

(1968) 07 KL CK 0029

High Court Of Kerala

Case No: Original Petition No. 2124 of 1967

E. Ramavarama Raja

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision: July 18, 1968

Acts Referred:

- Constitution of India, 1950 - Article 226, 309, 311
- Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 - Rule 352F, 60

Citation: AIR 1969 Ker 317 : (1970) 1 LLJ 526

Hon'ble Judges: M.S. Menon, C.J; V. Balakrishna Eradi, J; P. Govindan Nair, J

Bench: Full Bench

Advocate: S.A. Nagendran and N.N.D. Pillai, for the Appellant; Govt. Pleader, for the Respondent

Final Decision: Allowed

Judgement

1. The short question arising for decision is whether the alteration by Ext. P 3 order of the date of birth of the petitioner entered in the Service Register, from 15-12-1912 (1-5-1089 M. E.) into 13-12-1911 (28-4-1087 M. E-) is illegal, justifying interference by this Court, in proceedings under Article 226 of the Constitution.

2. The petitioner entered service on 17-7-1939 (1-12-1114 M. E.), Regulation 352F (c) of the Travancore Service Regulations which admittedly governed the petitioner is in these terms :--

"352-F (c). The age of an officer whether gazetted or non-gazetted, can be recorded only on receipt of satisfactory proof. Once the date of birth has been accepted and recorded in the service register, it should form conclusive evidence of the same in respect of all future Government transactions. The entry in the service register should be full and it should indicate on what evidence the date of birth is accepted by the appointing officer or the Head of the office. The following shall be considered as satisfactory proof of age.

1. An authenticated extract from the birth register or the baptismal register or the English School Leaving Certificate, or the admission register of a school or college where the officer last studied or a certificate by a Magistrate or other well-known and trustworthy person in the town or village.

2. Original copy of the horoscope, or correspondence at the time of the birth supported by a declaration before the Head of the office; or

3. An affidavit of the parent of the applicant or a close relative who has knowledge of the approximate date of birth of the applicant signed before an officer who is competent to administer oath-

2. Apparently in accordance with the above provision proof was furnished of the date of birth of the petitioner and this was accepted by an order dated 11-12-1940 corresponding to 26-4-1116 M.E. In the Service Book there is the following entry:

"Verified with horoscope and found correct."

We are marking the Service Register as Ext. R4 and the portion where the above entry is seen as Ext. R4 (a). Years afterwards a Memo Ext. P1 dated 17-12-1966 reading as under:-

"1. That you, Sri, E. Ramaverma. Raja Regional Transport Officer, Cannanore while employed in Government service as Plant Operator in the Development Department furnished incorrect date i.e. 1-5-1089 as your date of birth to be entered in the Service Register (Service Book) fully knowing that your date of birth according to the records of Ennakkad Upper Primary School, C. M. S. L. G. V. School, Pallon, G. M. S. E. M. S. Pallon and C. M. S. H. S. Pallon was 23-4-1087.

2. That you disobeyed the directions issued by the Government in respect of the rectification of the defects or irregularity in the date of birth entered in Service Records as per Government Circulars P1. 96 dated 5-1-1942 and M3-2789/60/CS dated 30-1-1950 read with No. M3-2789/50CS dated 22-2-1950 and that you have not taken any steps to get the Service Records examined and the defect in respect of your date of birth rectified on proper proof.

Your action described above amounts to gross irregularity on your part. You are, therefore requested to show cause why disciplinary action as contemplated under the Kerala Civil Services (Classification, Control and Appeal) Rules. 1900 should not be taken against you. You are allowed 15 days time from the date of receipt of this communication to put in a written statement of your defence. If the written statement of defence is not received within the said period, the matter will be proceeded with on the presumption that you have no defence. You are also requested to state whether you desire to be heard in person. A statement of allegations on the basis of which the charge is framed. and a list of documents, proposed to be relied on are attached hereto. You may peruse the records mentioned in the list of documents and take down extracts, if so desired during

office hours from the Secretariat in the presence of Deputy Secretary to Government, Home Department, on any day prior to the due date for the submission of your written statement." was issued to the petitioner. An explanation Ext. P2 was submitted by the petitioner to the Memo. But this was found unacceptable, and by Ext. P3 order, the petitioner was censured. We may state here that the Memo Ext. P1 proceeded on the basis that the petitioner was liable to be punished by taking action under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 because he had committed a misconduct. The misconduct as is seen from the Memo is the refusal to "correct" the entry in the Service Register of the date of birth of the petitioner in accordance with the Circulars Exts, R1, R2 and R3 issued by the Government in January 1942, January 1950 and February 1950. It is unnecessary to read the Circulars Exts. R1 and R2 which merely contain directions that all Government employees should correct the dates of birth given by them and entered in the Service Register if those dates are incorrect. These Circulars were issued by the State Government because it is alleged the Government discovered that in many cases incorrect dates of birth had been furnished by Government employees. It is necessary to read the last paragraph, of Ext. R3:-

"As a further clarification to these orders Government are pleased to order that in the case of graduates the entry in the College Certificate will be accepted as correct age and in the case of non-graduates the school age is the authority."

