

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION No.26262 OF 2012

Between:

Sanyasi Rao, S/o. Bethala Rao,
Aged 59 years, Occ: Advocate,
Retd. District Judge, R/o.Door No.11-5-413,
Bhavya Krishna Residency, Flat No.304,
Red Hills, Hyderabad .. Petitioner

And

The High Court of Andhra Pradesh,
Rep., by its Registrar (Admn.),
Hyderabad .. Respondent

Date of Order Pronounced: 30.01.2024

SUBMITTED FOR APPROVAL:

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

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 Reports/Journals? (Yes/No)
3. Whether their Lordship/ Ladyship wish to see the fair copy of the Judgment? (Yes/No)

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

WRIT PETITION No.26262 OF 2012

% Dated: 30.01.2024

Sanyasi Rao, S/o. Bethala Rao,
Aged 59 years, Occ: Advocate,
Retd. District Judge, R/o.Door No.11-5-413,
Bhavya Krishna Residency, Flat No.304,
Red Hills, Hyderabad .. Petitioner

And

The High Court of Andhra Pradesh,
Rep., by its Registrar (Admn.),
Hyderabad .. Respondent

! Counsel for petitioner : Mr. M. Surender Rao, learned
Senior Counsel

^ Counsel for respondent : Ms. V. Uma Devi, learned
Standing Counsel for High Court
for the State of Telangana

Mr. K. Vivek Reddy, learned
Senior Counsel and Amicus curiae
for the respondent

<GIST:

> HEAD NOTE:

? Cases referred

1. 2004 (3) ALD 449
2. 2015 SCC OnLine Bom 1933
3. 2007 (1) ALT 727
4. 1994 Supp (1) SCC 155

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.26262 OF 2012

ORDER: *(per the Hon'ble Shri Justice Anil Kumar Jukanti)*

Mr. M. Surender Rao, learned Senior Counsel for petitioner.

Ms. V. Uma Devi, learned Standing counsel for the Telangana High Court.

Mr. K. Vivek Reddy, learned Senior Counsel and *Amicus Curiae* for respondent.

2. The writ petition is filed praying to grant the following reliefs:
 - i) to declare the proceedings issued in Rc.No.702/1998-B2, dated. 21.03.2012 communicating the decision of the Hon'ble Court wherein and whereby rejecting the case of the petitioner by determining his date of birth as 01.07.1949, as illegal and arbitrary,
 - ii) to declare the petitioner's date of birth as 29.05.1953, but not as 01.07.1949.

- iii) that petitioner is entitled for all consequential benefits by determining his date of birth as 29.05.1953.
- iv) declare proceedings issued in order ROC.No.702/1998-B1, dated 26.03.2012 of 1st respondent rejecting the case of the petitioner for determination of date of birth as 29.03.1953 as illegal and arbitrary.

3. Brief facts:

The petitioner applied for the post of District Munsif on 17.12.1983 and in the application, he mentioned the date of birth as 01.07.1949. He was selected to the post of District Munsif, joined service on 17.10.1985 vide G.O.Ms.No.435, Home (Court.C) Department, dated 21.08.1985,.

4. An application/representation, dated 22.08.1989, was made to the High Court (through the District Judge, Srikakulam) stating that prior to entry into services, he filed a suit in O.S.No.61 of 1983 before the District Munsif, Chodavaram, for alteration of date of birth as 29.03.1953 instead of 01.07.1949 and the Court decreed the suit in his favour. At the time of opening the Service Register, on the basis of Birth Extract produced before the then District Judge, Visakhapatnam, his date of birth was entered as

29.03.1953. The Government of Andhra Pradesh issued G.O.Rt.No.1739, Education (ECI) Dept., dated 09.12.1988, directing to make necessary corrections in Higher Secondary Leaving Certificate (HSLC) Register. The change in date of birth was carried out in the said Register. In the application/representation, petitioner requested to record his date of birth in all records as 29.03.1953 instead of 01.07.1949.

5. The matter was placed before the Administrative Committee of the Hon'ble Judges and the Committee of Hon'ble Judges resolved as follows:

“CONSIDERED”, and since it is found that entry in respect of the Date of Birth in the Service Records has been made on the basis of the representation of the concerned officer/officers and materials produced including decrees of Civil Courts do not inspire confidence, resolved that representations for alteration of dates of birth be rejected.”

