

CASE NO.:
Appeal (civil) 3043 of 2006

PETITIONER:
State of Gujarat & Ors.

RESPONDENT:
Vali Mohmed Dosabhai Sindhi

DATE OF JUDGMENT: 19/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.17788 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

State of Gujarat and Inspector General of Police, Ahmedabad, and District Superintendent of Police, Mehsana, call in question legality of the judgment rendered by a Division Bench of the Gujarat High Court dismissing the Letters Patent Appeal filed by the appellant. By the impugned judgment, order of learned Single Judge allowing the Writ Petition filed by the respondent was upheld.

The factual controversy lies within a very narrow compass. The respondent was appointed as an unarmed Police Constable on 3.10.1947. At the time of appointment his year of birth was mentioned as 1923. On this basis he was to retire with effect from 1.11.1981 on reaching the age of 58 years. Accordingly, order dated 16.2.1981 was passed by the concerned Authority. It was indicated to the respondent that he will be retiring with effect from 1.11.1981. On receiving the order, he submitted an application for making a change of his date of birth in the service record. According to him, he was born in the year 1928 and not in 1923. Since the prayer was not accepted, he filed a writ petition. Though prayer for interim relief i.e. to stay operation of the order dated 16.2.1981 was made, no interim direction was given and he retired from service reaching the age of superannuation with effect from 1.11.1981. The writ petition was allowed by order dated 30.4.1993 and it was held that he was to retire in the year 1986 with effect from 1.11.1986. Accordingly, direction was given to the respondents in the writ petition to pay the arrears for the period from 1.11.1981 to 1.11.1986.

Learned Single Judge held that the school leaving certificate produced by the respondent deserved acceptance and on that basis he ought to have been continued till 1.11.1986. It was observed that the correctness of the school leaving certificate on which the respondent based his claim was not doubted as no counter affidavit was filed. Accordingly, the Writ Petition was allowed by order dated 30.4.1993.

The appellant preferred an LPA before the High Court which was dismissed so far as the date of controversy is concerned. However the arrears were directed not to be paid. All other salary benefits were directed to be given.

In support of the appeal, learned counsel for the appellant submitted that no reason was assigned by the respondent as to why he requested change of his date of birth after receiving the order relating to his retirement. He joined service in 1947, for nearly 35 years he remained silent. The entry in the service record was made on the basis of his own statement. No materials were adduced to show that there was any error in the date recorded. On mere production of school leaving certificate, authenticity of which was doubtful, the High Court should not have granted a relief. It was pointed out that in the so-called school leaving certificate no date of birth was indicated and only the year was mentioned. This suspicious circumstance has been completely lost sight of by the High Court.

There is no response on behalf of the respondent.

It is to be noted that there are several rules governing request to change the date of birth. One of them is Rule 171 of the Bombay Civil Services Rules, 1959 (in short the 'Rules'). This Rule clearly provides that the request made for alteration of date of birth should not be entertained after the preparation of the service book of the Government servant and in any event not after the completion of the probation period or after 5 years of continuous service whichever was earlier. The said rule categorically provides that once an entry of age or date of birth has been made in the service book, no alteration of the entry afterwards should be allowed unless it is shown that the entry was due to want of care on the part of some person other than individual in question or is an obvious clerical error.

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, 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 records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

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 Deka* (1970 (3) SCC 624), 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." In the case of *Government of Andhra Pradesh v. M. Hayagreev Sarma* (1990 (2) SCC 682)

the A.P. Public Employment (Recording and alteration of Date of Birth) Rules, 1984 were considered. 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. It was *inter alia* observed by this Court:

"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."

In *Executive Engineer, Bhadrak (R&B) Division, Orissa and Ors. v Rangadhar Mallik* (1993 Supp.(1) SCC 763), 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 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 made any representation for correcting his date of birth till September 9, 1986. In case of *Union of India v. Harnam Singh* (1993 (2) SCC 162) the position in law was again re-iterated and it was observed:

"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."

An application for correction of the date of birth should not be dealt with by the Courts, 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. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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 within at least a reasonable time. 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 about 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 date 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 or 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 thereby caused injustice to his immediate junior.

The position was succinctly stated by this Court in the above terms in *The Secretary and Commissioner Home Department and Ors. v. R. Kirubakaran* (JT 1993 (5) SC 404).

As observed by this Court in *State of Tamil Nadu v. T.V. Venugopalan* (1994 (6) SCC 302) and *State of Orissa and Ors. v. Ramanath Patnaik* (1997 (5) SCC 181) when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran's* case (supra) was adopted.

The above position was also noticed in *State of U.P. and Others v. Gulaichi (Smt.)* (2003 (6) SCC 483).

In the instant case the Rules referred to above clearly indicate the permissible area for correction of date of birth. In view of the specific provisions made, it was not permissible to effect any change.

The inevitable conclusion is that the order of learned Single Judge and impugned judgment of the Division Bench affirming it cannot be sustained. Both the orders are set aside. The appeal is allowed but without any orders as to costs.

JUDIS