Karnataka Rural Infrastructure ... vs T.P Nataraja on 21 September, 2021

Author: M. R. Shah

Bench: A.S. Bopanna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5720 OF 2021

KARNATAKA RURAL INFRASTRUCTURE DEVELOPMENT LIMITED ..APPELLANT(S)

VERSUS

T.P. NATARAJA & ORS. ..RESPONDENT(S)

With

CIVIL APPEAL NO. 5721 OF 2021

KARNATAKA RURAL INFRASTRUCTURE DEVELOPMENT LIMITED & ANR. ..APPELLANT(S)

VERSUS

M.C. SUBRAMANIAM REDDY. ..RESPONDENT(S)

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.03.2019 passed by the High Court of Karnataka at Bengaluru in Regular First Appeal (RFA) No.1674 of 2013, by which the High Court has allowed the said appeal preferred by respondent No.1 herein – employee and has quashed and set aside the judgment and decree passed by the learned Trial Court consequently dismissing the suit filed by respondent No.1 herein – original plaintiff declaring the date of birth of employee 24.01.1961, the original defendant – Karnataka Rural Infrastructure Development Limited (hereinafter referred to as the original defendant – appellant □corporation) has preferred the present appeal.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.11.2019

passed by the High Court of Karnataka at Dharwad in Writ Petition No.109447 of 2019 (S□RES), by which the High Court has partly allowed the said writ petition, relying upon the judgment and order passed in RFA No.1674 of 2013 (which is the subject matter of Civil Appeal No.5720 of 2021 arising out of SLP No.2368 of 2020) and has directed the Karnataka Rural Infrastructure Development Limited to reconsider the decision of original writ petitioner with respect to change of date of birth, the original respondent □Karnataka Rural Infrastructure Development Limited has preferred Civil Appeal No.5721 of 2021 arising out of SLP No.1062 of 2021.

3. The facts leading to the present appeal in nutshell are as under:□3.1 That respondent No.1 herein – original plaintiff was appointed with the appellant □corporation in the year 1984. In the service record his date of birth was reflected as 04.01.1960 as per SSLC Marks Card. After the lapse of nearly 24 years, respondent no.1 herein – original plaintiff requested for change of date of birth from 04.01.1960 to 24.01.1961. That thereafter respondent No.1 filed a suit for declaration before Additional City Civil and Sessions Judge at Bengalore to declare that his date of birth is 24.01.1961. The suit was opposed by the appellant – corporation relying upon the Karnataka State Servants (Determination of Age) Act, 1974 (hereinafter referred to as the Act, 1974) and resolution dated 17.05.1991 passed by the appellant □corporation adopting the Karnataka Civil Service Rules and allied laws. The said rule provided that the request for change of date of birth in the service record shall be made within a period of three years from the date of joining or within one year from commencement of the Karnataka Act No.22 of 1974. The suit was also opposed on the ground of delay and laches on the part of respondent No.1 – original plaintiff in requesting to change the date of birth. Relying upon Section 5(2) of the Act, 1974 the learned Trial Court dismissed the suit vide judgment and decree dated 28.07.2013.

3.2 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Trial Court dismissing the suit, respondent No.1 – original plaintiff preferred Regular First Appeal No.1674 of 2013 before the High Court. The High Court by the impugned judgment and order dated 11.03.2019 has allowed the said appeal by observing that it was highly impossible that the plaintiff should have availed the remedy within three years from the date of joining of service and also observing that the resolution dated 17.05.1991 passed by the appellant □corporation adopting the Karnataka Civil Service Rules and allied laws was not brought to notice of the plaintiff.

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dated 11.03.2019 allowing the said appeal and quashing and setting aside the judgment and decree passed by the learned Trial Court dismissing the suit preferred by respondent No.1 herein and consequently decreeing the suit and declaring the date of birth of respondent No.1 – original plaintiff 24.01.1961 instead of 04.01.1960 recorded in the service record, original defendant – employer – corporation has preferred the present appeal.

4. Shri Gurudas S. Kannur, learned Senior Advocate appearing on behalf of the appellant – corporation has vehemently submitted in the facts and circumstances of the case more particularly when the request for change of date of birth was made after 24 years and dehors the statutory provisions, the High Court committed a grave error in decreeing the suit and granting the declaratory relief. It is submitted that as mandated by Section 5 (2) of the Act, 1974 no such

alteration to the date of birth to the advantage of a State servant be made unless the employee has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of the Act, 1974, whichever is later. It is submitted that the Act, 1974 came to be adopted by the appellant – corporation in the year 1991 and therefore respondent No.1 – original plaintiff ought to have made the request for change of date of birth at least within one year from 17.05.1991 i.e. when the resolution was passed by the appellant – corporation adopting the Act, 1974 and allied laws. It is submitted that in the present case respondent No.1 □employee made the application for the first time vide notice dated 23.06.2007 i.e. after the lapse of 24 years since he joined the service and nearly after the lapse of 16 years from the date of adoption of enactment (Act, 1974) by the appellant – corporation.