6. The said decision of the Hon'ble Judges Committee was informed to the petitioner vide letter dated 11.11.1997. Challenging the order dated 11.11.1997 in Roc.No.4518/97-B1, a Writ Petition bearing No.930 of 2002 was filed. The High Court vide order dated 06.02.2002 allowed the writ petition to change the date of birth

from 01.07.1949 to 29.03.1953. Matter was carried in appeal to the Hon'ble Supreme Court vide C.A.No.6964 of 2004. The Hon'ble Apex Court disposed of the appeal by the following order.

- a) The High Court on the administrative side shall determine the Judicial Officer's date of birth in accordance with Rule 2 of the 1984 Rules.
- b) The above exercise shall be completed within four months from the date of communication of this order.
- c) In case the Judicial Officer's date of birth is determined as March 29, 1953 as appropriate order for his reinstatement with all consequential benefits shall be issued as early as may be possible and in no case later than two weeks from the date of such determination.

7. In compliance with the directions of the Hon'ble Supreme Court, matter was placed before the Administrative Committee on 26.12.2011 and the Committee resolved requesting the Hon'ble Hon'ble Shri Ashtosh Mohantha to look into the matter and submit a report. It is pertinent to extract the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984) (for short, 'the Rules, 1984') and the same are as under:

2. Recording of date of birth : - (1) Every Government employee shall, within one month from the date on which he joins duty, make a declaration as to his date of birth.

(2) On receipt of the declaration made under sub-rule (1), the Head of Office or any other officer who maintains the service record in respect of such Government employee shall, after making such enquiry as may be deemed fit, with regard to the declaration and after taking into consideration such evidence, if any, as may be adduced in respect of the said declaration, make an order within four months from the date on which the Government employee joins service determining the date of birth:

Provided that in cases where the date of birth as determined under this sub-rule is different from the one declared by the Government employee concerned under sub-rule (1), he shall be given an opportunity of making a representation, before a final order is made.

(3) Where a Government employee fails to make a declaration within the time specified in sub-rule (1), the Head of Office or the officer who maintains the service records shall, after taking into consideration such evidence as may be available and after giving an opportunity of making a representation to the Government employee concerned, determine the date of birth of the employee within six months from the date on which the Government employee joins service.

(4) The date of birth determined under this rule shall be entered in the service records of the employee concerned duly attested by the Head of the Office or the officer who maintains the service records and the date of birth so entered, shall be

final and binding and the Government employees shall be stopped from disputing the correctness of such date of birth.

[(5) The date of birth as determined on the basis of the school records or any proof produced at the time of entering into service and entered in the service record shall be final and no subsequent variation of date of birth in the school records for any reason, shall be relevant for the purpose of service and on that basis the date of birth entered in the service records shall not be altered except in the case of *bonafide* clerical error, under the orders of the Government.] [Subs.by G.O.Ms.No. 94, Fin. & Plg., Dt. 15.03.94]

2A. "Civil Courts" Decree not to be taken into

consideration:- In any proceedings before the Government or any Court, Tribunal or other authority for the alteration of date of birth in the service records, the decree of a Civil Court in regard to alteration of the date of birth in the School or the University records or the contents in the Judgment leading to such decree, or the effect of its implementation shall not be taken into consideration in derogation to these rules and it is hereby declared that these rules shall have effect notwithstanding anything contained in any Judgment decree or order of a Civil Court in regard to the alteration of date of birth in the School or the University records whether or not the Government is a party - to such proceedings.] [Added by G.O.Ms.No. 383, Fin. & Plg., Dt. 16.11.1993 w.e.f. 21.04.1984]

3. Procedure in recording date of birth of employees appointed before the commencement of these rules: -

The date of birth of a Government employee who has been

appointed before the commencement of these rules and whose service register has not been opened, shall be recorded in the manner laid down in Rule 2.

4. Alteration of date of birth in past cases: - Rule 4 re-numbered as sub-rule [(1)] No Government employee in service, before the commencement of these rules;

(a) Whose date of birth has been recorded in the Service Register in accordance with the rules applicable to him; or

(b) Whose entry relating to date of birth became final and binding under the rules in force prior to the commencement of these rules, shall be entitled to claim alteration of his date of birth.

