

Administrative Officer Vs Chandran K

R/Letters Patent Appeal No. 1318 Of 2019 In R/Special Civil Application No. 6836 Of 2010 With Civil Application (For Stay) No. 1 Of 2019

Court: Gujarat High Court

Date of Decision: July 3, 2019

Acts Referred:

Constitution Of India, 1950 " Article 226, 311

Hon'ble Judges: Anant S. Dave, J; Biren Vaishnav, J

Bench: Division Bench

Advocate: Rituraj M Meena, Harshal N Pandya, Rituraj M Meena, Gm Joshi, Rituraj M Meena

Final Decision: Dismissed/Disposed Of

Judgement

1. These appeals arise out of a common oral judgement dated 26.12.2018 passed by the learned Single Judge in the respective writ petitions. The

respective petitioners therein had approached the learned Single Judge challenging the impugned orders by which the employer " present appellant

had sought to unilaterally change their dates of birth more than two decades after their having joined service. As a result of the impugned orders

before the learned Single Judge, the respondents " original petitioners were sought to retire much before their actual date of retirement and

therefore the petitions were filed.

2. As far as Letters Patent Appeal No. 1318 is concerned, the main petition was Special Civil Application No. 6836 of 2010. The learned Single Judge

has set out the facts of that petition which read as under:

"2. So far as Special Civil Application No.6836 of 2010 is concerned, it is the case of the petitioner that he was originally appointed as a temporary

work charge helper in department of Executive Engineer of Sub Division, Mehsana dated 05.02.1976. Since the work of the petitioner was sincere,

through the process of employment exchange Mehsana, his services came to be regularised vide order dated 19.03.1979 as a work charged helper on

the very same place. In the meantime, at the time of regularising the appointment, the date of birth certificate was demanded by respondent on

20.11.1978 but since the same was not available with the petitioner, an affidavit was submitted by mentioning his date of birth on the basis of

Ã¢â¬ÏJanmaKundliÃ¢â¬Ï as 11.11.1955 and the same was accordingly submitted. However, when school leaving certificate was demanded by the

respondent and the same was produced by the petitioner showing the date of birth as Ã¢â¬Ï01.06.1952Ã¢â¬Ï. However, right from 1976 in the

employment according to the petitioner, his date of birth that has been recorded is as 11.11.1955 and, therefore, on the basis of such date of birth on

the basis of Ã¢â¬ÏJanmaKundliÃ¢â¬Ï and the assertion in the affidavit, the department has prepared seniority list in which also this very date of birth has

been recorded as 11.11.1955. Various seniority list prepared and issued upto the year 2009 in which the petitionerÃ¢â¬Ïs date of birth is mentioned as

11.11.1955. On 22.12.2000, a link insurance was also taken in which also the date of birth is recorded as 11.11.1955 which is continued throughout.

On 24.07.2009, a letter was received by the petitioner from respondent demanding school leaving certificate for calculation of granting benefit of 6th

Pay Commission as a result of which the petitioner has immediately supplied and subsequently without giving any single notice, respondent No.2 has

passed an order on 27.08.2009 unilaterally deciding the date of superannuation of petitioner on 13.06.2010 by considering the school leaving

certificateÃ¢â¬Ïs birth date as 01.06.1952 instead of 11.11.1955.Ã¢â¬Ï

2.1 As far as Letters Patent Appeal No. 1319 of 2019 is concerned, it arises out of the Special Civil Application No. 7588 of 2010. The learned Single

Judge has in a nutshell set out the facts in para 2.4 which reads as under:

Ã¢â¬Ï2.4 Same is the case with respect to Special Civil Application No.7588 of 2010 filed under Article 226 of the Constitution of India on the premise

that petitionerÃ¢â¬Ïs name was registered with employment exchange and he came to know that date of birth was wrongly entered as 01.06.1952

instead of 25.08.1953 and the name of the petitioner was also mentioned in the Employment Exchange as Ã¢â¬ÏJentilalÃ¢â¬Ï and, therefore, same was

duly granted according to the petitioner. In the year 1978, the petitioner was selected and appointed by respondent to work as a Karkun by recording

his date of birth as 01.06.1952 instead of 25.08.1958 and thereafter by communication dated 20.05.2010 the petitioner was informed that his date of

birth is treated to be 01.06.1952 and, therefore, the petitioner would now retire on 30.06.2010 on the basis of this date of birth. It is further the case of

the petitioner that when he came to know about this sudden change, the petitioner preferred an application giving full details and requested the

