

P. Nagamuni vs Government Of Andhra Pradesh And Anr. on 14 November, 1980

Equivalent citations: AIR1981SC864, [1981(42)FLR421], 1981LABLC319, 1980SUPP(1)SCC619, 1981(13)UJ20(SC), AIR 1981 SUPREME COURT 864, 1981 LAB. I. C. 319, 1980 SCC (SUPP) 619, 1981 UJ (SC) 20, 1981 SCC (L&S) 421, (1981) 42 FACLR 421, (1980) 3 SERVLR 574

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Bench: Y.V. Chandrachud, A.C. Gupta

JUDGMENT

Y.V. Chandrachud, C.J.

1. This is an appeal by special leave against a judgment dated October 9, 1979, of the Andhra Pradesh Administrative Tribunal at Hyderabad.

2. The appellant joined service on April 7, 1943 in the Revenue Department in West Godavari District and thereafter he was transferred to the Commercial Tax Department in 1946. In the service register the date of his birth was shown as April 20, 1924. The case of the appellant is that in April, 1978, on the occasion of the marriage of his son, an old relative of his told him, when the question of his date of birth was broached, that he could not have been born in April, 1924 because it was in that very year that his parents were married. On September 26, 1978 the appellant made a representation to the Secretary to the Government, Revenue Department. A.P. praying that his date of birth should be corrected as August 19, 1925. That representation was turned down on the ground that it was not filed within ninety days of February 10, 1976, as provided under the rules issued in G.O.Ms. No. 50, Finance and Planning (F.R.I.) Department, dated February 10, 1976. The appellant then filed a Petition before the Andhra Pradesh Administrative Tribunal under paragraph 7 of the Andhra Pradesh Administrative Tribunal Order, 1975, praying that in the circumstances stated by him in his affidavit, the Tribunal be pleased to issue an order declaring that his true date of birth is August 19, 1925, and that the date of birth recorded in the service record as April 20, 1924 is incorrect. The Tribunal having rejected the representation, the appellant has filed this appeal by special leave.

3. It is not necessary to decide the question as to whether the representation filed by the appellant was barred on the ground that it was not filed within 90 days of February 10, 1976 as provided by the rules of the Finance and Planning Department to which we have earlier referred. But we would like to observe that the aforesaid rule will govern those cases only in which the cause of action for

applying for rectification of the date of birth arose prior to February 10, 1976. It could not have been possibly intended by the rule making authority that the opportunity for rectification of the birth date should be available to those persons only who had discovered prior to February 10, 1976 that the birth date recorded in the service register was wrong.

4. But, as stated above, it is unnecessary to pursue this question because there is no clear evidence to show that the correct date of birth of the appellant is August 19, 1925 and not April 20, 1924. In the first place the school leaving certificate records the birth date of the appellant as April 20, 1924. Secondly, when the appellant entered service he gave his birth date as April 20, 1924. Thirdly, according to the appellant himself it was in April 1978 that he came to know at the time of the marriage of his son that he could not have been born in April 1924 because, his parents were married in that year only. Now, though the appellant came to know, according to his own case, in April 1978 that he could not have been born in April 1924, it seems to us strange that he should have signed the service register on October 20, 1978, in which his birth date is recorded as April 20, 1924. We quite see that if the rules require a government servant to sign his service register every year not much thought or care will be devoted by the government servant while signing the register. But a significant event had taken place in April, 1978 as a result of which the appellant had come to know that he could not have been born in April 1924. It seems to us improbable that having known in April 1978 that he could not have been born in April 1924 he would still sign the service register in October 1978, without mentioning in that register that the birth date recorded therein was wrong. Fourthly, the appellant never disclosed the name of the relative who is alleged to have told him that he could not have been born in April 1924. He could have produced an affidavit of that relative which might have carried conviction with the Tribunal regarding his date of birth. He did not do so.

5. Mr. Gupte who appears on behalf of the appellant has drawn our attention to a report of the Tehsildar in which several facts have been mentioned carefully, bearing on the appellant's age. The report is *prima facie* persuasive but the one great impediment in accepting it is that it is in the nature of hearsay. If the Tehsildar was examined as a witness by the appellant, it would have been possible for the authorities concerned to cross examine him and ascertain as to what was the source of his information. It seems to us difficult to rely on the mere report of the Tehsildar for the purpose of concluding that the true birth date of the appellant is August 19, 1925 and not April 20, 1924.

6. For these reasons we find it difficult to interfere with the finding arrived at by the Tribunal that there is no credible evidence to show that the birth date of the appellant as recorded in the service record is wrong. In that view of the matter the appeal fails and is dismissed but there will be no order as to costs.