank that his correct date of birth is 8-3-1940 and in support of that had enclosed photo copy of the staff card despatched from the Head Office to the Branch, where petitioner had been posted after completion of initial period of training. In response to these communication, the Bank by its letter dated 4-10-1996 informed the petitioner that as per their service records, the date of birth of the petitioner is recorded as 21-2-1939 and he had to retire from service after attaining the age of superannuation on 28-2-1997 and this was followed by another communication dated 16-10-1996 reiterating their earlier stand that petitioner's correct date of birth as noted in their records as 21-2-1939 and not 8-3-1940 as claimed by him in his letters/representation. The said communication is as under:

'We have for reference your letter dated 14-10-1996 sent under cover of letter No. 1519/0446/BWSSB/STF dated 14-10-1996. We have gone through the contents of your letter carefully and would like to state as under:

1. At the time of joining the Bank, you had mentioned the date of birth as [9-4-1940] in the application (OG 85) dated 27-6-1968, date of birth stated in the application is always accepted when the same is supported by necessary proof/evidence. In your case, though in the application it was stated that your date of birth is 8-3-1940, the supporting evidence i.e., the Secondary School Leaving Certificate revealed your date of birth as 21-2-1939.

2. As soon as the discrepancy was noticed, Bank had written to you vide letter No. 1754 dated 15-1-1969 seeking clarification regarding the correct date of birth and also advising you to produce attested copy of certificate of date of birth. In reply vide letter dated [22-1-1970] you informed the Bank that a petition has been filed in the Magistrate's Court at South Arcot, Cuddalore for rectification of the error and the petition is under consideration of the Court, and shall revert as soon as the Court's communication is received.

3. Failure on your part to produce satisfactory evidence in support of the date of birth mentioned in the application form even after the same was called for specifically by the Bank shall not be construed as having accepted the date of birth

furnished on OG 85. On the other hand it amounts to your giving a wrong declaration regarding the date of birth which is a serious matter. Also you will note that the date of birth mentioned in the seniority list is not the conclusive proof and only the date of birth as noted in the individual file supported by satisfactory evidence is the correct date of birth.

4. While you have tried to put forth your plea that the correct date of birth should be 8-3-1940, you have not cared to explain the circumstances under which you have failed to produce necessary evidence in support of the same nor about the outcome of the petition filed by you in the Court at Cuddalore as informed to the Bank in 1969.

Under the above circumstances, we would like to once again reiterate that your correct date of birth as noted in our records is 21-2-1939 on the basis of documentary evidence submitted while joining the service and your contention that the same should be 8-3-1940 is not acceptable'.

4. Petitioner after some more correspondence and replies by the respondent-Bank just a few days earlier to his retirement from service has approached this Court in a petition filed under Article 226 of the Constitution, inter alia seeking a writ to quash the communication of the respondent-Bank in No. PD:PAS:DGM:PNL:1289:0087 dated 16-10-1996 and further for a direction to the respondents to forbear from effecting retirement of the petitioner before he would attain the age of superannuation in the month of March 1998.

5. This Court while entertaining the petition had not granted any interim prayer, though sought for. Accordingly, petitioner was retired from service in the month of February 1997 itself.

6. Respondent-Bank, has filed its detailed statement of objections, resisting the reliefs sought for by the petitioner. Further, they assert that petitioner should have produced the appropriate documents as informed through their circulars dated 3-2-1971, 1-6-1972 and 10-1-1997 for correction of his date of birth in his service register. Since petitioner failed to produce the material documents, they assert, that competent authority of the respondent-Bank has taken the correct date of birth

of the petitioner as 21-2-1939 which is noted in the S.S.L. Certificate produced by him along with his application filed seeking employment in the bank, though in the application the date of birth was specified as 8-3-1940.

7. Sri M.C. Narasimhan, learned Counsel appearing for the petitioner, apart from reiterating the grounds urged in the petition in support of the main relief, submits that the impugned communication dated 16-10-1996 issued by the bank requires to be set aside not only on the ground of arbitrariness, but also on delay and laches on the part of the bank in modifying the date of birth entered in the service registers of the petitioner at the fag end of his service/career, and further submits that this Court frowns on an aggrieved person, when he approaches this Court for correction of his date of birth entered in the service records on the eve of his retirement on the ground that the entries made in the service registers should not be modified/corrected, who had not made any claim for correction of his date of birth entered in the service register within a reasonable time, since Courts are not expected to decide the stale claims and come to the aid of those persons who had slept over their rights, even if it amounts to abridging rights of the persons to continue in service on the basis of his actual age. Therefore, submits that the respondent-bank having accepted the date of birth of the petitioner as 8-3-1940 and having noticed it in several seniority lists prepared and published from time to time, the respondents are estopped at this belated stage to rake up the issue which had been accepted for nearly three decades. Therefore, submits, the impugned communication of the respondents requires to be set aside on the ground of delay and laches and further as most unfair and unjust and further to direct the respondents to continue the service of the petitioner notionally till March 1998 and to grant consequential monetary benefits.

8. Sri Radesh Prabhu, the learned Counsel for the Bank ably justifies the impugned communication and also produces records maintained by the Bank relating to service profile of the petitioner.

