Supreme Court of India
State Of T.N vs T.V. Venugopalan on 3 August, 1994
Equivalent citations: 1994 SCC (6) 302, JT 1994 (5) 337
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
STATE OF T.N.

Vs.

RESPONDENT:
T.V. VENUGOPALAN

DATE OF JUDGMENT03/08/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC (6) 302 JT 1994 (5) 337
1994 SCALE (3)667

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. RAMASWAMY, J.- Leave granted.

2. The respondent had entered into the service as a Probationary Deputy Surveyor in Revenue Department of Madras Province on 12-1-1952. In his service record, his date of birth, as recorded in his Secondary School Leaving Certificate was 15-8-1933. His SSLC book contained a declaration of his father, as was the procedure in vogue, that the respondent's date of birth was 15-8-1933. While the respondent was working as an Assistant Director of Survey and Land Records, he was due to retire on attaining the age of superannuation of 58 years on 31-8-1991. On 14-8- 1990, i.e., a year before retirement he made a representation to the Government, the appellant, stating, inter alia, that his father had inadvertently recorded his date of birth as 15-8-1933 in the school register but, in fact, his actual date of birth was 15-8-1935 and sought for its alteration enclosing certain birth certificates claiming to be of his sister's, brother's and of himself. The Government after examining his case rejected his request by letter dated 30-8-1991. On an application filed in the Administrative

Tribunal, he contended that before rejecting the application, he was not provided with an opportunity of hearing, nor the order contained any reasons, which is in violation of the principles of natural justice. The Tribunal in the order dated 1- 12-1992 while setting aside the order, directed the Government to dispose of respondent's representation by giving reasons and an opportunity of hearing. The Government after complying with the direction and consideration of the case again rejected the claim by its GOMs No. 271 dated 31-3-1993. The respondent challenged that order by filing OA No. 1993 of 1993 and the Tribunal by the impugned order dated 1-9-1993 again allowed the petition and directed to extend respondent's service by two years which would be counted from the date of his joining duty since the respondent was superannuated on 31-8-1991. The intervening period was directed to be dealt with in such a manner as not to constitute a break in service as it would affect his service benefits. It also held that the respondent is eligible to draw his provident fund and other superannuation benefits like gratuity, special provident fund and family benefit fund and commutation of pension only after his superannuation in terms of the Tribunal's order and that if the respondent had already drawn these amounts, the State would be entitled to deduct interest at the rate of one per cent per month at the end of the extended tenure from the amounts due and payable to him.

3.The learned Senior Counsel for the respondent Mr K.V.S. Raghavan contended that the Tribunal had appreciated the evidence and held that the reasons given by the Government to reject the claim of the respondent for correction of his date of birth, are unsound. The discrepancies pointed out by the Government were not on material particulars and of no consequence and they were minor discrepancies regarding names of the parents, addresses, etc. They do not cast doubt on the registration of respondent's date of birth. Since the Tribunal had appreciated the evidence 'and found the date of birth to be 15-8-1935, the case does not warrant interference. Placing reliance on the letter dated 21-8- 1990 issued by the Government intimating the departments that Rule 49 of the Tamil Nadu State and Subordinate Services Rules (in short 'Rules') was prospectively introduced in the year 1961 prescribing a limitation of five years for seeking correction of the date of birth after entering into the service and applications made thereafter shall be summarily rejected, amounts to conceding that the respondent had no prior opportunity to have it corrected. In the light of the directions issued by the Administrative Tribunal, in an earlier case, Government conceded and permitted the authorities to have the date of birth corrected within five years from that date. Since the respondent had already applied for correction of the date of birth, the authorities are bound to go into the question and the limitation of five years would not be a bar. We find no force in any of the contentions.

