

Secy. & Commissioner vs R. Kirubakaran on 21 September, 1993

Equivalent citations: 1993 AIR 2647, 1994 SCC SUPL. (1) 155

Author: N.P Singh

Bench: N.P Singh, A.M. Ahmadi

PETITIONER:
SECY. & COMMISSIONER

Vs.

RESPONDENT:
R. KIRUBAKARAN

DATE OF JUDGMENT 21/09/1993

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMADI, A.M. (J)

CITATION:
1993 AIR 2647 1994 SCC Supl. (1) 155
JT 1993 (5) 404 1993 SCALE (3) 829

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- Leave granted.

2. This appeal is on behalf of the Commissioner, Home Department, and the Director General of Police of Tamil Nadu, for setting aside an order dated November 3, 1992 passed by the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal") directing the alteration of the date of birth of the respondent in the service records.

3. In the year 1958, the respondent entered in the police service as Sub-Inspector of Police. In due course, he was promoted to the posts of Inspector of Police, Deputy Superintendent of Police and

Additional Superintendent of Police. According to the date of birth recorded in his service register, he was to superannuate on August 8, 1992. On August 6, 1991, the said respondent filed an application before the Tribunal for an order to alter his date of birth recorded as August 9, 1934 to August 9, 1936. That application was rejected giving an option to the respondent to approach the Government under the appropriate service rules. A representation to that effect was made, which was rejected on April 2, 1992 and copy of the said order was communicated by the Director General of Police. Thereafter, an application was filed before the Tribunal, making prayer for a direction to alter the date of his birth. On September 9, 1992 the Tribunal passed an interim order directing the appellants to allow the respondent to continue. Ultimately, by the impugned order, the Tribunal recorded a finding that the date of birth of the respondent was August 9, 1936 and he shall superannuate with reference to that date.

4. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not.

5. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Dekal* this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure". This Court in the case of *Government of A.P. v. M. Hayagreev Sarma*² had occasion to examine the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. This Court said: (SCC p. 685, para 7) 1 (1970) 3 SCC 624 2 (1990) 2 SCC 682: 1990 SCC (L&S) 542: (1990) 13 ATC 713 .lm15 "The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior

to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth."

6. In the case of Executive Engineer v. Rangadhar Mallik³ Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on the basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor make any representation for correcting his date of birth till September 9, 1986. Recently, in the case of Union of India v. Hamam Singh⁴ it was said: (SCC p. 167, para 7) "A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay."

7. 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 3 1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276: (1993) 23 ATC 4 (1993) 2 SCC 162: 1993 SCC (L&S) 375 :(1993) 24 ATC 92 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.

8. So far the facts of the present case are concerned, admittedly the respondent entered into the service of State Government as early as in the year 1958. He never questioned the entry in respect of his date of birth in his service register till August 1991, when he filed an application before the Tribunal for alteration of his date of birth from August 9, 1934 to August 9, 1936. This application was filed only about a year before his date of superannuation, mentioned in his service register. On September 9, 1992, an interim order was passed by the Tribunal, when the respondent had already superannuated with reference to the date of birth mentioned in the service register and ultimately by the impugned order, the Tribunal directed the appellants to alter his date of birth to August 9, 1936. While issuing such a direction, the Tribunal has taken into consideration, as to how many brothers the respondent has and what were the dates of their birth. Although the Tribunal has observed that the different dates of birth of the brothers of the respondent, indicate that "there is a great deal of confusion and incongruities regarding dates of birth of the various members of the applicant's family", still on the basis of a report of the Revenue Divisional Officer, submitted after oral inquiry made from different persons, including the mother of the respondent, the Tribunal has come to the conclusion, that the date of birth of the respondent was August 9, 1936 instead of August 9, 1934. The Commissioner for Revenue Administration, had rejected the said report submitted by the Revenue Divisional Officer, but the Tribunal has accepted the said report for correction of date of birth of the respondent. If the date of birth of a public servant, is corrected only on basis of a report submitted by a Revenue Officer after holding an inquiry, according to us, it will introduce uncertainty, in public services. This Court has repeatedly pointed out that correction of the date of birth of public servant is permissible, but that should not be done in a casual manner. Any such order must be passed on materials produced by the public servant from which the irresistible conclusion follows that the date of birth recorded in the service book was incorrect. While disposing of any such application, the court or the tribunal, has first to examine, whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the court or tribunal has to examine, why such application was not made within a reasonable time after joining the service.

9. The Tamil Nadu Service Manual contains Rules 49 and 49- A, which are the provisions in respect of alteration and correction of the date of birth. Whenever any application is filed by persons governed by those service rules, procedures prescribed therein have to be strictly followed, including the time limit prescribed for making such an application. Clause (b) of the aforesaid Rule 49 provides that after a person has entered in 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 in service..... It need not be pointed out that if an application is made for

correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in a much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier. In the facts and circumstances of the case, it is not possible to uphold the finding recorded by the Tribunal.

10. Accordingly, the appeal is allowed. The impugned order is set aside. However, there shall be no order as to costs. Contempt Petition No. 298 of 1993

11. In view of the order passed in the above appeal, this petition for initiating proceedings for contempt is dismissed.