4.1 It is submitted that the High Court ought to have appreciated that the ignorance of law cannot be an excuse. It is submitted that being an employee in fact he was supposed to know the rules and regulations applicable to the employees of the corporation.

4.2 It is submitted that in any case, the High Court ought to have non suited the employee on the ground of delay and laches as the request for change of date of birth was made after lapse of 16 years from the date of adoption of enactment (Act, 1974) by appellant – corporation.

4.3 Relying upon the decisions of this court in the cases of Home Deptt. v. R.Kirubakaran, 1994 Supp (1) SCC 155; State of M.P. v. Premlal Shrivas, (2011) 9 SCC 664; Life Insurance Corporation of India & Others v. R.Basavaraju (2016) 15 SCC 781 and Bharat Coking Coal Limited and Ors. v. Shyam Kishore Singh (2020) 3 SCC 411, it is prayed to allow the present appeal.

4.4 Learned advocate appearing on behalf of the appellant – corporation had fairly admitted that so far as respondent No.1 herein □employee is concerned, the impugned judgment and order passed by the High Court has been implemented. However, as others suits are pending, he has requested to decide the question of law so that the impugned judgment and order passed by the High Court may not come in the way of corporation.

5. Shri Ashok Bannidinni, learned Advocate appearing on behalf of respondent No.1 – original plaintiff has submitted that so far as respondent No.1 –original plaintiff is concerned the impugned judgment and order passed by the High Court has been implemented in the year 2019 and even thereafter he has attained the age of superannuation treating and considering his date of birth as 24.01.1961, nothing further is required to be done in the present appeal and as such the present appeal has become infructuous so far as respondent No.1 – original plaintiff is concerned.

5.1 Now so far as Civil Appeal No.5721 of 2021 arising out of SLP No.1062 of 2020 is concerned, it is submitted that even the said appeal has also become infructuous as after the impugned judgment and order dated 05.11.2019 passed by the High Court in writ petition No.109447 of 2019, by which the High Court has directed the appellant – corporation to re□consider the request of the writ petitioner – respondent herein for change of date of birth in light of the judgment and order passed in RFA No.1670 of 2013, thereafter the appellant – corporation reconsidered the

application/representation of the writ petitioner – respondent herein and his prayer for change of date of birth came to be rejected against which even the writ petition was preferred before the learned Single Judge and the same has also been dismissed. It is submitted that therefore even Civil Appeal No. 5721 of 2021 arising out of SLP No.1062 of 2020 has become infructuous.

5.2 Learned Senior Advocate appearing on behalf of appellant ☐corporation is not disputing the aforesaid factual matrix.

6. Heard the learned counsel appearing on behalf of the appellant – corporation and respondent No.1 ☐employee.

7. The dispute is with respect to change of date of birth in the service record. The employees of the State Government for the determination of the age are governed by the Karnataka State Servant (Determination of Age) Act, 1974; Section 4 of the Act, 1974 provides for bar of alteration of age except under the Act, 1974; Section 5 of the Act, 1974 provides alteration of age or date of birth of State servants which provides that subject to Sub☐section (2), the State Government may, at any time, after an inquiry, alter the age and date of birth of a State servant as recorded or deemed to have been recorded in his service register or book or any other record of service. Sub☐section (2) of Section 5 further provides that no such alteration to the advantage of a State servant shall be made, unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of Act, 1974, whichever is later. Section 6 of the Act, 1974 further provides that no court shall have jurisdiction to settle, decide or deal with any question which is required to be decided under the Act, 1974. It also further provides that no decision under Act, 1974 shall be questioned in any court of law. Section 4, Section 5 and Section 6 which are relevant for our purpose are re☐produced herein below: ☐

4. Bar of alteration of age except under the Act.☐Notwithstanding anything contained in any law or any judgment, decree or order of any court or other authority, no alteration of the age or date of birth of a State servant as accepted and recorded or deemed to have been accepted and recorded in his service register or book or any other record of service under section 3 shall, in so far as it relates to his conditions of service as such State servant, be made except under section 5.

5. Alteration of age or date of birth of State servants.☐(1) Subject to subsection (2), the State Government may, at any time, after an inquiry, alter the age and date of birth of a State servant as recorded or deemed to have been recorded in his service register or book or any other record of service:

> Provided that no such alteration shall be made if the age and date of birth of a State servant has been accepted and recorded or deemed to have been accepted and recorded in the service register or book or any other record of service in pursuance of a decree of a civil court obtained by the State servant 1 [after he became such servant]1 against the State Government:

1. Inserted by Act 22 of 1977 w.e.f. 29.7.1977 Provided further that no such alteration shall be made without giving the State servant concerned a reasonable opportunity of being heard.