9. Having carefully considered the legal issues canvassed by the learned Counsels for the parties, the issues which require to be considered and decided are:

1. Whether the impugned action and communication of the Bank requires to be rejected on the sole ground of delay and laches on their part while correcting the date of birth of the petitioner in their service records?

2. Whether the respondent-Bank should have accepted the correct date of birth of the petitioner as 8-3-1940 as mentioned in his application for employment in the Bank?

3. Whether the action of the respondent-Bank is justified, for taking into consideration the date of birth mentioned in the S.S.L. Certificate produced by the petitioner along with his application?

4. Whether any relief can be granted to the petitioner?

10. Re. Issue No. 1: At the time of entry into Bank's service, petitioner's service book had been prepared and the date of birth was recorded as 8-3-1940, though he had produced S.S.L. Certificate along with his application seeking employment in the Bank, where it was specifically mentioned as 21-2-1939 and the said date continued to be reflected in the seniority lists prepared and published by the respondent-Bank is not in dispute. It is also not in dispute that the date of birth of the petitioner in the S.S.L. Certificate issued by District Education Officer, South Arcot, Cuddalore, is 21-2-1939. Further, it is also not in dispute that the respondent-Bank by their letter dated 15-1-1969 had informed the discrepancy about petitioner's date of birth mentioned in the application filed for seeking employment in the Bank and supporting documentary evidence produced along with the application and had directed the petitioner to produce the attested copy of the certificate of birth. It is also not in dispute that the petitioner had informed the Bank that he could trace the correct date of birth in the middle of 1968 from elementary school records as 8-3-1940 and he has made appropriate petition before Magistrate's Court, South Arcot, Cuddalore, for appropriate rectification in the date of birth certificate and that petition is under consideration and he would revert back to them as soon as he receives communication from the Court. This correspondence clearly demonstrates that the respondents had not accepted the correct date of birth of the petitioner as 8-3-1940 in the absence of necessary proof of attested copy of the certificate of birth. Petitioner, who had promised the

Bank that he would revert back to them after he received appropriate communication from the Jurisdictional Magistrate's Court, kept silent all along, in spite of circulars issued by the Bank informing the employee/officer to immediately furnish to the Head Office, Staff Department evidence of his correct date of birth and in those circulars, it was also made clear that the acceptable evidences are attested true copy of the first page of Secondary School Leaving Certificate or extract of register of Births and Deaths or Church Registers and yet was taking whatever benefits available under various seniority lists wherein it was mentioned that the date of birth of the petitioner as 8-3-1940. It was not only the duty and obligation but also the responsibility of a Senior Officer of the Bank to have produced appropriate documentary evidence in support of his claim that his actual date of birth is 8-3-1940 and not 21-2-1939 as reflected in the S.S.L. Certificate. This Court cannot expect and also should not expect in a big organisation like Syndicate Bank, where thousands of employees/officers are working to keep track of one file and to find out whether the officer has complied with the directions issued by them in their communication. If anybody has to be blamed, it is the petitioner alone and not the respondent-organisation. Therefore, merely because respondents continued to reflect the date of birth in the seniority lists as indicated in the petitioner's application form while entering into Bank's service, till they made appropriate corrections, it cannot be said, the Bank was estopped from correcting the date of birth after complying with rules of natural justice. In my view, since the action of the respondent-Bank is not unilateral and since they had not accepted the date of birth as mentioned in the application filed for seeking employment in the Bank, it cannot be said that there is delay and laches on the part of the respondent-Bank, while correcting the date of birth of the petitioner in their service records. Therefore, the first issue is answered in the negative and in favour of the respondent-Bank.

11. Re. Issue Nos. 2 and 3: An employee/officer, while seeking an appointment in the Bank is expected to file appropriate application by giving all the details required in the application and also supporting documentary evidence to substantiate the claim. Petitioner while seeking employment in the Bank as officer-trainee had filed an application dated 21-6-1968 and therein he had mentioned the date of birth as 8-3-1940 but the supporting S.S.L. Certificate produced, which was

issued by the competent authority had mentioned the date of birth of the petitioner as 21-2-1939. The Bank had taken the date of birth of the petitioner as 8-3-1940 but had intimated to him right in the beginning itself to produce appropriate document to accept his date of birth, since the date of birth entered in the service records is of utmost importance for the reason that the right to continue in service stands decided by its entry in the service records. Thereafter, Bank had issued several circulars informing the employees of the Bank to furnish the evidence of their correct date of birth. They had also made it clear that the acceptable evidence would be either attested true copy of the first page of Secondary School Leaving Certificate or the extract of Register of Births and Deaths or Church records. In spite of personal communication and in spite of these circulars, petitioner did not care to produce the appropriate documentary evidence of his date of birth to substantiate his claim made in the application dated 27-6-1968 and therefore after intimation, the authorities of the Bank have treated the correct date of birth of the petitioner as 21-2-1939, entirely basing on the S.S.L. Certificate produced along with the application seeking employment in the Bank. Therefore, respondents are justified in not treating the date of birth of the petitioner as 8-3-1940. Therefore, second and third issue is answered against the petitioner.

12. For the reasons stated, petitioner cannot claim as a matter of right to continue in service till March 1998. Therefore, petition is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs.

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