

A. Doraisamy Vs. Director of School Education, Madras

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Court : Chennai

Decided On : Nov-28-1996

Reported in : (1997)IILLJ578Mad; (1997)IMLJ196

Judge : D.J. Jagannadha Raju, J.

Acts : Tamil Nadu State and Subordinate Services Rules, 1961 - Rule 49

Appeal No. : S.A. No. 1658/1996 and C.M.P. No. 16288/1996

Appellant : A. Doraisamy

Respondent : Director of School Education, Madras

Judgement :

1. The plaintiff in O.S. No. 907 of 1995 on the file of the Court of District Munsif, Vaniyambadi, North Arcot Ambedkar District, who failed before both the Courts below, has filed the above second appeal. The suit in question was filed for declaration and also for a consequential direction to the defendant/respondent to correct the date of birth of the appellant in his S.S.L.C. Book as on September 2, 1943 instead of January 10, 1938 and have such correction made in all other records that the date of birth of the appellant was September 2, 1943. In the Plaint presented before the trial Court, it was claimed that during the month of January, 1994 there was a partition in the family of the appellant in the presence of his father, aged about 94 years and other members and during the course of discussion at that time the second senior brother of the appellant by name Chinna

Anumanthan claimed that he was 60 years old and this created a doubt and inquisitiveness in the appellant to verify about his own date in view of the existence of two other sisters immediately above him and induced him to verify the relevant records, which disclosed, according to the appellant, that Chinna Anumanthan was born on November 23, 1934, that the other two sisters were born on March 21, 1938 and November 1, 1940 and that his date of birth was September 2, 1943. The date of birth as entered in the S.S.L.C. book of the appellant was therefore claimed to be an incorrect one and he was entitled to have the same corrected, by virtue of the order of the Government in G.O. Ms. No. 39, Education dated January 12, 1944. To have the date so corrected, it appears, the appellant called upon the respondent to carry out the correction by issuing a lawyer's notice dated November 3, 1994 under Sec. 80 of the Code of Civil Procedure, 1908 and in spite of the fact that the appellant submitted all the records, the defendant declined to comply with the request for correction, necessitating the filing of the suit for the relevance referred to supra.

2. The defendant filed a written statement disputing the claims of the appellant and contended that the appellant retired from service as Headmaster of Desiriappanoor Panchayat Union Primary School on January 31, 1996 itself and that he is only continuing on Office on reemployment basis and consequently he is not entitled at that stage to have the age corrected. Relying upon Rule 49 of the Tamil Nadu State and Subordinate Services Rules, hereinafter referred to as the Rules, the defendant also contended that the claim for correction should have been made within the time stipulated and in accordance with the said Rule and it is not open to the appellant to make an application at the fag end of his career and that such request could not be complied with in view of the decisions of the Courts on the point, particularly that of Supreme Court, reported in *State of Tamil Nadu v. T. V. Venugoplan*, : (1994)6SCC302 . An objection was also raised on the ground of non-joinder of necessary and proper parties and also on the ground that the suit claim was barred by limitation and the appellant had no cause of action to maintain the suit.

3. On the above claims and counter claims, the suit came to be tried and both sides adduced oral and documentary evidence. Learned Trial Judge by his

judgment and decree dated April 25, 1996 dismiss suit on the ground that the claim was not maintainable both in terms of the provisions contained in Rule 49 of the Rules and the decision of the Apex Court noticed supra. Even on the merits of the claim, learned Trial Judge was of the view that the appellant failed to examine, his senior brother or connect the certificates of the said person and that in the absence of proper and sufficient proof, the extract relating to the date September 2, 1943 could not be considered to relate really to the birth date of the appellant. Aggrieved, the Appellant pursued the matter on appeal before the Sub Court Tiruppathur, North Arcot Ambedkar District in A.S. No. 8 of 1996. Learned First Appellate Judge also extensively considered the contentions in the light of both the factual details presented by means of oral and documentary evidence, as also the relevant Rules and the decision of the Supreme Court. In addition to the findings recorded by learned Trial Judge, learned First Appellate Judge also specifically adverted to the claim based on Rule 49(c) of the Rules and came to the conclusion that Proviso to 5 Rule 49(c) will have no application to the case of the appellant and consequently no exception could be taken to the Judgment and decree of the Trial Judge dismissing the suit. Learned First Appellate Judge also adverted to some other decisions on the subject, wherein the claim for correction or alteration of date of birth at the far end of the service career came to be deprecated on more than one occasion. Agreeing with the findings of the trial Judge, the appeal came to be dismissed by judgment and decree dated September 24, 1996. Hence, the above second appeal.