[(2) No subsequent variation of the date of birth in the school records shall be relevant for the purpose of service nor shall such variation be a valid ground for ordering an alteration of the date of birth by any Court. Tribunal or other authority.]

[Added by G.O.Ms.No. 94, Fin. & Plg., Dt. 15.03.94]

5. Cases pending on the date of commencement of these rules: - The cases in which the Government employees have already applied for alteration of their date of birth and which are pending on the date of commencement of these rules, shall be dealt with on the basis of recorded age in School and College records at the time of entry into service.

6. Effect of the Rules: - No rule made or deemed to have been made under the proviso to Article 309 of the Constitution of

India shall, in so far as it is inconsistent with any of the provisions of these rules, shall have any effect.

8. A notice dated 17.02.2012 was issued to petitioner (in connection with Rule 2 (2) of the Rules, 1984) to appear before the Hon'ble Shri Justice Ashtosh Mohantha on 02.03.2012 with necessary documents including all educational certificates in support of his claim. Petitioner appeared and made his submissions. The Hon'ble Judge submitted a report dated 05.03.2012 holding that the plea of the petitioner, that he was born on 29.03.1953 cannot be accepted and held that petitioner was born on 01.07.1949. The matter was placed before the Administrative Committee and the Committee of Hon'ble Judges accepted the report and resolved that the date of birth of Officer (petitioner), for the record to be 01.07.1949 and not 29.03.1953, the application/representation of the Officer was rejected. This writ petition is filed challenging the decision of the Hon'ble Court, in rejecting the case of the petitioner and seeking other reliefs.

9. It is submitted by the learned Senior Counsel appearing for the petitioner that petitioner hailed from Chodavaram Village of Veervalli Taluk, Visakhapatnam District, and that the Registrar of

Birth(s) and Death(s) of the said village recorded the date of birth as 29.03.1953. That his parents were illiterate and someone entered his date of birth as 01.07.1949, and that he appeared his 12th Class examination in April, 1968, studied degree in AMAL College, Anakapalli and Law from Andhra University.

10. Petitioner was practising as an Advocate from 1980. He filed a suit in O.S.No.61 of 1983 on 18.03.1983. Pursuant to the notification for the post of District Munsif, he made an application and an order of appointment was issued on 07.10.1985. The said suit was decreed on 28.02.1985, and pursuant to the decree, the Principal District Judge (PDJ) entered the date of birth as 29.03.1953. The PDJ entered the date of birth as 01.07.1949 according to HSLC Register earlier.

11. Petitioner made a representation/application through proper channel to the High Court seeking to enter the date of birth as 29.03.1953 in all the records. The High Court on administrative side placed the matter before the Administrative Committee, which rejected the representation. A review was filed and no orders were passed in the review. Aggrieved by the same, a writ petition was filed and the same was allowed. A Civil Appeal was preferred,

which was disposed of by the Hon'ble Supreme Court with certain directions, as stated supra.

12. It is submitted that the decree is prior to the date of entry into service and the entry in the Register was corrected in December, 1988. In the said circumstances, Rule 2-A of the Rules, 1984 does not operate as a bar. Rule 2-A was inserted vide G.O.Ms.No.383, dated 16.11.1993 w.e.f. 21.04.1984. A representation was made in the year 1989 and the decision on the representation was made in the year 1997. Hence, it is not open to press Rule 2-A of the Rules, 1984 into service.

13. It is further submitted that the decree of the civil Court stood unchallenged and that it was a contested suit. The Hon'ble Judge was not justified in giving the finding that the petitioner got admission in 9th Class at the age of 11 years and completed 12th Class at the age of 14 years and that the date of birth 29.03.1953 cannot be accepted. The finding of the Hon'ble Judge is erroneous.

14. Learned Standing Counsel appearing on behalf of the High Court supported the report of the Hon'ble Judge and submitted that there is no infirmity. A perusal of the report, establishes the

fact that entire record, relevant documents and certificates produced by the petitioner, in response to the notice issued, were well considered. It is further submitted that the Hon'ble Judge rightly opined that the decree of the civil Court does not inspire confidence to believe that the petitioner was born on 29.03.1953.

