

Chandi Vs. State of Travancore

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Court : Kerala

Decided On : Dec-01-1958

Reported in : (1959)IILLJ507Ker

Judge : K. Sankaran and; N. Varadaraja Ayyangar, JJ.

Appellant : Chandi

Respondent : State of Travancore

Advocate for Pet/Ap. : Mr. K.P. Abraham

Judgement :

N.V. Ayyangar, J.

1. This appeal arises out of the judgment and decree in O.S. No. 88 of 1951 on the file of the District Court of Trivandrum. The appellant is the plaintiff.

2. The plaintiff Mr. P.C. Chandy joined service under the former Government of Travancore, as a clerk in the Account Office on 10 March 1095. For the preparation of his service book he gave his date of birth as 1 April 1896 corresponding to 21 August 1971 on thee basis of this certificate of baptism. His age, it would appear, had been given as ten years at the time of his admission on 19 July 1905 in the Seminary E.H.S. School, Thiruvella. On his admission in the C.M.S. College, Kottayam, his date of birth had been taken to be 19 July 1895,

apparently calculating it as just ten years previous to his admission in the seminary school. His date of birth in the Maharaja's College, Trivandrum, where he later joined was however put down as 17 July 1895, it is not clear on what basis. Anyhow there had crept in a discrepancy between the official and academic ages of the plaintiff. On 8 February 1950 while the plaintiff was the Deputy, Inspector-General of Police under the defendant, Travancore-Cochin State, his official superior the Inspector-General of Police asked him to rectify his date of birth as 17 July 1895 as per the Maharaja's College records. The plaintiff replied on 13 February 1950 to say that there was no mistake calling for rectification. While so, Government issued press note dated 20 February 1950 as follows:

The Government have decided that action will be taken on the following lines in the case of officers whose official or academic ages differ:

- (i) Gazetted officers with over 25 years' service will be compulsorily retired.
- (ii) Gazetted officers with less than 25 years' service and non-gazetted officers will be required to accept the dates of birth in the college admission register as the correct age.

The plaintiff's case obviously fell within the scope of the press note. So Government sanctioned his retirement as on 17 July 1850 when he would have attained age of superannuation according to the academic age, with all eligible leave preparatory thereto. Plaintiff accordingly gave up charge of his office on 20 March 1950 and retired on 17 July 1950. This suit he filed thereafter on 21 March 1951 for declaration that his date of birth was 1 April 1896 and for recovery of the pay and emoluments of his office as Deputy Inspector-General of Police from 21 March 1950 to 1 April 1951 amounting to Rs. 4,155-12-6 and of a larger monthly pension of Rs. 168-10-0 instead of Rs. 150-5-0 as fixed. He also claimed recovery of solatium and damages for mental agony and suffering and loss of reputation which he estimated at Rs. 16,000. The Plaintiff averred that the initial acceptance by Government of 1 April 1896, as the plaintiff's date of birth when first he entered service and along with it the acting on basis thereof for a continuous period of 31 years, estopped the Government from reopening the subject, in any event without proper enquiry.

3. Government contested the suit on the footing that they had given sufficient opportunity to the plaintiff to explain the discrepancy in the date of birth as entered in the service book and that disclosed by the college records. Plaintiff failed to correct his age and as Government were satisfied about the correctness of the date of birth as entered in the college records they adopted the same for purpose of the plaintiff's retirement. Government submitted that the retirement of plaintiff was in the circumstances legal and competent and plaintiff had no cause of action to maintain the suit. They denied the plaintiff's right to all or any of the reliefs claimed.

