

K. Pulla Reddy Vs. Director of Survey Settlement and Land Records, Govt of A.P. and Others

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Court : Andhra Pradesh

Decided On : Mar-02-2001

Reported in : 2001(2)ALD511

Judge : S.B. Sinha, CJ and ; S.R. Nayak, J.

Acts : Andhra Pradesh Civil Services Code - Rule 3; [Evidence Act, 1872](#) - Sections 35

Appeal No. : WP No. 1903 of 1999

Appellant : K. Pulla Reddy

Respondent : Director of Survey Settlement and Land Records, Govt of A.P. and Others

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : Mr. M. Subba Reddy, Adv.

Judgement :

ORDER

S.B. Sinha, CJ

1. The short question which arises for consideration in this application is as to whether the respondents acted illegally in directing the petitioner to retire taking his date of birth as 1-7-1939 instead and place of 31-12-1941. At the time the petitioner was appointed in the year 1958 his date of the birth was recorded in his service book as 1-7-1939. However, on representation of the petitioner or otherwise his date of birth was corrected and a new page was added in his service book and his date of birth was purported to have been recorded as 31-12-1941. Upon discovery of the fraud purported to have been committed by the petitioner a proceeding was initiated on 27-11-1997 stating that as there had been a variation in the date of birth of the petitioner in his service book he was asked to appear on 22-12-1997 along with his explanation and enquiry was caused to be made even in the schools where the petitioner had allegedly read and it was found that the petitioner is guilty of commission of fraud. The learned Tribunal inter alia held that although the petitioner's date of birth is said to be 31-12-1941 such papers were found in the disposal records of the year 1940 itself i.e., before his date of birth. The petitioner has not been able to prove that at the time of entry into service he submitted an educational certificate showing his date of birth as 31-12-1941 and admittedly he produced such a certificate only on 10-6-1992. On perusal of the service book it was found that the first page was removed and a new sheet was replaced in its place. It was further held:

'To my dismay, it is noticed that the first page of the service book was removed and a new sheet was replaced in its place. The relevant entries including his date of birth are found in the second page of the said sheet and it is said to have been signed by the then MRO Penagaluru of Cuddapah district on 1-4-1987. The office clerk who made such entries counter signed the same on 25-3-1987. Therein his date of birth is written as 31-12-1941. Therein the necessary entries were made that he passed intermediate in March, 1985 vide marks sheet Sl.No.08955 and Regd. No.008793. His service record consists of four volumes. In the second volume at page-2, on 20-2-1983 necessary entries are made to show that he passed his SSC. The fact remains that entries pertaining to his Intermediate qualification are made in the second page of his service book in the first volume itself as already stated. Admittedly a new sheet was replaced in the first volume itself as already stated. Admittedly a new sheet was replaced in the first volume of

his service book. When the same is brought to the notice of the applicant's Counsel in open Court it is admitted that a new sheet was replaced in place of the old sheet'.

2. It was also found that except the first sheet of the first volume all the four volumes of the service book are elegantly maintained including the family benefit card of the year 1977 and other relevant entries which were made from 1958 to 1977 attached to the first volume are in tact. The circumstantial evidence shows that only the first sheet of the service book is replaced with a different sheet which speaks volumes about the fraudulent act of the appellant in getting the sheet replaced. It was held:

'Thus there is any amount of truth in the assertion of the respondents that the applicant alone is responsible for tampering with the service book in his vain attempt to establish that his date of birth is 31-12-1941 instead of 1-7-1939. In the counter it is indicated that the applicant produced a certificate dated 30-4-1952 and the same was found to have been issued in a file which was closed on 4-2-1940 by District Educational Officer, Kurnool'.

3. The learned Tribunal also found that the petitioner has purported to obtain further education without getting any prior permission from the department in violation of Rule 3 of the Andhra Pradesh Civil Services Code.

4. The learned Counsel appearing on behalf of the petitioner inter alia submitted that the learned Tribunal went wrong in arriving at the aforementioned findings of fact relying upon the purported circumstantial evidence and without taking into consideration even the seniority list wherein also his date of birth was wrongly recorded. According to the learned Counsel the service records were in the custody of the respondents and there was no occasion for him to intermeddle therewith so as to enable him to cause any interpolation. It has been pointed out that the said replaced page contains the signature of the Mandal Revenue Officer.

