

State Of M.P. & Ors vs Premlal Shrivass on 19 September, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3418, 2011 (9) SCC 664, 2011 AIR SCW 5398, 2011 LAB. I. C. 4606, (2011) 10 SCALE 600, (2012) 1 SERVLJ 31, (2012) 1 ALL WC 300, (2012) 2 JCR 4 (SC), (2011) 3 GUJ LH 656, (2011) 131 FACLR 361, (2011) 5 LAB LN 61, (2011) 5 MAD LW 769, (2011) 4 SCT 383, (2011) 6 SERVLR 680, 2011 (4) KLT SN 57 (SC)

Author: D.K. Jain

Bench: Asok Kumar Ganguly, D.K. Jain

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2331 OF 2004

STATE OF M.P & ORS.

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APPELLA

VERSUS

PREMLAL SHRIVAS

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RESPOND

J U D G M E N T

D.K. JAIN, J.:

1. This appeal is directed against the judgment and order dated 17th January, 2002 passed by the High Court of Madhya Pradesh, Jabalpur Bench, in Writ Petition No.

2561 of 2001. By the impugned judgment, the High Court has allowed the writ petition preferred by the respondent, directing the appellants to correct the service record of the respondent, incorporating his date of birth as 30th June, 1945 in place of 1st June, 1942, within a period of one month from the date of the impugned order.

2. To appreciate the controversy involved, a brief reference to the facts, as stated in the impugned judgment, would suffice. These are:

The respondent was appointed to the post of a Police Constable in the year 1965. In the service book, prepared at the time of his entering the service, his date of birth was recorded as 1st June, 1942. His father's name was recorded as Gayadin. This position continued till 1990, when he made a representation to the appellants seeking correction of his father's name and date of birth in the service record. The plea of the respondent was that at the time of joining the service, his date of birth as also the name of his father was wrongly recorded on the basis of the information furnished by his maternal grandfather, who was accompanying him at that point of time as he was living with him after the death of his father. According to the respondent, he came to know about the mistake when he was promoted as Head Constable. In support of his application, the respondent submitted his class IV marksheet, transfer certificate of class VIII and a certificate from a local MLA.

3. By order dated 8th March 1995, the representation came to be rejected, inter-alia, on the ground that the service record of the respondent was prepared on the instructions of his maternal grandfather, accompanying the respondent at the time of enrolment, the same carries his finger and thumb impressions and was duly attested by the then Superintendent of Police on 7th September, 1976. Moreover, at the time of enrolment, the respondent had been subjected to a medical examination on 27th September 1965, when the Examining Medical Authority had certified his age to be 23 years.

4. Being dissatisfied, the respondent preferred an application before the M.P. Administrative Tribunal (hereinafter referred to as "the Tribunal"). Referring to several documents brought on record by the appellants, which included some documents which had been filled up by the respondent himself and showing the date of his birth as 1st June, 1942 and father's name as Gayadin, the Tribunal dismissed the application vide order dated 18th April, 2001.

5. Having failed before the Tribunal, the respondent filed a writ petition before the High Court which set aside the order of the Tribunal and allowed the writ petition. Being aggrieved, the State of Madhya Pradesh and two of its functionaries are before us in this appeal.

6. Despite service of notice, the respondent remains unrepresented.

Accordingly, we have heard learned counsel for the appellants.

7. The learned counsel, appearing on behalf of the appellants, strenuously urged that the High Court ought not to have directed a change in date of birth of the respondent, on his request, made after a lapse of over two decades of his joining the service. It was asserted that some of the documents in which his father's name was shown as Gayadin, bore his signatures and, therefore, the plea of the respondent that he was not aware of the contents of his service record cannot be accepted. It was also submitted that as per Rule 84 of the M.P. Financial Code, the date of birth recorded in the service record is conclusive and only a bonafide clerical mistake in the said record can be corrected. To bolster his submission, learned counsel commended us to a recent decision of this Court in Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg & Anr.¹, wherein it has been held that the declaration of age made at the time of or for the purpose of entry into government service is conclusive and binding on the government servant.

8. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

9. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the 1 (2010) 6 SCC 482 Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh²).

10. In Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran³, indicating the factors relevant in disposal of an 2 (1993) 2 SCC 162 3 1994 Supp (1) SCC 155 application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus :

"An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely

to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

(Emphasis supplied)

11. In *State of U.P. & Anr. Vs. Shiv Narain Upadhyaya*⁴, while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

12. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1st June, 1942 and not 30th June, 1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27th September, 4 (2005) 6 SCC 49 1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll,

prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1st June, 1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record was vitiated. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex-facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.

13. Rule 84 of the M.P. Financial Code, heavily relied upon by the respondent reads as under :

"Rule 84. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under Rule 85 should be recorded in the history of service; Service book or any other record that may be kept in respect of the Government servant's service under Government. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever."

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record.

However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake.

This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

15. In Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane⁵, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him.

Again, in Union of India Vs. C. Rama Swamy & Ors.⁶, it has been observed that a bonafide 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.

5 (1997) 1 SCC 247 6 (1997) 4 SCC 647

16. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules.

17. In view of the foregoing discussion, the decision of the High Court, holding that the respondent was entitled to get his date of birth corrected in the service record, cannot be sustained. Resultantly, the appeal is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs throughout.

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(D.K. JAIN, J.)

(ASOK KUMAR GANGULY, J.) NEW DELHI;

SEPTEMBER 19, 2011.

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