

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.2110 OF 2017

1. A. Jagan Mohan S/o. Thirupathi,
aged 57 yrs, died as per LRs.
Occ:ASI, R/o H.No.1-12-154/A,
Vinayaka Nagar, Nimzamabad – TS.
2. Smt. A. Varalazmi, W/o A.Jagan Mohan,
Aged 57 yrs, Occ: House hold and three others.

....Petitioner

VERSUS

1. The State Government of Telangana,
Home Dept, Secretariat, Hyderabad,
rep. by its Principal Secretary and four others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.10.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

J. SREENIVAS RAO, J

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! Counsel for the Petitioner : K.M.Mahender Reddy

^ Counsel for the Respondent : G.P. for Home

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2010 4 ALD 16 (DB)
2. 2021 11 Scale 110
3. 1994 6 SCC 302
4. 2023 1 ALT 332

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.2110 of 2017

ORDER:

This writ petition is filed seeking the following relief:

“...issue an appropriate Writ or Order or direction particularly one in the nature of Writ of Mandamus in issuing impugned the Memo No.A3/LR/Mis/ 2017, dt. -.01.2017 by 4th respondent proposing to retire as Asst Sub Inspector of Police PS Town V Nizamabad with effect from 31.01.2007 instead of 31.07.2017 by showing incorrect date of birth as 13.01.1959 instead of 13.07.1959 contrary to two ID cards issued by two Govts. i.e., AP.Govt. ID No. CIVIL 81 122077 issued on 02.03.2013 before bifurcation of AP State and Telangana Govt No.1981 039974 issued recently on 09.03.2016 after bifurcation of AP State showing date of birth as 02.07.1959 valid upto 31.07.2017 and failed to rectify date of birth as 13.07.1959 on the basis of ID cards Transfer Certificate which was submitted at the time of joining in Service as Constable in 1981 year Bonafide Certificate dt 22.01.2007 is totally illegal, arbitrary, unjust, discriminatory, unreasonable, without jurisdiction opposed to Public Policy and violation of Art. 14, 16, 21 of the Constitution of India and also violative of Principles of Natural Justice and call for the records and issue consequential directions to the Respondents:

a) to continue the petitioner as Asst Sub Inspector till 31.07.2017.

b) to issue revised orders showing the petitioner retirement as 31.07.2017 without disturbing terminal benefits alternatively direct the respondents to pay full salary till 31.07.2017 from 01.02.2017 i.e., till the retirement date and award costs...”

2. Heard Sri K.M. Mahender Reddy, learned counsel for the petitioner and learned Special Government Pleader for Home for respondent Nos.1 to 4.

3. Learned counsel for the petitioner submits that the

petitioner was appointed as constable in respondent No.4 office through proceedings D.O.No.2484/81 dated 14.02.1981 and he joined at P.S.Armour. At the time of appointment he produced X class Transfer Certificate and bonafide certificate dated 22.01.2007, wherein his date of birth was mentioned as 13.07.1959, along with representation on 31.01.2007. However, respondent No.4 issued *ex parte* order on 06.10.2016, *vide* Proc. C.No.A5/1259/54/Pup-Pen/2015, D.O.No.2128/2016, wherein it is mentioned that the petitioner is going to be retired on 31.01.2017 instead of 31.07.2017, after receipt of the said order the petitioner submitted representation on 09.11.2016 to respondent authorities requesting them to rectify his date of birth basing on the transfer certificate issued by respondent No.5 School. When the respondents failed to consider the said representation the petitioner approached this Court and filed W.P.No.1095 of 2017, when the said case is pending, respondent No.4 issued impugned Memo No.A3/LR/Mis/2017 dated Nil-01-2017, rejecting the claim of the petitioner on the ground that the date of birth of the petitioner was recorded as 13.01.1959 in the service record and also in Arogya Bhadratha form and the petitioner is not entitled for correction of his date of birth.

4. Learned counsel for the petitioner vehemently contended that at the time of appointment he produced the transfer certificate and also bonafide certificate issued by respondent No.5 school wherein his date of birth was mentioned as 13.07.1959. Respondents without properly considering the representation submitted by the petitioner and without verifying the certificates produced by the petitioner, erroneously rejected the claim of the petitioner, without giving reasonable opportunity and the same is contrary to law. In support of his contention he relied upon the Judgment of this Court in ***C. Thimmaiah Vs. State of Andhra Pradesh and others (DB)***¹.

5. *Per contra*, learned Special Government Pleader contended that the petitioner was appointed as constable on 14.02.1981 and basing on the date of birth furnished by the petitioner himself as 13.01.1959, respondents have opened his service records in the year 1981 and the petitioner accepted the same and put his signature and thumb impressions. Thereafter, in the year 1989, the petitioner submitted an application under Arogya Bhadratha scheme wherein he himself mentioned his date of birth as 13.01.1959. As per the Service Regulations, respondent No.4

¹ 2010 4 ALD 16 (DB)

issued Memo on 06.10.2016 informing the petitioner and others that they are going to retire on 31.01.2017. After receipt of the said notice, petitioner submitted a representation and after verifying the entire records by duly considering the representation submitted by the petitioner, respondent No.4 issued the impugned order by giving cogent reasons. He further contended that during his service the petitioner got two promotions, in the promotion orders also the petitioner's date of birth was mentioned as 13.01.1959 and during his entire service the petitioner has not raised any dispute seeking correction of his date of birth and he had filed the present writ petition at the fagend of his services and the same is not permissible under law and the petitioner is not entitled to the relief sought in this writ petition.