(2) No such alteration to the advantage of a State servant shall be made unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of this Act, whichever is later.

6. Bar of jurisdiction of courts.□(1) No court shall have jurisdiction to settle, decide or deal with any question which is required to be decided under this Act. (2) No decision under this Act shall be questioned in any court of law.

8. So far as the appellant corporation is concerned, they adopted the provisions of the Act, 1974 by resolution dated 17.05.1991. Therefore, as such the request for change of date of birth as per the Act, 1974 as adopted by the appellant – corporation in the year 1991 was required to be made by respondent No.1 – employee within a period of one year from 17.05.1991 being the employee of the appellant □corporation. However, respondent No.1 – employee made the request for change of date of birth vide notice dated 23.06.2007 i.e. after the lapse of 24 years since he joined the service and nearly after the lapse of 16 years from the date of adoption of enactment (Act, 1974) by the appellant – corporation. The High Court in the impugned judgment and order has observed that nothing is on record that resolution dated 17.05.1991 adopting the Act, 1974 was brought to the notice of the employee and that therefore respondent No.1 – employee might not be aware of the applicability of the Act, 1974. Aforesaid cannot be accepted. Being the employee of the corporation, he was supposed to know the rules and regulations applicable to the employees of the corporation. Ignorance of law cannot be an excuse to get out of the applicability of the statutory provisions.

9. Even otherwise and assuming that the reasoning given by the High Court for the sake of convenience is accepted in that case also even respondent No.1 – employee was not entitled to any relief or change of date of birth on the ground of delay and laches as the request for change of date of birth was made after lapse of 24 years since he joined the service. At this stage, few decisions of this court on the issue of correction of the date of birth are required to be referred to. 9.1 In the case of Home Deptt. v. R.Kirubakaran (Supra), it is observed and held as under:□"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 the promotion for ever..." 9.2 In the case of State of M.P. v. Premlal Shrivas, (Supra) in paragraph 8 and 12, it is observed and held as under:□"8. 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 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 v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. 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." 9.3 In the case of Life Insurance Corporation of India & Others v. R.Basavaraju (Supra), it is observed as under:□"5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement" 9.4 In the case of Bharat Coking Coal Limited and Ors. v. Shyam Kishore Singh (Supra) of which one of us (Justice A.S. Bopanna) was a party to the bench has observed and held in paragraph 9 & 10 as under:□"9. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of State of Maharashtra and Anr. v. Gorakhnath Sitaram Kamble (2010)14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:

> "16. The learned counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri [(2005) 11 SCC465: 2006 SCC (L&S) 96]. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.
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> 17. In another judgment in State of Uttaranchal v.

Pitamber Dutt Semwal [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in Home Deptt.v. R. Kirubakaran [1994 Supp (1) SCC 155 :

> 1994 SCC (L&S) 449 : (1994) 26 ATC 828] reads as under: (SCC pp. 158 59, para 7) "7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. 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 promotion forever. ... 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. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book." "10. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in State of M.P. vs. Premlal Shrivas, (Supra) it is held as hereunder:□"8. 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 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 sleepover their rights" (see Union of India v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. 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."

10. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under:

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and latches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.

11. Therefore, applying the law laid down by this court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order passed by the High Court is unsustainable and not tenable at law.

12. However, considering the fact that when the impugned judgment and order passed by the High Court has been implemented and respondent No.1 has retired thereafter considering his date of birth as 24.01.1961, it is observed that the present judgment and order shall not affect respondent No.1 – employee and we decide the question of law in terms of the above in favour of the appellant – corporation. With this Civil Appeal No. 5720 of 2021 stands disposed of.

13. So far as the Civil Appeal No.5721 of 2021 arising out of the SLP No.1062 of 2020 is concerned, it is true that while passing the impugned judgment and order the High Court heavily relied upon the judgment in RFA No.1674 of 2013 (subject matter of Civil No.5720 of 2021) which also is not sustainable in law as observed hereinabove. However considering the fact that thereafter after the impugned judgment and order dated 05.11.2019 passed by the High Court in W.P. No.109447 of 2019 directing the appellant – corporation to consider the case of the original writ petitioner – respondent herein in light of the decision in the case of RFA No.1674 of 2013, the case of the respondent came to be reconsidered and his prayer for change of date of birth came to be rejected on the ground of delay and laches and even thereafter also the fresh decision was challenged before the learned Single Judge and the learned Single Judge has also dismissed the subsequent writ petition. Therefore, no further order is required to be passed in the present appeal and is accordingly disposed of. However, question of law is decided in favour of the appellant – corporation as observed hereinabove.

.....J. (M. R. SHAH) .....J. (A.S. BOPANNA) New Delhi, September 21, 2021