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Court : Andhra Pradesh

Decided On : Mar-02-2001

Reported in : 2001(2)ALT596

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

Acts : Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 - Rule 2(1) and 2(4)

Appeal No. : W.P. No. 25571 of 2000

Appellant : V. Lokanadham

Respondent : Govt. of A.P., Municipal Administration and Urban Development Dept. and ors.

Advocate for Def. : G.P. for Services II

Advocate for Pet/Ap. : K.R. Venkatesh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.B. Sinha, C.J.

1. In this writ petition a question as regards (SIC) correctness or otherwise of the action on the part of the respondents herein in issuing a Memo dated 25-3-1994 in terms whereof the petitioner was informed that he would retire from service, is raised on the ground that an illegality has been committed as his date of birth is not corrected in his service book and the correct date of birth has not been taken into consideration. The petitioner was originally appointed as Junior Engineer in 1971. He had been given his due promotion. The petitioner contends that while he was admitted in Class 1 in a school in his native village Gudur his date of birth was recorded as 25th Sherwar 1354 Fasli but when he was admitted to another school the same was wrongly mentioned as 3-9-1942 AD in place of his correct date of birth 31-7-1945 AD. The petitioner contended before the learned Tribunal that the said mistake was detected only in the year 1993 upon coming across the Janmanama Patrika.

2. It is the contention of the petitioner that the respondent acted illegally in not correcting his date of birth as in the school records an error had crept in while finding out the English equivalent to the Urdu calendar.

3. The petitioner's plea was rejected on the ground that in terms of Rule 2(1) of the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 such representation for correction of date of birth ought to have been made within one month from the date on which he joined his duties.

4. It may be noticed as regard the vires of the said rule, a decision of the Tribunal has been upheld by the Apex Court. A writ petition was filed by the petitioner which was allowed whereby the order of the Tribunal was quashed and the matter was remitted to the Tribunal for fresh consideration. The petitioner has been enjoying the order of status quo from this Court pursuant whereto and in furtherance whereof the State had also issued orders to continue him in service upto 19-10-2000 giving liberty to him to file appropriate application for continuing him in service till the disposal of the original application whereupon interim orders directing the respondents to continue the petitioner in service till 31-11-2000 were passed. Before the learned Tribunal the Deputy Collector to the Government filed additional counter-affidavit reaffirming that the date of birth of the petitioner was

recorded in his Service Register as 3-9-1942 based on the school records furnished by him at the time of his entry into service and the same had been accepted by him for all those years. It was denied and disputed that any clerical error had crept in. Sri K.R. Venkatesh, the learned Counsel appearing on behalf of the petitioner inter alia submitted that it is not a case where the petitioner is relying upon his horoscope but relying upon a register of the school where he was admitted in his childhood. According to the learned Counsel only because the school authorities had committed a mistake in ignoring the original records of the school the petitioner should not suffer therefor. In support of the said contention strong reliance has been placed on G.M. Bharat Coking Coal Ltd., W.B. v. Shiv Kumar Dushad, AIR 2001 SC 72.

5. The Tribunal negated the aforementioned contention and relied upon a judgment of the Apex Court in Government of Andhra Pradesh v. M. Hayagreeva Sarma, 1990 (2) SLR 742.

6. The law in this regard is now well settled. The date of birth of an employee recorded in the Service Book should be considered for the purpose of calculating his date of superannuation.

7. A correction in the service records as regards the date of birth of an employee may be made only in the event the conditions laid down in the statutory rules made in that regard are fulfilled and/or when a bona fide error has been committed. In Union of India v. C. Rama Swamy, AIR 1977 SC 2055 the Apex Court negated such contention holding:

'21. The date of birth as recorded in the service book, in the case of a pre 4th December, 1971 entrants, and the date as declared by an officer in the application for recruitment, in the case of post 4th December, 1971 entrants, has to be accepted as correct by the Central Government and, as already indicated, this can be altered only if under Sub-rule (4) it is established that a bona fide clerical mistake had been committed in accepting the date of birth. It is for this reason we find that in the orders rejecting the representation of the respondent the Central Government has stated that there was no bona fide clerical mistake which had been committed.