6. Having considered the rival submissions made by respective parties and upon perusal of the material available on record, it is undisputed fact that the petitioner was appointed as constable on 14.02.1981, through the proceedings issued by respondent No.4 and thereafter, the petitioner got promotion to the post of Head Constable and ASI. As per the rules, respondent No.4 issued memo on 06.10.2016, informing the petitioner that he is going to be retired on 31.01.2017. After receipt of the said

notice, petitioner submitted representation on 09.11.2016. Respondent No.4 after considering the same, issued the impugned proceedings wherein it was mentioned that the petitioner himself mentioned his date of birth as 13.01.1959 at the time of his initial appointment and basing on the same his date of birth was mentioned as 13.01.1959 in the service records. It is very much relevant to mention here that this Court summoned the original service record of the petitioner from the respondents on 11.08.2023 and the same was produced.

7. After due verification of the original service record, it clearly reveals that in one document i.e., verification roll which was prepared on 09.02.1981, all the details are mentioned by the petitioner in his own handwriting including his date of birth i.e., 13.01.1959 and had put his signature. It further reveals from the record that the petitioner submitted application for membership under Arogya Bhadratha A/c.No.033542 cum nomination form on 05.07.1999 to respondent wherein the petitioner himself mentioned his date of birth as 13.01.1959 and also mentioned all the family members particulars and he raised the dispute after rendering more than 30 years of service i.e, at the fagend of his service and the same is not permissible under law.

8. As per TS Public Employment (Recording and alteration of date of Birth) Rules, 1984 every Government employee shall within one month from the date on which he joins duty has to make a declaration as to his date of birth.

9. It is already stated supra that the date of birth of the petitioner in the service record was recorded as 13.01.1959 and the petitioner has not raised dispute till 31.07.2017 and he raised the said dispute after lapse of a long period of more than 30 years and he filed the present writ petition on 20.01.2017 i.e., before his retirement and the same is not permissible under law.

10. In **C. Thimmaiah(supra)** **case** the dispute of the petitioner therein was his actual date of birth is 23.10.1953 basing on the certificate issued by MRO Roddam, but his date of birth was entered as 10.01.1952 in the school records basing on the wrong declaration given by his parents, who were illiterates, at the time of admitting the petitioner in school and the same date was entered in the petitioner's service record. The Division Bench of this Court taking into consideration the Registration of Births and Deaths Act, 1969 held that the certificate given by the competent authority i.e., MRO, is authenticated document and basing on the same the petitioner therein is entitled for correction

of his Date of Birth. In the case on hand, the petitioner's date of birth was recorded in the service record basing on the information furnished by the petitioner himself as 13.01.1959 and the same was accepted by the petitioner and subsequently he got promotions in the year 2006 and 2012, wherein his date of birth was mentioned as 13.01.1959 and the petitioner is not entitled to raise the dispute for correction of his date of birth. It is settled proposition of law that at the fagend of service the employee is not entitled to raise dispute for correction of date of birth.

11. In ***Karnataka Rural Infrastructure Development Limited Vs. T.P.Nataraja and Ors***² the Hon'ble Apex Court held that, the employee is not entitled to the relief of 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, which reads as follows:

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.

11. Therefore, applying the law laid down by this court in the aforesaid decisions, the application of the respondent for change of

² 2021 11 Scale 110

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. In ***State of Tamil Nadu Vs. T.V. Venugopalan***³, the Hon'ble Supreme Court held that when 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 the service career to raise a dispute as regards the correctness of the entries in the service register.

13. This Court in ***K. Kumaraswamy Vs. Regional Manager, APSRTC and Others***⁴ after considering the various judgments of this Court and Hon'ble Apex Court specifically held that the petitioner having rendered more than two decades of service is not entitled to contend that he is not aware of the actual date of birth entered in the service records.

14. It is already stated supra that the petitioner's date of birth was mentioned as 13.01.1959 in all the records pertaining to the petitioner and he rendered more than 30 years of service and during his tenure he got two promotions from constable to higher posts. In the promotion orders also the petitioner's date of birth

³ 1994 6 SCC 302

⁴ 2023 1 ALT 332

was mentioned as 13.01.1959 and the petitioner raised the dispute after receiving the advance intimation notice dated 06.10.2016 about his date of retirement and he submitted representation on 09.11.2016 seeking correction of his date of birth. Respondent No.4 after verification of the service record rightly passed the impugned order.

15. Since the petitioner raised the dispute at the fagend of service, this Court is not inclined to invoke the jurisdiction of this Court under Article 226 of Constitution of India to grant the relief of correction of date of birth.

16. For the foregoing reasons as well as the principle laid down by the Hon'ble Apex Court and this Court, there are no merits in the writ petition and the writ petition is liable to be dismissed.

17. Accordingly, the writ petition is dismissed. No costs.

As a sequel thereto, miscellaneous applications, if any, pending in this writ petition shall stand closed.

JUSTICE J SREENIVAS RAO

12th October, 2023
PSW