4-5. It is clear from the Memo of charges Ext. P1 as well as from the statements contained in the order Ext. P3 and the several statements in the counter affidavit that has been filed on behalf of the State of Kerala that the State Government proceeded on the basis that the one and only evidence acceptable to the State Government as regards the date of birth of the petitioner is that furnished by the entry in the School Register. We may refer to some of the statements in the counter affidavit.

6. In paragraph 3 of the counter affidavit it is stated:-

"Government have laid down the procedure for entering in the service records the correct date of birth of Government Servants as per Exts. R1 to R3 Circulars. According to the Government Orders the school record is the authority to prove the correct date of birth The only date of birth acceptable to the Government as proof of the correct date of birth of the petitioner is 28-4-1087 which is entered in the School records Here the proper authority is the records of the various schools where the petitioner had studied. The petitioner had also produced the relevant extract from his horoscope. In the face of the date of birth as entered in the School records (which alone is recognised by Government) was available to prove his date of birth, the records produced by the petitioner could not be relied on..... It is unnecessary to multiply instances of the definite stand taken. We must however refer also to another statement in the counter affidavit where it is asserted that it is not necessary to give any opportunity to the petitioner to state his case before the

date of birth as entered in the Service Register is "corrected".

"There is no rule retiring the Government to give the petitioner an opportunity to show cause why his date of birth should not be corrected."

From what is stated above, it is very clear that a strict adherence to a rule contained in Ext. R3 which specified a particular document and that alone as proof of the date of birth of a Government employee has been the basis of the "correction" effected by Ext. P3 order.

7. The question is whether this procedure is justified or not. The question has to be answered in favour of the petitioner in the light of the ruling of the Supreme Court in *State of Orissa v. Dr. (Miss) Bina-pani Dei*. AIR 1907 SC 1269 . In view of this decision, the decisions of the Travancore Cochin High Court and of this Court [K. Mohammed Vs. State of Kerala](#), relied on by the State cannot have any application. A perusal of the judgment of the Supreme Court [State of Orissa Vs. Dr. \(Miss\) Binapani Dei and Others](#), would show that that decision was rendered on facts very similar to those in this case. The relevant paragraphs of the decision are paragraphs 9 and 10. We shall read those paragraphs.

"The first respondent held office in the Medical Department of the Orissa Government. She, as holder of that office, had a right to continue in service according to the rules framed under Article 309 and she could not be removed, from office before superannuation except "for good and sufficient reasons", The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary

authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken."

8. There is a rule which came into force on 1-11-1959. Rule 60. of the Kerala Service Rules, which has stipulated that the age of superannuation of Government employees is 55. This rule was framed under Article 309 of the Constitution. So It has to be taken that the petitioner had a vested right to continue in service till he attained the age of 55 reckoned on the basis of the actual date of birth of the petitioner. The actual date of birth was accepted by the State Government by order dated 11-12-1940 and we conceive that if this is to be altered, it can only be on the basis of an enquiry which would satisfy the requirements specified by the Supreme Court in the, decision already read. This means that such an enquiry must be made in consonance with the principles of natural justice. We cannot think of such an enquiry where there has been a predetermination of the issue by an adherence to a single item of evidence and refusal to consider the question with an open mind. And this procedure has been adopted when there has been an earlier acceptance of the date given, by the petitioner on material then furnished by him and found acceptable. That makes the position worse.

9. The order Ext- P-3 cannot be sustained. This has to be quashed. We do so. It necessarily follows that no further action pursuant to Ext. P-3 as visualised by

Ext. P-4 order by the second respondent, the Commissioner of Transport the Head of the Department in which the petitioner was working can be taken. We therefore quash Ext. P-4 as well.

10. We may add that the quashing of these orders will not preclude a proper enquiry being conducted, if there is need for it, in consonance with the principles of natural justice as regards the age of the petitioner. This enquiry will of course be as to what is the actual date of birth of the petitioner and the question naturally would not be what is the date of birth of the petitioner as entered in a particular document or in any School Register.

11. We allow this original petition on the above terms. There will be no order as to costs.