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**(1985) 01 KAR CK 0026**

**Karnataka High Court**

**Case No:** W.A. No. 407 of 1978

Government of Karnataka

APPELLANT

Vs

Govinda Setty

RESPONDENT

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**Date of Decision:** Jan. 1, 1985

**Acts Referred:**

- Karnataka State Servants (Determination of Age) Act, 1974 - Section 5

**Citation:** (1985) ILR (Kar) 933

**Hon'ble Judges:** Malimath, C.J; Mahendra, J

**Bench:** Division Bench

**Advocate:** V.C. Brahmarayappa, for the Appellant; A. Anandashetty, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Malimath, C. J.

1. This appeal is by the State Government challenging the order of the Learned Single Judge dated 4-5-1978 in Writ Petition No. 6550/77.

2. The Respondent made an application to the State Government u/s 5 of the Karnataka State Servant (Determination of Age) Act, 1974 (hereinafter referred to as the Act,) for alteration of his date of birth from 20-9-1922 to 15-2-1923. For the purpose of holding an inquiry, the State Government appointed, under sub-section (3) of Section 5 of the Act, the second appellant as the Inquiry Officer. The Inquiry Officer held an inquiry and after giving an opportunity of showing cause in the matter to the Respondent, submitted his report agreeing with the request of the Respondent for alteration of his date of birth- The State Government, however, disagreed with the report of the Inquiry Officer and passed an order on 30-6-1977 rejecting the Respondent's application. The Respondent challenged the said order of the State Government in W. P. No. 6550/77- The Learned Single Judge has allowed

the Writ Petition and quashed the order of the State Government on the ground that the Respondent was not given an opportunity of being heard by the State Government before passing the impugned order. Hence this appeal.

3. Sri V.C. Brahmarayappa, Learned Government Advocate appearing for the appellants, contended that the Respondent having been given full opportunity of placing material in support of his case and he having been given an opportunity of hearing before the Inquiry Officer, could not complain of the violation of the principles of natural Justice on the ground that the State Government did not give him an opportunity of hearing. In support of this contention he relied upon the Division Bench decision of this Court in David -v.- State of Karnataka, "That was a case in which the State Government had agreed with the report of the Inquiry Officer regarding the alteration of the date of birth of the Government servant. The grievance made in that case was about the failure on the part of the State Government in not giving an opportunity of hearing to the Government servant before taking a final decision in the matter. It has been held in that case that it is not necessary for the State Government while agreeing with the report of the Inquiry Officer to give an opportunity to the Government servant. Their Lordships have not held in that case that principles of natural justice do not require an opportunity of hearing being given to the Government servant when the State Government is inclined 1. 1979 (1) Kar. L.J. 1 to disagree with the report of the Inquiry Officer which re-report is In favour of the Government servant. The very judgment which is the subject matter of this appeal was pressed into service before the Division Bench in that Case and Their Lordships have, after considering the said judgment, observed as follows in paragraph-10 :-

"The aforesaid decision is clearly distinguishable from the present case inasmuch as the Government had not accepted the report of the Enquiry Officer in that case, whereas in the present case the Government accepted the report of the Enquiry Officer. No doubt, His Lordship has made a general observation to the effect that after the report of the Enquiry Officer is received by the Govt., it should give an opportunity to the affected official before making any final order on the report of the Enquiry Officer. We are unable to agree with this view of His Lordship. At any rate, where the Government agrees with the report of the Enquiry Officer, we do not think that principles of natural justice would go so far as to require the ultimate authority to give to the official a second opportunity of being heard before accepting such report."

It is clear from the aforesaid observations of the Division Bench that Their Lordships and not agree with the observation that in every case the State Government is bound to give an opportunity of hearing before making a final order. Their Lordships indicated that when the State Government is inclined to accept the report of the Inquiry Officer it is not necessary to give a further opportunity of hearing to the official at that stage, the reason obviously being that the Government servant

did have an opportunity of placing his case before the Inquiry Officer. But when the report of the Inquiry Officer is in favour of the Government servant and the State Government proposes to take a view different from the one taken by the Inquiry Officer, Their Lordships did not say that the principles of natural justice do not require an opportunity of hearing being given to the official by the State Government. The fact that the Division Bench has observed that the decision of the Learned Single Judge is distinguishable from the case which they were dealing with, clearly suggests that Their Lordships did not express any dissent from the view taken by the Learned Single Judge that the principles of natural justice require an opportunity of hearing being given by the State Government when it proposes to take a decision contrary to the report of the Inquiry Officer which report is in favour of the Government servant. When the report of the Inquiry Officer is in favour of the Government servant, in our opinion, the principles of natural justice do require the State Government to give an opportunity of hearing to the Government servant before it decides to take a decision contrary to the one reported by the Inquiry Officer. The decision of the Division Bench in David's case, in our opinion, does not lay down a contrary proposition. Hence we do not find any good grounds to interfere with the decision of the Learned Single Judge in this case.

4. Hence while dismissing this appeal we make it clear that the State Government is entitled to proceed to dispose of the matter after giving the Respondent an opportunity of hearing. No costs.