22. It was faintly submitted that on the basis of the birth certificate obtained from the Sub-Registrar's Office by the respondent as well as his horoscope it should be held that there was a bona fide clerical mistake and therefore, the date of birth could be corrected. We are unable to accept the submission. Bona fide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded. In the present case admittedly the date of birth indicated in the application form filled in for the purpose of taking the competitive examination was that of 17th June, 1939. This date was then incorporated in his descriptive roll kept in his service record and this was duly signed by the respondent. Admittedly the respondent also believed this to be his correct date of birth, therefore, it was not a case where the date of 17th June, 1939 had been incorrectly recorded in the service book as a result of any bona fide clerical mistake. In fact in his original representation it was not even suggested by the respondent that there had been any clerical mistake. The positive case put forth by the respondent was that it is after the demise of his mother that he had discovered that his real date of birth was 15th June, 1941 and not 17th June, 1939.'

8. In the instant case the date of birth in the service records of the petitioner was recorded on the basis of the school certificate. The petitioner and/or his father never questioned the entry in the school register nor has even pointed out any alleged mistake occurring therein. We do not know under what circumstances the date of birth of the petitioner was recorded as 25th Sherwar 1354 Fasli in a primary school.

9. It is now a well settled principle of law that even recording of date of birth in the school register would be admissible if the primary evidence in support thereof is produced. See *Birad Mal Singhvi v. Anand Purohit*, : AIR 1988 SC1796 . The aforementioned decision has been followed in *Chittaranjan Das v. Durgapur Project Ltd.*

10. In *Bata India Ltd v. Arjun Kumar Sarkar*, 1999(1) SLR 574 it has been held:

'8. Mr. Ghosh, the learned Advocate appearing on behalf of the appellant has relied upon a decision of the Apex Court in *Burn Standard Co. Ltd. v. Dinabandhu Mazumdar and Anr.* reported in : [1995]3SCR712 in support of his contention that an employee should not be permitted to dispute the correctness of his date of birth at the far end of his service period. In the aforesaid decision the Apex Court held that the extraordinary nature of the jurisdiction vested in the High Court's under Article 226 of the Constitution of India is not meant to make employees of the Government or its instrumentalities to continue in service beyond the period of their entitlement according to the date of birth accepted by their employers, placing reliance upon the so-called newly found materials.....'

11. In *Chairman, AD Hoc Committee v. Subhendu Bikash Deb*, 1998 (4) SLR 87 it has been held:

'3. The question which arises for consideration in this appeal is as to whether despite the fact that the petitioner's date of birth was corrected in the Matriculation Certificate, the same is binding on the appellant. A Division Bench of this Court in *Saroj Kumar Bhattacharya v. Bengal Immunity Limited and Ors.* reported in 1994 (1) CLJ 79 : [1994 (1) SLR 574 (Cal)] held that it would not be proper to correct the date of birth in respect of the private candidate. Before us an attempt has been made by Mr. Basu, learned Counsel appearing on behalf of the respondent-writ petitioner, to show that the petitioner had been reading in a school and correction of his date of birth had been made on the basis of the register maintained therein. There cannot be any doubt whatsoever that the petitioner at the time of his appointment relied upon his date of birth as stated in the School Leaving Certificate. We do not intend to go into the correctness or otherwise of the letters exchanged between the school and in particular the letter where the petitioner allegedly wrote to the West Bengal Board of Secondary Education for correction of his date of birth, but even otherwise, we are of the opinion that apart from the decision referred to by Mrs. Choudhuri, learned Counsel appearing on behalf of the appellant, there are other decisions of other High Courts to that effect. Reference in this connection, may be made to 62 FLR 766 and 68 FLR 1183. Furthermore, the Apex Court in a decision reported in : AIR 1988 SC1796 , which decision had been followed by a Division Bench of this Court in *Chittaranjan Das*

v. Durgapur Project Ltd., reported in 99 CWN 897, categorically held that even in relation to entry of date of birth in the school register primary evidence should be produced. No such primary evidence has been produced. This aspect of the matter has been considered by this Court in Calcutta Port Trust and Ors. v. Ajit Kumar Deb reported in 1996 Lab IC 167: [1996 (4) SLR 305 (Cal)]. It is further well-known that at the fag end of the career, it is not permissible for any person to apply for change of date of birth. Reference in this connection may be made to Pratul Kumar v. Steel Authority of India reported in 1996 (1) CHN 347, : [1995]1SCR175 and : [1995]3SCR712 (Burn Standard Co. Ltd. v. Dinabandhu Majumdar). Thus, even if a date of birth has been corrected by the West Bengal Board of Secondary Education, the same is not binding on the appellant. The appellant is not bound to change the service book and treat ' the petitioner to be in service till 20th March, 1997 as was directed by the learned trial Judge.....'