5. The learned Counsel appearing on behalf of the respondents, on the other hand, produced before us also the records. Before the Tribunal as also before us it stands admitted that the first page of the service book has been replaced in the

year 1987. It appears from the said service book that the same bears the signature of the Mandal Revenue Officer, Penagaluru of Cuddapah district.

6. It is beyond anybody's comprehension as to why only the first page had to be replaced. If pursuant to or in furtherance of any application filed by the petitioner any correction is required to be made, the same was required to be done upon initiation of a proceeding and passing of an order therefor. Such corrections could have been made by the competent authorities in the service book itself and there was absolutely no necessity as to why the first page of the said service book should be torn and replaced by another countersigned by the Mandal Revenue Officer only whereas the competent authority therefor is the Assistant Director of Survey and Land Records, Cuddapah which authority had put his signature on the other relevant pages of his service book.

7. The petitioner passed the secondary school certificate examination as a private candidate in March, 1982. Apart from the fact that he did not obtain the prior permission therefor as is required in law normally such a certificate is not accepted.

8. In *S.A. of India Ltd. v. S.K. Chakrabarty*, 1991 (62) FLR 766, it has been held:

'..... Mr. Som, learned Counsel submitted that in the case of regular student recording of date of birth is maintained in the school register and on the basis thereof School Final Certificate is issued by the Higher Secondary Board. In the case of private candidate no such recording is ever made. Therefore, Mr. Som, contended that the recording of age of a regular student cannot be equated with that of a private candidate. In our view there is some force in the contention of Mr. Som and it appears from the record that the learned trial Judge has proceeded solely on the basis of the age as recorded in the School Final Certificate granted by the West Bengal Board of Secondary Education as a private candidate'.

9. In *Saroj Kumar Bhattacharya v. Bengal Immunity Ltd*, 1994 (1) Cal.LJ 79, it has been held:

'6..... When allegation is made by the Management on affidavit that not only he had declared his age at the time of entering of service. But four years thereafter he had also made a voluntary declaration about his age supported by a horoscope and for long 17 years he was keeping significantly silent when his allegation is made in the affidavit-in-reply, in that event the Court is bound to accept the position that he had no explanation to offer in this regard. He cannot be allowed to go back from the admission already made in this behalf which is binding on him. The Company was originally a private company. The company was taken over the Government of India undertaking on 18th May, 1978 and only thereafter a move was made to get his date of birth corrected on the basis of age recorded in the School Final Certificate in which he appeared as a private candidate wherein he had put his date of birth according to his choice. Subsequent document/documents which had come into existence subsequent to his admission cannot be made a ground for correcting something with retrospective effect. The Special Bench of this Court in that case decided that any contemporaneous document which could not be produced because the reason is beyond the control of an employee concerned only in that even the said contemporaneous document may be made a basis for claiming the case for correction of a date of birth at a later date and not otherwise'.

10. In *P.K. Mukherjee v. Steel Authority of India Ltd.*, 1996 (1) CHN 347, it has been held:

'11. However, in this case the date of birth of the petitioner was recorded in the Service Book on the basis of his own declaration and on the basis of the School Leaving Certificate produced by him. He, therefore, normally cannot shift his stand on the basis of a self-serving declaration regarding his date of birth while appearing at the School Final Examination as a private candidate.

12. In *Steel Authority of India Limited v. Sudhendu Kumar Chakraborty and others*, reported in 1991 (62) FLR 766, a Division Bench of this Court has held that recording of age of a regular student cannot be equated with that of a private candidate in the School Leaving Certificate. The Division Bench in that case directed that the entry made in the Service Book on the basis of a Medical Examination held in the year 1958 may be acted upon in the interest of justice.

