

Basavaraju Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-08-1999

Reported in : 1999(6)KarLJ445

Judge : R.V. Raveendran, J.

Acts : Karnataka State Servants (Determination of Age) Act, 1974 - Sections 2, 3(4) and 5(1 and 2);

Appeal No. : Writ Petition No. 212 of 1998

Appellant : Basavaraju

Respondent : State of Karnataka and Others

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

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

Judgement :

ORDER

1. Petitioner claims that he was working as a daily wage employee from 1-7-1974 in the Gubbi Sub-Station, Public Works Department. As per the order of the Chief Engineer (C and B), Bangalore, dated 4-8-1984, the petitioner who was working as a Gangman in NMR, was absorbed on the monthly rated establishment on a consolidated pay of Rs. 300/-per month, with effect from 13-1-1984. A service

register was opened in regard to the petitioner in the year 1984 after receiving the necessary particulars from the petitioner with an affidavit in regard to his date of birth. The date of birth was entered as 1-7-1941 in the service register. After completion of ten years of service, petitioner's services were regularised. The petitioner has retired on 30-6-1999 on the basis of the said date of birth entered in the service register.

2. Petitioner gave an application on 4-1-1996 for altering the date of birth from 1-7-1941 to 18-9-1950 on the ground that in the School record his date of birth is entered as 18-9-1950. The said request for alteration of date of birth was rejected as per endorsement dated 22-8-1997 (Annexure-B) issued by the second respondent. Feeling aggrieved, petitioner has filed this petition and sought quashing of Annexure-B and a direction to the respondents to correct the date of birth as 18-9-1950 in the service register in place of 1-7-1941.

3. The learned Government Pleader was directed to secure the records and the original service register. He has accordingly produced the same. The service register disclosed that it was opened in the year 1984 when the petitioner was ordered to be absorbed into monthly rated establishment of the Assistant Executive Engineer, No. 2 PWD Sub-Division, Gubbi. The petitioner contends that even though he was taken on the monthly rated establishment with effect from 13-1-1984, his services were regularised with effect from 1-1-1994 as per order dated 14-12-1995; and, therefore, having regard to Section 5(2) of the Karnataka State Servants (Determination of Age) Act, 1974 (the Act', for short), he is entitled to make an application within three years from the date on which his services were regularised; and as the regularisation was with effect from 1-1-1994, and the application for alteration was given on 4-1-1996 within three years, it could not have been rejected, but ought to have been considered under Section 5(2) of the Act.

3-A. Section 3(4) of the Act provides that the age and date of birth accepted and recorded or deemed to have been accepted and recorded in the service register or book or any other record of service under sub-section (2) or sub-section (3), shall subject to any alteration made under Section 5, be applicable for all purposes

relating to the conditions of service including superannuation and retirement of the State servant concerned.

4. Sub-section (1) of Section 5 of the Act provides that the State Government may, subject to sub-section (2), at any time, after an enquiry 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. Sub-section (2) provides that no alteration of age or date of birth, 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 the Act, whichever is later.

4.1. It is clear from Section 5 that the State Government may alter the date of birth of a State servant any time, without the shackle of limitation, after a due enquiry; but the State servant cannot seek alteration, after the expiry of three years from the date on which the age and date of birth is accepted and recorded in the service register. The reason for such distinction is obvious. The State Government (employer) will have no knowledge about the date of birth of the employee, except information disclosed, and documents produced, by the employee, at the time of being engaged or appointed. If the employee gives a wrong age (normally an age lesser than the actual age, to have a longer tenure of service), and it is entered in the service register, the State Government should be in a position to correct the age at any time, so as to ensure that an employee does not continue in service beyond the age of superannuation, by either fraud or misrepresentation. Therefore, no limitation is prescribed in regard to the employer's power to correct the date of birth, whenever it learns that a lesser age has been declared by the employee (even bona fide).

4.2. On the other hand, the employee knows or is deemed to know his date of birth. Hence, if the date of birth given by him is entered in the service register, such declaration normally binds him, unless he is able to establish by clear and indisputable evidence that his date of birth is different from what is entered in the service register and he was unaware of the correct date of birth, when he declared

his date of birth to the State Government while seeking employment. Invariably such requests will be made by the employees, only for reducing the age so as to have a longer period of service. Human tendency being what it is, the State Government seldom gets any request from an employee to correct the date of birth so as to increase his age and reduce the period of service. If the request for change is not made by the employee within reasonable period from the date of the employee's declaration of his date of birth for purposes of employment, it will be difficult, if not impossible for the State Government to verify the correctness of the employee's claim. Further, a position (regarding date of birth), accepted and settled should not be altered after a long time. Therefore, there is a need to put a limit to the period within which such a request can be entertained. If within such period, the request is not made, the accepted date of birth will remain unaltered, even if it is subsequently established or proved that such date is erroneous.