authority not to alter the date of birth but the request was rejected and the petitioner simultaneously had also filed suit for correction of names in the

register of birth and the same was accordingly corrected as the suit came to be allowed on 29.06.2010. However, the respondent authority passed an

order on 01.06.2010 maintaining the decision to treat the date of birth as 01.06.1952 on the ground that at the time of entering in the service the date of

birth was recorded dated 25.08.1953 which was merely on the basis of affidavit and thereby petitioner was superannuated on 30.06.2010 on the basis

of date of birth as 01.06.1952 and it is this decision which is made the subject matter of petition for claiming reliefs which are prayed for in para:6 of

the said petition.Ã¢â‚¬â€œ

2.2 Letters Patent Appeal No. 1340 of 2019 arises out of Special Civil Application No. 8694 of 2011 and the facts as narrated by the learned Single

Judge in para 2.3 read as under:

Ã¢â‚¬â€œ2.3 Similar is the case with regard to Special Civil Application No.8694 of 2011 in which also it is the case of the petitioner that petitioner was

appointed as a Typist in the year 1982 by the respondent Board after inviting names from the Employment Exchange Board and after due verification

by authorities, the date of birth of the petitioner came to be recorded as 01.05.1957 in the service book and this date according to the petitioner is

mentioned dafter due verification and continued throughout the very same date of birth as 01.05.1957 at no point of time the same is altered nor even

requested by the petitioner. Still, however, according to the petitioner a show cause notice was issued calling upon the petitioner as to why his date of

birth be not changed to 10.05.1954 from 01.05.1957 and why he should not be made to retire on 31.05.2012 on the basis of date of birth dated

10.05.1954. The said show cause notice dated 28.04.2010 came to be replied by the petitioner on 17.05.2010 and thereafter the Respondent Board

passed an order on 20.05.2010 reiterating that date of birth dated 10.05.1954 is to be accepted and consequently the petitionerÃ¢â‚¬â€œs date of

superannuation is fixed as 31.05.2012. Thus, the decision has been challenged by the petitioner mainly on the ground that action is arbitrary, against

settled position of law and it is not open for the respondent authority to correct the same at the fag end of service.Ã¢â‚¬â€œ

3. The common thread of facts, which arise in these three appeals, as set out by the learned Single Judge in the paragraphs referred to hereinabove

would suggest that the respondents in these appeals had on the basis of their birth certificates, horoscope or an affidavit supporting their birth

certificates, had recorded their dates of birth while joining service with the appellants in the years 1976, 1978 and 1982. It is also undisputed that on the

basis of such documents given by the respondents Ã¢â‚¬â€œ original petitioners, their service books continued to record the dates of birth given in case of

each of the respondents herein.

3.1 In the case of the respondent in Letters Patent Appeal No. 1318, the date of birth recorded in the service book was 11.11.1955 which was so

recorded when the respondent joined the employment in 1976. Upto the year 2009, in the seniority lists, the date of birth continued to be 11.11.1955.

That even the link insurance form submitted on 22.12.2000, the date of birth continued to be 11.11.1955. It is only in the year 2009, that the respondent

demanded a School Leaving Certificate, based on which, unilaterally the date of birth was changed to 01.06.1952 and the respondent of this appeal

was sought to be retired on 13.06.2010. 3.2 In case of Letters Patent Appeal No. 1319 of 2010, the original date of birth recorded in the service book

was 25.08.1953. It was so mentioned in the employment exchange through which the respondent secured appointment with the appellant in the year

1978. The record continued to show the date of birth as 25.08.1953. The respondent in this appeal had filed a civil suit before the Trial Court for a

decree that based on the Record of Births and Deaths which showed the date of birth as 25.08.1953, the School Leaving Certificate be changed and

the date of birth entered in the School Leaving Certificate be corrected and entered as 25.08.1953. The civil Court by a decree dated 29.06.2010

allowed the suit of the respondent and corrected the date of birth in the record of general register as 25.08.1953 instead of 01.06.1952 and directed

issuance of a fresh School Leaving Certificate in the name of the respondent.

3.3 In case of Letters Patent Appeal No. 1340 of 2019, the respondent had joined as a typist in 1982. Based on the employment exchange records, his

date of birth was 01.05.1957 which continued to be so throughout. Even the seniority list in case of the respondent mentioned the date of birth as

01.05.1957. In the year 2009, the appellant unilaterally sought to change the date of birth to 01.06.1952 and sought to retire the respondent on

superannuation on 30.06.2010.

It is aggrieved by these orders that the learned Single Judge was approached.