4. The Court below found that the Government was entitled to accept the date of birth shown in the academic registers as the relevant date for service purposes. In this view it found it necessary to find on the real date of birth of the plaintiff. On the question of denial of opportunity to be heard before the plaintiff's retirement was ordered, the Court held that the requisition of the Inspector-General of Police to the plaintiff to correct the date of birth was enough intimation to the plaintiff. The only opportunity that the plaintiff could after all seek was to prove that his academic age was not what the Government stated it was but on this the plaintiff had no contention. The plaintiff could not also complain that he was retired before actually he attained age of superannuation. For Article 309 of the Travancore Service Regulations, note 1, says:

Note 1, Article 309: Government retains an absolute right to retire any officer after he has completed five (sic) years' qualifying service without giving any reasons and no claim to special compensation on this account will be entertained. This right will not be exercised except when it is in the public interest to dispense with the further service of an officer.

In the result the Court below dismissed the suit but without costs. Hence this appeal by the plaintiff as abovesaid and directed to all reliefs claimed in the plaint, except to the extent of Rs. 14,000 of the solatium and damages claimed.

The Government respondent have filed cross-objections in regard to their costs disallowed.

5. Now, the main plank in the arguments addressed on behalf of the plaintiff in the Court below was the peremptory nature of the wording of Article 352F (c) of the Travancore Service Regulations as follows ;

The age of an officer whether gazetted or non-gazetted can be recorded only on receipt of satisfactory proof. Once the date of birth has been accepted and recorded in the service register, it should form conclusive evidence on the same in respect of all future Government transactions.

The point was accordingly sought to be made that the press note issued by Government on later date 20 February 1950 must, to the extent it takes more powers for Government, be unauthorized and void. It was this point however which came up for specific consideration and was overruled in *Zainuddin v. State* I.L.R. 1953 T.C. 954 as. noted by the Court below. The learned Judges there held: ' Such a provision in the Service Regulations cannot in our opinion bind the discretion of the State, and a decision on the lines embodied in the press note is well within its competence.'

Indeed this decision has been accepted as settling the law in the later Full Bench case in *Mohammed v. State of Kerala* 1957 K.L.T. 608 : 1957 K.L.J. 570. This later decision has really gone farther so as to recognize the power of Government to accept by subsequent order the academic age even though under former order an entry in the birth register had been preferred thereto. In this position, Mr. K.P. Abraham, learned Counsel for the plaintiff, did not want to canvass before us the validity of the Government's preference of the academic age to the official age so far as his client was concerned. But he said it was the entry in the register of the last of the colleges that should govern, if at all. That is to say, in the case of the plaintiff, the Law College, Trivandrum, where last he had studied and he referred to the entry as to date of birth, 1 April 1896, in plaintiff's application for admission to the B.L. Class in that college and filed as fresh document before this Court.

6. No doubt, Article 353F (c), Clause (1), dealing with satisfactory proof of age refers among others to

an authenticated extract of the admission register of the school or college where the officer last studied.

and on this basis the admission register of the last of the colleges where the plaintiff studied may be relevant. But the plaintiff had no case in the pleadings as now suggested that his last college of study was other than the Maharaja's College, Trivandrum, or that his date of birth in the register of admission in such college stood any way differently. Nor even was a suggestion of this case made during the course of the arguments in the lower Court. Learned Counsel drew our attention to a statement made by the plaintiff in the course of his examination that he studied last in the Law College and that the correct date of birth is shown there. But this assertion by itself avails nothing. And even assuming that the plaintiff can be allowed to develop this new case at this stage, the fresh document filed shows only that the plaintiff gave his date of birth in his application for admission to the B.L. Class as 1 April 1896 and nothing is clear as to what the college authorities did with reference to the plaintiff's statement. For the certificate is given that the admission register had become so dilapidated that it was impossible to make out anything relevant. What exactly was the date of birth which the plaintiff gave and the Law College accepted in connexion with his admission to the F.L. Class of the Law College, the plaintiff has not cared to reveal. The refinement attempted by the learned Counsel is therefore incapable of acceptance.

7. The cross-objection filed by the State relates only to a matter within the discretion of the lower Court. We therefore refuse to interfere.

8. The appeal fails in the result. It is therefore dismissed with costs. The cross-objection filed by the respondent is also dismissed with costs.