5. In this case, the fact that the service register was opened in the year 1984 by the State Government after due enquiry, when petitioner was taken on the monthly rated establishment, is not in dispute. In fact, petitioner had furnished an affidavit of his near relative, swearing personal presence at the time of petitioner's birth on 1-7-1941. In view of it, it is possible that the date of birth entered in the School Certificate is an erroneous one. Be that as it may. The application for alteration was filed by the petitioner only on 4-1-1996, twelve years after the recording of the date of birth in the service register. Petitioner could not have made an application three years after the date of birth is entered. Hence, it was hopelessly barred by time and rejection of the request for change, is therefore in accordance with the provisions of the Act.

6. The petitioner contends that the three year period for making an application should be reckoned not from the date of entry in the service register, but from the date of his regularisation. The petitioner relied on Sections 2 and 3 of the Act to contend that the three year period specified in Section 5(2) should be reckoned from the date when he was regularised and became a permanent State servant. Section 2 defines 'State servant' for the purpose of the Act, as a person who is a member of the Civil Service of the State of Karnataka or who holds a civil post under the State of Karnataka. The relevant portions of Section 3 relied on by

petitioner are extracted below:

'3. Determination of age on entry into State services:

(1) Every person on appointment as a State servant shall declare his age along with the date of birth, and in support of such declaration shall furnish to the appointing authority, documentary evidence, namely, an authenticated extract from the birth or baptismal register, original horoscope or correspondence contemporaneous with the time of birth indicating the date and time of birth, an authenticated copy or extract from the entries made in school or college records indicating the date of birth:

Provided that where any such document is not available, the reasons for its non-availability shall be furnished along with such other documentary evidence in support of the declaration of the age and date of birth as the appointing authority may require.

(2) The appointing authority shall notwithstanding anything contained in any judgment, decree or order of any Court after considering the evidence produced by the State servant and after such enquiry as it deems fit, accept the age and date of birth which in its opinion is satisfactorily established; and shall inform the State servant and shall record or cause to be recorded in the service register or book or any other record of service of the State servant the age and date of birth so accepted:

xxx xxx xxx.(3) xxx xxx xxx.(4) The age and date of birth accepted and recorded or deemed to have been accepted and recorded in the service register or book or any other record of service under sub-section (2) or as the case may be sub-section (3), shall subject to any alteration made under Section 5, be applicable for all purposes relating to the conditions of service including superannuation and retirement of the State servant concerned'.

The petitioner contends that the Act contemplates the age and date of birth of a 'State servant' being recorded in the service register and the term 'State servant' refers to a permanent State servant; that he became a State servant only on 1-1-

1994 and that too by virtue of order dated 14-12-1995; and therefore the limitation for an application for rectification specified in Section 5(3) can be reckoned only from 14-12-1995, and at all events only from 1-1-1994, and not from 13-1-1984.

7. The term 'civil servant' includes not only persons who hold a substantiate or permanent posts, but also persons who hold temporary or contractual appointments. The 'State servant' in Section 2, would include employees on the monthly rated establishment of any Department of the State Government. Further, Section 5(2) does not distinguish, insofar as date of birth accepted and recorded in the service register/book, permanent State servants and other State servants; nor does it contemplate the three year period being reckoned only from the date of regularisation or permanent employment. The service after regularisation, is in continuation of the earlier non-permanent service. Regularisation is a hybrid equitable concept, evolved to render justice to persons who have served the employer (Government/Authority) for a long period, albeit temporary. For the purpose of maintaining a service register, service after regularisation is a continuation of the earlier temporary service. Therefore, when the service of a person taken on the monthly rated establishment is regularised, his service register opened at the time of entering the temporary service is continued in regard to the permanent service.

8. Where the wording of the statute is clear and unambiguous, it is not possible to read more than what is stated therein. Section 5(2) provides that the application for alteration should be made by the State servant within three years from the date on which the age and date of birth is accepted and recorded in the service register. In this case, the age and date of birth was accepted and recorded in the service register in the year 1984 itself. When that is so, the petitioner cannot contend that the application for alteration of date of birth filed on 4-1-1996 is in time. As the application for alteration has been made beyond the three year limit prescribed under Section 5(2) of the Act, it is liable to be rejected.

9. The petitioner next contended that it is clear from the school record that his date of birth is not 1-7-1941 but 18-9-1950 and he will be losing nearly nine years if the date of birth is not corrected. Before examining whether the date of birth has been

correctly entered, it is necessary to consider whether the date of birth that has been entered can be corrected at all, at that stage. The general principle is that when a person is employed, the contract is based on the date of birth or age given by the employee, and that will determine the period of service. Having regard to the provisions of the Act, the date of birth that was given by the petitioner and accepted and entered in the service register is binding for all purposes, unless altered in the manner provided. Even if such date of birth is wrong, it is binding and the petitioner is not entitled to seek alteration. Petitioner, therefore, cannot have any legal grievance in regard to rejection of the request for alteration of his date of birth.

10. Petition is accordingly rejected.

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