13. In *Saroj Kumar Bhattacharya v. Bengal Immunity Ltd.*, reported in 1994 Vol. I CLJ 79, a Division Bench of this Court held that there is a distinction between a student who had passed as a regular student and as private student. The Division Bench observed: 'In the instant case the School Final Certificate was not a contemporaneous document and there is a distinction between a student who had passed as regular student and as a private student. In case of regular student, the age/date of birth is registered with the register of the school where the School Authority insist upon production of some records or documents or statements made from the guardian and the same is also considered in view of the appearance of the boy by the trained and experienced teachers and in such a case there is a very little scope for suppressing the real age or to manipulate the age before the teachers who are dealing with thousand of similar students and in that case age recorded in the School Register is reflected in the Matriculation or School Final Certificate. That age is accepted because of certain safeguards therein. But in case of a private student the Board accepts the age declared by the candidate in the application form, without any verification and in case of a private candidate any age may be declared suppressing real age and there is no machinery or there is no check and balance for verifying the actual age'.

14. In the *National Airport Authority v. M.A. Wahab*, reported in 1994 (68) FLR 1183, the Supreme Court pointed out that the petitioner thereof had also filed a School Certificate at the time of his appointment wherein his date of birth was recorded and the same formed basis for the entry in his Service Book. In the aforementioned case the Supreme Court also stated in the law that a stale claim should not be entertained.

15. Similar view has been taken by the Allahabad High Court in *R.S. Mehoratra v. Central Government Industrial Tribunal*, reported in 1991 (63) FLR page 76 wherein it was held that documents which came in evidence subsequent to the date of entry in the service cannot be relied upon'.

11. In *Chittaranjan Das v. Durgapore Project Limited*, 1995 (2) Cal.LJ 388, it has been held thus:

'48. Admittedly the writ petitioner even at the time when he was appointed as an apprentice did not furnish his Matriculation or School Final or School Leaving Certificate granted by the University or Board of Secondary Education or similar Educational Authority nor filed any certified copy of the date of his birth as recorded in the register of Municipality or local authority or filed any other document as provided for in Rule 4 of the certified Standing Order of the respondent-company.

49. It is true that the petitioner filed a certificate obtained from the Headmaster of the school. Such certificate given by the Headmaster may be admissible in evidence in a suit. Assuming that the school leaving certificate which has been produced by the petitioner for the first time in this Court may be taken to be admissible in evidence in terms of Section 35 of the Evidence Act is Mr. Pratap Ray contends but the same also is not conclusive. The petitioner evidently although passed the Matriculation Examination did not produce his matriculation certificate. He has not denied that he had appeared in the said examination'.

12. In *State of West Bengal v. Sisir Kumar Paria*, 1996 (5) SLR 812, it has been held that even a matriculation certificate is not sacrosanct. The law in this regard has been laid down by the Apex Court in *G.M. Bharat Coking Coal Ltd., W.E. v. Shib Kumar Dushad*, AIR 2001 SC 72.

'17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retrial benefits he would be entitled to. Therefore, while determining the dispute in such matters Courts should bear in mind that a change of the date of birth long after joiningservice, particularly when the employee is due to retire shortly which will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the Court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a

dispute regarding correctness of the date of birth entered in the service record and the Courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of date of birth in the service record. Such a situation cannot be commended for the reason that the Court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in the service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialise, on record of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior'.

13. We are, therefore, of the opinion that the petitioner is guilty of commission of fraud and thus is also not entitled to any notice.

14. In *State of Tamil Nadu v. A. Gurusamy*, : [1997]2SCR104 , the Apex Court held:

'..... The Courts would not lend assistance to perpetrate fraud on the Constitution and he cannot be allowed to get the benefit of the fraudulent certificate obtained from the authorities'.

15. This aspect of the matter has been recently considered in *K.S. Vijayalakshmi v. Tahsildar, Palakkad*, : AIR2000 Ker262 (DB), in the following terms:

'17.....That does not in any way help to further their stand. Entries in their school records cannot be treated as conclusive evidence to prove caste. These entries are made on the basis of declaration of appellants and are not necessarily on the basis of any community or caste certificate issued by competent authorities and/or with any verification.....'

16. In view of the fact that the petitioner is guilty of commission of fraudulent act which finding of fact has been arrived at by the learned Tribunal we do not find any reason to interfere therewith, and we are of the opinion that the petitioner is not entitled to any relief. The writ petition is dismissed with costs. Advocate's fee is assessed at Rs.2,000/-(Rupees two thousand only).