4. The main contention of the respondents "original petitioners was that once the date of birth was recorded as such in the service records in the

case of the respective respondents, it was not open for the appellant after three decades to change the date of birth unilaterally adverse to the

respondents "original petitioners and seek to relieve them of their services by preponing their date of superannuation. The learned Single Judge on

the basis of the pleadings in the petitions allowed the petitions and held that it was not open for the appellant herein to unilaterally change the date of

birth after several years and seek termination/retirement of the services of the original petitioners much prior to their actual date of retirement.

5. Mr. Rituraj Meena, learned advocate for the appellant submitted that it was in the year 2009 when the State Government issued directions pursuant

to the resolution for adoption of 6th Pay Commission, that the appellant sought verification of dates of birth from the employees and when their School

Leaving Certificates were produced, it was found that their actual date of birth was not the ones that their service books indicated but the respondents

were born much prior to the date so recorded in the service book. Opportunity of hearing was given to the respondents and then according to the

records that the respondents submitted in the year 2009, their dates of birth were changed and the respondents were made to retire prior to their

actual date of retirement as shown in the service books.

4.1 Reliance was placed on the judgements of the Apex Court in the cases of Life Insurance Corporation of India and Others vs. R. Basavaraju Alias

Basappa reported in (2016) 15 SCC 781 and State of Punjab vs. Mohinder Singh reported in (2005) 3 SCC 702 to suggest that the date of birth can be

corrected once it is found to be fraudulent.

5. Having considered the submissions of Mr. Meena, learned advocate for the appellant and the learned advocate for the respondents who supported

the judgement of the learned Single Judge, it is evident that:

(i) In each case, the employee on the basis of the certificate of registration of births and deaths, an affidavit based on a horoscope and on the basis of

a decree of a Civil Court by which the date of birth was changed, entered service in the years 1976-1979.

(ii) The service records continued to record the dates of birth as shown by the employees. In some cases, the seniority list as late as in the year 2009

reflected the date of birth as given by the employees. The GPF records, the link insurance schemes and the documents together also confirm the date

of birth so recorded and suggested by the employees at the time of appointment in the years 1976-1978.

(iii) In the year 2009, more than almost two decades after having served with the appellant, the appellant sought to verify the respondents' dates

of birth on the basis of and under the pretext of extending the benefits of the sixth pay commission. When such records were submitted, the appellant

thought it fit to change the date of birth unilaterally to the disadvantage of the respondents' original petitioners by which they were retired from

service approximately two years before their actual date of retirement.

6. It is in context of these facts that the learned Single Judge has found that the entire exercise of changing the date of birth was in contravention of

the settled position of law inasmuch as -

(a) The service record was changed more than two and a half decades after they had joined service.

(b) It was contrary to the decision of the Apex Court in the case of State of Gujarat & Others vs. V. Vali Mohamed Dosabhai Sindhi reported in

(2006) 6 SCC 537.

(c) That the contemporaneous service record continued to show their date of birth as suggested by the employee and there was no reason for the

department/employer/appellant to change the date of birth at the fag end of their service.

7. Mr. Meena's submission that it is always possible to change the date of birth on the basis of service records was not accepted by the learned

Single Judge and rightly so because in the facts of the case it is found that primacy was given to the certificate issued by the Registrar, Births and

Deaths to that of the School Leaving Certificate and in Letters Patent Appeal No. 1319 of 2019, even the Civil Court had passed a decree confirming

the date of birth and its alteration. Mr. Meena's submission in this case that they were not parties to the civil suit and therefore a decree was not

binding is not accepted.

8. The learned Single Judge has set out the reasons for agreeing with the employees and holding the action of the appellant as misconceived for the

following reasons:

8. Having heard learned advocates appearing for the parties and having gone through the material placed on record of each case and having

considered the submissions of either side, the Court found that some of the circumstances are not possible to be ignored. In each of the petition, it

seems that the date of birth has been recorded from the initial stage and in provisional seniority list of 1993, two dates were mentioned in all the cases

and after due verification the competent authority has finalised the seniority list in the year 1997 as a true date of birth respectively and the same date

is continued throughout till the process is undertaken. It is also reflecting that when the step of verification is done in the year 2009, for the first time

unilateral decision is taken initially and fixed the date of superannuation on its own and, therefore, the Court has remanded the proceedings for granting

an opportunity to the concerned petitioner. Now these petitioners have submitted detailed written reply, have pointed out circumstances in which the

date of birth is recorded and also relied upon several decisions delivered by the Apex Court on the issue of determination of date of birth but a perusal

of the impugned order would clearly indicate that even after granting the opportunity without considering the contentions and dealing with the

decisions, the same stand is maintained and thereafter for the first time a fraud is alleged against the petitioners which can be seen from the

affidavit in reply which has been filed. A fact is to be noted is that not only contentions which have not been dealt with nor decisions have been taken

into considerations, but right from the year 2009 onwards have alleged fraud no steps are taken till date i.e. till final hearing of this matter in the year