12. Yet recently in Amar Singh v. State of Rajasthan it has been held:

'6. It is settled law that the employee cannot ask the employer to change or to make any correction in the date of birth after serving for a long period and if it does so, the employer is under no obligation to consider such an application. (Vide Secretary and Commissioner, Home Department and Ors. v. R. Kirubakaran, [1994 (Suppl.) (1) SCC 155], Chief Medical Officer v. Khadeer Khadri, [995 (71) FLR 9 (SC)], Burn Standard Company Ltd. and Ors. v. Deen Bandhu Majumdar and Anr. : [1995]3SCR712 , Union of India v. Miss Saroj Bala : (1997)IIILLJ299SC , Vishakhapatnam Dock Labour Board v. E. Atchanna and Ors. : (1996)IILLJ95SC , Union of India v. Harnam Singh [1993 (67) FLR 262 (SC)], International Airport Authority v. M.A. Wahab : (1995)ILLJ34SC and The Collector of Madras and Anr. v. Raja Manikam : (1995)IILLJ677SC .

8. In view of the aforesaid judgments, the Court reaches an inescapable conclusion that the petitioner cannot be permitted to place that the mistake in the recorded date of birth was itself discovered at a very late stage, and it cannot be a ground for the writ Court to interfere in the matter for the simple reason that the attempt is not a bona fide one as the petitioner had put his signatures in the Service Book several times and Mr. Joshi could not answer, when confronted as

why the petitioner had not raised objection whenever the Seniority Lists showing his date of birth were published from time to time. The writ Court should be slow to interfere in the matter where the correction is sought in the date of birth at the fag end of the service for the reason that the date of birth had been recorded long time ago in the Service Book and the writ jurisdiction cannot be resorted to by the employee as a matter of course. The very conduct of non-raising an objection in the matter by the petitioner itself is a sufficient ground not to interfere in the matter as such application was liable to be rejected only on the ground of 'acquiescence, undue delay and laches'.'

13. We may however note that in a different context, in *Aditya Kumar Ghorai v. Durgapur Projects Ltd.*, 1999(1) SLR 323 it has been held:

'4. It is now well settled principle of law that whenever by reason of administrative order a civil or evil consequence ensues, particularly in relation to an alteration of date of birth, it is incumbent upon the respondents to give the petitioner an opportunity of hearing. This aspect of the matter has been considered in a decision reported in : (1967)IILLJ266SC and : (1981)IILLJ380SC . There is nothing on record to show that a purported mistake committed by the Personnel Officer had been communicated to the petitioner. There cannot be any doubt that a mistake apparent on the face of the record can be corrected. However, it is also well settled that a mistake remains in the records for long time, genuineness of the order shall be presumed. It is further well-known that even a mistaken order requires compliance of principles of natural justice. Reference in this connection may be made to : (1995)IILLJ726SC . It is further well settled principle of law that assignment of reason is a part of the principles of natural justice. The impugned order does not contain any reason and on that ground too, the same is liable to be set aside. Reference in this connection may be made to *The Siemens Engineering and . v. The Union of India and Anr.* reported in : AIR 1976 SC1785 .'

14. It is also a trite law that an employee should not be allowed to correct his date of birth at the fag end of his career.

15. The decision of the Apex Court in *G.M. Bharat Coking Coal Ltd. case* (1 supra) does not help the petitioner. In that case also the Apex Court relying upon some of

its earlier decisions held:

'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 joining service, 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 recommended 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 order 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.'

16. As in this case in that case also there was no material on record to show why when a purported entry in the school register was produced. He produced a copy thereof when he entered into service. Such questions must be held to be questions of fact which could be proved on evidence either oral or documentary to be placed by the parties before an appropriate forum and such disputed questions cannot be gone into in a writ proceeding.

17. Further a bona fide mistake can be corrected provided the same has been committed by the State. In this it was not so. Mistake if any was committed by the

school authorities which found place in the certificates granted by the Board and the Universities. The petitioner never moved the said Boards and the Universities for correction of his date of birth in the said certificates. The action of the petitioner, therefore, cannot be said to be bona fide. It is unfortunate that despite various decisions of the Supreme Court the petitioner had been continuing in service although he attained his age of superannuation long back and thus obtaining an undue benefit therefor.

18. We, therefore, direct that the petitioner shall not be entitled to get any benefit, monetary or otherwise, after attaining the age of superannuation. The petitioner must also bear the costs of this litigation borne by the respondents herein which is fixed at Rs. 10,000/- (Rupees Ten thousand only). The writ petition is dismissed.

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