4. Mr. Vijayakumar, learned counsel appearing for the appellant while elaborating the substantial questions of law raised in the grounds of appeal contended that the Courts below committed an error in holding that the suit was not maintainable and barred by limitation and that the deletion of proviso to Rule 49(c) of the Rules with effect from August 3, 1994 by Order dated December 27, 1995 cannot in any manner affect the claims of the appellant since at that point of time, when the appellant made his application, the proviso was very much on the Statute. Accordingly, learned counsel for the appellant contended that the Courts below committed an error in rejecting the claim and on the other hand the suit ought to have been decreed as prayed for.

I have carefully considered the submissions of the counsel for the appellant. In my view, the concurrent judgment of the Courts below do not call for any interference in this second appeal and that the grounds of challenge sought to be made against the judgments of the Courts below, do not merit the acceptance of this Court. Rule 49 of the Rules in so far as it related to the 4, 5 present case read as follows :-

'49. Alteration of date of birth : (A) If, at the time of appointment, a candidate claims that the date of his birth is different from that entered in his S.S.L.C. or Matriculation Register or school records, he shall make an application to the Tamil Nadu Public Service Commission in cases where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Board of Revenue for Report after investigation by an Officer not below the rank of a Deputy Collector and, on receipt of the report, the Tamil Nadu Public Service Commission or the appointing authority as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected.

Provided that in case of a candidate who was born outside the State of Tamil Nadu the investigation through the Board of Revenue shall be dispensed with and the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall examine and scrutinise the records that may be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.

(b) After a person has entered service, an application to alter the date of his birth as entered in the Official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in subrule (a).

(c) Any application received after five years after entry into service or any application, which is not supported by entries in Secondary School Leaving Certificates, School, College or University records, birth extract from records of

local bodies or militia discharge certificates, shall be summarily rejected. Provided that the application for alteration of date of birth of a person who entered into service prior to January 24, 1961 shall be submitted at least one year before the date of his retirement reckoned with reference to the Official records

The right of a Government servant to have an alteration of date of birth is indisputably governed and regulated by the provisions contained in the Tamil Nadu State and Subordinate Services Rules and particularly Rule 49 extracted above, which is relevant to the purposes of the present case. The scope and content of such rights came to be dealt with by the Apex Court on more than one occasion and it was made clear even in the latest pronouncements reported in *State of Tamil Nadu v. T. V. Venugopalan* (supra) that the application for correction of the date of birth of an inservice employee should be made within five years from the date when the Rules had come into force in 1961 and if no applications made, after 1 expiry of five years, the Government employee loses his right to make such an application for correction of his date of birth. In reversing a decision of the Tamil Nadu Administrative Tribunal, Madras in C. A. No. 1993 of 1993 and 2 while applying and reiterating the earlier view taken by the Apex Court in a case arising from this State reported in *Secretary and Commissioner, Home Department, v. R. Kirubakaran* 1994 I LLI 673, it was held that the inordinate delay in making the application is itself a ground for rejection. The claim for the correction of date of birth and the Government servant having declared his date of birth as entered in the service register to be correct, could not be permitted at the far end of his service career to raise a dispute as regards the correctness of the entries in the service register. The ratio of the said decision would, in my view, squarely apply to the case on hand and the findings recorded and conclusions arrived at by the Courts below in rejecting the claim of the appellant, are well merited and quite in accordance with law and do not suffer any infirmity warranting interference by this Court.

5. That apart, the claim on behalf of the appellant based on the proviso to Rule 49 (c) also is misconceived and has no merit whatsoever, apart from the fact that the proviso came to be deleted subsequently by an order dated December 27, 1995 with effect from August 3, 1994. The proviso itself will have no application to the

case of the appellant and no advantage can be take@ by the appellant on the basis of the said 0 proviso which reads that the application for alteration of the date of birth of a person, who entered into service prior to January 24, 197 1, shall be submitted at least one year before the date of his retirement reckoned with reference to the Official records. The appellant indisputably came to be appointed to service on June 23, 1964 and in respect of the claims like the one projected by the appellant, it is the main Rule, particularly clause (c) of Rule 49 will be attracted and the rejection of the claim by the defendant, as also by the Courts below cannot be said to be either unwarranted or unjust.

6. Further, the Courts below have also chosen to reject the claim on merits. The Appellant has not chosen to examine his brother Chinna Anumanthan or any of the other sisters to prove his claim or to connect the birth extracts as relating to really his sisters and that the appellant was younger to them as claimed. The reasons assigned by the Courts below and the defects pointed out in the citries as creating a genuine and reasonable doubt about the relevance of those documents to the claim of the appellant @5 and rejecting them as also the now claimed date of birth cannot be said to be either vitiated by any patent error of law or perversity of approach, consequently, I do not see any justification to entertain this second appeal.

7. The second appeal, therefore, fails and shall stand dismissed. Consequendy the C. M. P. is also dismissed.