2013. Had there been any fraud practiced as alleged, a detailed inquiry could have been initiated including prosecution could have been launched but at

present to sustain with the decision a mere assertion is made in affidavit-in-reply and nothing beyond. This also a relevant consideration to be kept in

mind.

8.1 Further, if fraud is committed and thereby date of birth is corrected and concerned petitioner to be discontinued from service / terminated that

tantamount to be a penal consequence and a blot on the service career and in such manner on the basis of that material and the allegations without

holding departmental inquiry against the petitioner and without maintaining the spirit of Article 311 of the Constitution of India, no such superannuation

could have been done which ultimately tantamount to be a termination / discontinuance on the basis of some attribution against the petitioner. Further,

it is a settled position of law that when there is conflict between school leaving certification visavis the certificate issued by Registrar of Death and

Birth Registration, an entry recorded in the Birth and Death Register is presumed to be correct and school leaving certificate is not conclusive proof of

evidence of that and therefore also the stand taken by authority is not possible to be acceptable. Further, no doubt the decree of Civil Court is not

binding upon the authority as the authority was never party to the proceedings but when the authority realised in the year 2010 that there is some

decree is passed upon some evidence and material at least from the date of knowledge some steps could have been taken to challenge the said decree

of competent Court which has certified the correct date of birth of the petitioner. To this also, candidly it has been submitted that authority appears to

have not challenged the decree so far. Apart from its binding effect, the Court has an advantage of said conclusion of competent Court which has not

only examined documentary evidence but has also examined the witnesses.

8.2 Yet another circumstance which is not possible to be ignored is that here is an attempt of authority to correct the date of birth practically at the fag

end of service. Now if the employee is accepted not to claim correction of birth at the fag end of career similarly authority is also expected not to act

and correct at the fag end of service. Because if that is allowed, the spirit of Rule 40 would be defeated more particularly subrule (ii) and this is

more so that assuming that it can be done on account of fraud practice by the employee then that fraud has to be dealt with in the manner in which

law permits and only after that the action to be initiated either by holding departmental inquiry dealing with or by launching the criminal prosecution.

But unilaterally assuming that petitioners have committed fraud without making inquiry at length no superannuation can be effected on the basis of

mere allegations. Resultantly, the action of the authority found to be not in accordance with law.Ã¢â¬â¸

9. Considering the submissions of the learned advocates appearing for the respective parties, it is found that contemporaneous record of the

employees so filed at the time of employment showed a particular date of birth which continued in the record of service for more than two and half

decades. Apart from the service book, in some cases, the seniority list and other documents in the employerÃ¢â¬â¸s possession with regard to the

pensionary benefits and link insurance continued to show the date of birth so recorded which the employee had given at the time of employment. It

was therefore not open for the employer unilaterally to change the date of birth merely because it thought it fit to verify such records in the year 2009

under the pretext of extending the 6th Pay Commission benefits.

10. The judgements relied upon by Mr. Meena would in fact on the contrary help the employee. If an employee is prevented from coming forth and

requesting for alteration of his date of birth at the fag end of his service career, the same applies even to the employer. In this case, eloquent are the

facts to suggest that the date of birth was sought to be corrected by the employer two and half decades after the respondents entering into the service,

particularly when they were to retire within a short span of about 3 to 5 years. In one case there was a decree in favour of the employee from the

Civil Court. Moreover, their dates of birth were entered in the service record on the basis of either the horoscope backed by the certificate of

Registrar of Births and Deaths. These documents were found to be genuine and their date of birth continued to be so recorded in the service records

till they were unilaterally changed to the disadvantage of the employees.

11. We find no reason to disagree with the findings of the learned Single Judge that such an exercise of superannuating the original petitioners by

adversely changing their dates of birth without even a formal or a detailed inquiry was in violation of the provisions of Article 311 of the Constitution of

India. We therefore concur with the view taken by the learned Single Judge. The appeals are bereft of merit and deserve to be dismissed.

12. The appeals are accordingly dismissed. Civil Application also stands disposed of accordingly.