15. Learned Senior Counsel and *Amicus Curiae* has supported the report of the Hon'ble Judge. It is submitted that the petitioner has neither pleaded nor produced any material of securing a double promotion. It is further submitted that the petitioner had completed his 12th Grade in the year 1968-69. If the petitioner was born in the year 1953, he would have completed his 12th Grade when he was only 15 years old i.e., two years ahead of the normal/standard time required to clear 12th Grade. It is also submitted that Rule 2-A of the Rules, 1984 is applicable to the petitioner, as there is a pending proceeding on determination of his date of birth (Rule 5 of the Rules, 1984).

16. Reliance is placed on a Full Bench judgment of Andhra Pradesh High Court in **G. Krishna Mohan Rao v. Registrar,**

Andhra Pradesh Administrative Tribunal and others¹ for the proposition that a decree of civil Court is not binding while determining the date of birth.

17. Further reliance is placed on in the judgment in **Dhondiram Bapusaheb Nangare v. State of Maharashtra**² for the proposition that the decree of civil Court is not binding as it is a decree *in personam* and not a decree *in rem*.

18. Learned Senior Counsel has also relied upon the judgment in **Naga Raju v. High Court of Andhra Pradesh**³ for the proposition that Rule 2 (5) of the Rules, 1984 contemplates determination of the date of birth based on the service records or proof produced while entering into service. Learned Senior Counsel submitted that the report of the Hon'ble Judge has considered all the relevant material and held that they do not inspire confidence. There is no infirmity in the report submitted and the order rejecting the application/representation for alteration of date of birth is correct and no interference is necessitated.

¹ 2004 (3) ALD 449

² 2015 SCC OnLine Bom 1933

³ 2007 (1) ALT 727

19. Heard learned counsels, perused the record, report of the Hon'ble Judge, judgement of the Court below in O.S.No.61 of 1983.

20. Considered the rival submissions. This Court is conscious of the fact that it is a petition filed under Article 226 of the Constitution of India. Yet, this Court feels the need and necessity to peruse the judgement of the Court below in O.S.No.61 of 1983 to cull out certain facts for arriving at a proper conclusion of the issue.

21. Perused the report of the Hon'ble Judge of the High Court. The report is pursuant to the directions of the Hon'ble Supreme Court in Civil Appeal No.6964 of 2004. The Hon'ble Judge, having perused the original certificate of Higher Secondary School Leaving Certificate (HSSLC), observed that the petitioner has studied 9th Class in the year 1964-65, 10th Class in the year 1965-66, 11th Class in the year 1966-67 and 12th Class in the year 1967-68. It is further observed by the Hon'ble Judge of High Court that petitioner had never got a double promotion or frog leaped a few classes. The Hon'ble Judge held that it is not possible to believe that petitioner had completed 12th Class at the age of 14 years. The material as well as decree passed by civil Court does not inspire confidence that the applicant was born on 29.03.1953. It is further

held that if the date of birth is taken to be as 01.07.1949, all the years of study are possible and acceptable. The Hon'ble Judge held that the facts showing that the petitioner had got admission in 9th Class in 1964-65 are inconsonance with the observation of the Hon'ble Apex Court. The Hon'ble Apex Court's observations are as follows:

“... Certain materials have been placed on record by the High Court on the administrative side of this appeal. One of such materials is that the judicial officer got admitted in 6th standard in 1961-62 and it was not possible that somebody born on March 29 1953 to be in 6th standard at that time, he would hardly be 8-9 years old.”

22. Perused the entire report. We do not find any infirmity. An opportunity was afforded to the petitioner to place all the relevant material to substantiate his case. The same have been considered objectively by the Hon'ble Judge and the Hon'ble Judge held that the material presented does not inspire confidence and that the Date of Birth Extract produced does not belong to the applicant and the same could be to another male child born to the parents. In view of the categorical finding recorded on the basis of an objective consideration of the relevant material, this Court is not inclined to disturb the findings.

23. In the application form submitted for the post of District Munsif at page 2 column (a), the date of birth mention is mentioned as 01.07.1949 (also written in words as 1st July Nineteen Forty Nine). It is also mentioned in the application form that in the year 1968-69, he passed the examination of HSSLC in ordinary division from ZPHS School, Chodavaram, Board of Secondary Education, Hyderabad. The application form is dated 17.12.1983 and signed by the applicant (petitioner). There is no iota of doubt that the date of birth is shown as per HSSLC register. The petitioner is now contending that date of birth is 29th March 1953, contrary to what he has shown in the application. This is an important aspect which this Court cannot lose sight of while examining the issue of alteration of date of birth.