4.Rule 49 and 49-A of the Rules provide the procedure and limitation for seeking correction of the date of birth by the government employees. Rule 49(b) provides that after a person has entered in service, an application to alter his date of birth, as entered in the official records, "shall be entertained only if such an application is made within five years after entering in service..... If any such application has been made earlier or before the expiry of five years from the date of the entry into the service, it is incumbent upon the authorities to enquire into the claim for correction of the date of birth mentioned in the service record and to pass appropriate order in that behalf. It is true that a government servant has a right to seek correction of the date of birth as entered in the service record by placing unimpeachable evidence before the competent authority and the authority is

enjoined to enquire into and pass appropriate orders in that behalf, but it must be in accordance with the rules and in the manner prescribed therein. It is well known that the service record would be opened after the government servant enters the service and normally the entry in the service record would be countersigned by the government servant. The date of birth as entered in the school record (Matriculation, Secondary School Leaving Certificate or HSC or Board Exams, whatever may be the name of the certificate from an institution in which the candidate had undergone course of study, be it in the primary or secondary educational institutions), is the source material for making entry in the service record. The object of the rule or statutory instructions issued under proviso to Article 309 or orders issued by the Government under Article 162, for the correction of the date of birth entered in the service record, is that the Government employee, if he has any grievance in respect of any error of entry of date of birth, will have an opportunity, at the earliest, to have it corrected. Its object also is that correction of the date of birth beyond a reasonable time should not be encouraged. Permission to reopen accepted date of birth of an employee, especially on the eve or shortly before the superannuation of the government employee, would be an impetus to produce fabricated record. The Government of Andhra Pradesh made statutory rules, namely, A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 and had given time to have the date of birth corrected within the stipulated period and on expiry thereof, the civil court was prohibited to entertain any suit or proceedings for correction of the date of birth. When an application was made to the Administrative Tribunal for correction of the date of birth based on entries maintained under Births, Deaths and Marriages Registration Act.

1886, the Tribunal allowed the petition. On appeal, this Court in Government of A.P v. M. Hayagreev Sarma1 held that: (SCC p. 685, para 7) "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."

The appeal was allowed and alteration of date of birth was set aside.

5. In Union of India v. Harnam Singh2, when Fundamental Rule 56(m) was amended and substituted Note 5 in 1979 prescribing a period of five years to seek alteration of the date of birth from the date of coming into force of these rules, this Court harmoniously interpreted the rule and held that the employee who was in service as on that date, will be entitled to seek correction of date of birth within five years from 1979. In that context, this Court held that: (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;.....

should make application within a period of five years from the date the rule had come into force and if he had not done, he was not eligible and was not entitled to correction. In that case, in view of the inordinate delay, the application for correction of date of birth was rejected.

6. In Executive Engineer v. Rangadhar Mallik3 interpreting Rule 65 of the Orissa General Finance Rules, when an application for correction of date of birth was made nearabout the time of superannuation, this Court held that it shall not be corrected. In Secretary & Commissioner, Home Department v.R. Kirubakaran4arising from the Tamil Nadu State and Subordinate Rules, this Court while noticing the inordinate delay in filing the application for correction of the date of birth, set aside the order of the Tribunal. Director of Technical Education v. K. Sitadevi5 relied on by the respondent, renders little assistance to the facts in this case. The respondent in that case filed a civil suit for correction of date of birth without impleading the Government and got suit decreed. While upholding that the State being not a party to the suit, the decree did not bind the Government, since the evidence of the Municipal Birth Register was not objected by the State when it was produced before the 1 (1990) 2 SCC 682: 1990 SCC (L&S) 542: (1990) 13 ATC 713 2 (1993) 2 SCC 162: 1993 SCC (L&S) 375 : (1993) 24 ATC 92 3 1993 Supp (1) SCC 763: 1993 SCC (L&S) 276: (1993) 23 ATC 4 1994 Supp (1) SCC 155: 1994 SCC (L&S) 449 : (1994) 26 ATC 828 : JT (1993) 5 SC 404 5 1991 Supp (2) SCC 387: 1992 SCC (L&S) 78 : (1992) 19 ATC 287 : AIR 1991 SC 308 Tribunal, the acceptance thereof by the Tribunal was found by this Court, cannot be faulted. In that factual background, this Court upheld the order of the Tribunal directing correction of date of birth of the respondent therein.

7. As held by this Court in Harnam case2, Rule 49 Is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force, i.e., 196 1. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in the GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of

the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs 3000.