24. A perusal of the judgment in O.S.No.61 of 1983 indicates that Exs.A1, A2 and A3 were marked for the plaintiff. The Court below has relied upon these exhibits. Ex.A1 dated 24.12.1981 is C.C. of birth register for the year 1953 relating to Chodavaram Village issued by Tahsildar, Chodavaram. Ex.A2 dated 17.07.1981 is a copy of application filed by the petitioner at Taluk office. Ex.A3 dated 28.07.1981 is an endorsement of Tahsildar, Chodavaram.

25. A notable feature of all these documents is that they all pertain to the year 1981. For reasons best known, the petitioner, has shown the date of birth in the application to the post of District Munsif as 01.07.1949, instead of entering it as per the certified copy of the birth register i.e., Ex.A1. This is a crucial factor, which cannot be ignored and it negates the contention advanced by the petitioner.

26. A perusal of the judgment also indicates that Exs.B1 and B2 were marked for the defendants in the suit. Ex.B1 dated 19.06.1961 is the record sheet for admission into ZPHS School Chodavaram. Ex.B2 dated 24.06.1961 is an application form for admission into ZPHS School, Chodavaram. Both Exs.B1 and B2 pertain to petitioner. The Court below at paragraph 6.g in the judgment held as follows:

“... No doubt, Exs.B1 and B2 shows that the date of birth of the petitioner is 01.07.1949.”

But, surprisingly, adds the following statement:

“.. There is a possibility of giving declaration of age in order to facilitate admission into the school because he is under aged.”

27. On a perusal of the entire judgment in O.S.No. 61 of 1983, especially the manner in which the court has dealt with the core issue of date of birth in paragraphs 6 to 6.1, it appears that the Court did not address the issue in a proper perspective. The Court below has grossly erred in arriving at the finding with regard to date of birth.

28. Disputes with regard to change of date of birth in service record have been considered by various High Courts and the Hon'ble Apex Court. It is settled law that "*correction of date of birth cannot be claimed as a matter of right.*"

29. The Hon'ble Apex Court in **Home Deptt. v. R.Kirubakaran**⁴, 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,

⁴ 1994 Supp (1) SCC 155

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...”

30. In **Karnataka Rural Infrastructure Development Limited v. T.P. Nataraja and others** in Civil Appeal No.5720 of 2021, the Hon’ble Apex Court summarized the law on change of date of birth, which is 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.”

31. This Court is of the opinion that the application for change of date of birth made by the petitioner cannot be considered. Rules, 1984 do not permit for alteration of the date of birth entered in the service records. The entries made by the employee are final and binding and the employee is estopped from disputing the correctness of the date of birth. Rules do not permit alteration of date of birth on the basis of any judgement, decree or order of a Civil Court and no indulgence can be shown.

32. Entertaining the claim for correction of date of birth would completely frustrate the objective behind the Rules, 1984. The petitioner is unable to demonstrate to the satisfaction of this Court either in law or on facts about the claim for alteration of date of birth. In view of the consistent legal position that the onus is on the applicant to prove about the wrong recording of the date of birth in the service records, the claim for the alteration cannot be entertained. It is settled law that “correction of date of birth cannot be claimed as a matter of right.”

33. The petitioner did not make any attempt to get the date of birth corrected in his school records. Upon correction of date of birth in the school records, petitioner could have got the same corrected in the HSSLC as well. However, even this was not done. Therefore, as of today, both in school/college records as well as in the HSSLC, petitioner’s date of birth continues to be reflected as 29.03.1953. Permitting petitioner to correct his date of birth in service record would result in incongruous situation where there would be different dates recorded in his school records/HSSLC and service records, which is impermissible.

34. The writ petition is devoid of merits and the same is liable to be dismissed. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous applications, pending, if any, shall stand closed.

ALOK ARADHE, CJ

ANIL KUMAR JUKANTI, J

Date: 30.01.2024

Note:- L.R. Copy be marked.
(B/o)
KH

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI

WRIT PETITION No.26262 OF 2012

Date:30.01.2024

KH