
(1998) 1 KLJ 683

High Court Of Kerala

Case No: O.P. No. 15016 of 1997

C. Viswanathan

APPELLANT

Vs

Joint Registrar of
Co-op. Societies and
Others

RESPONDENT

Date of Decision: March 6, 1998

Citation: (1998) 1 KLJ 683

Hon'ble Judges: K.A. Abdul Gafoor, J

Bench: Single Bench

Advocate: K. Ramakumar, for the Appellant; K. Reghuraj) and Asok M. Cherian, for the Respondent

Judgement

K.A. Abdul Gafoor, J.

The petitioner was in the service of the 3rd respondent Co-operative Society. According to the petitioner, there was a mistake in his SSLC book so far as the date of birth was concerned. It was entered as 5-8-1939. He applied for correction of the date of birth before the Commissioner for Government Examinations in accordance with rule 3 of Chapter VI K.E.R. There was delay in submitting the application before the Commissioner for Government Examinations. Therefore, it was rejected. Later in Ext.P1, the Government condoned the delay and directed to reconsider the application. The Commissioner rejected his request for correction. The petitioner took up the matter in appeal before the Government. Government allowed the appeal and again directed the matter for reconsideration as per Ext.P2 order. Finally, the Commissioner for Government Examinations issued Ext.P5 produced along with the Reply affidavit, on 6-2-1997 according sanction to correct the date of birth of the petitioner from 5-8-1939 to 3-2-1941. This was on the basis of the birth register kept by the Panchayat concerned. Thus, the petitioner got corrected the date of birth in the SSLC book corrected as per Ext.P5, as 3-2-1941. As already mentioned he was in the service of the 3rd respondent Co-op. Society. He had opened the service book at the time of entry in the service. That contained the date of birth as 5-8-1939 obviously based on the original entry in the SSLC

book because Note to Rule 197 of the Co-operative Societies Rules provides that "the date of birth of the employee shall be that entered in the school admission register, Matriculation Book or S.S.L.C. Book". Therefore, the original entry in the S.S.L.C. Book was copied down to the service register by the Co-operative Society as per Rule 197 of the Kerala Co-operative Societies Rules. On getting the date of birth corrected as 3-2-1941, the petitioner approached the 3rd respondent-Society for corresponding correction in the service register. That was declined. Thereupon he approached the Joint Registrar of Co-operative Societies. He also declined the request of the petitioner. He mainly relied on G.O.(P) No. 45/91/P&ARD dated 30-12-1991 regarding the procedure for correction of date of birth of government servants which provide for a time limit. It also provides that the correction in the date of birth in the S.S.L.C. book shall not be correspondingly carried out in the service book. It is in the above circumstances the petitioner has approached this court with this writ petition challenging Ext.P4 and seeking corresponding correction in the service register in terms of Ext.P5 and seeking a direction that he shall be allowed to continue in the service beyond 31-8-1997 when he retired from service on the basis of the original entry.

2. The petitioner submits that the orders governing government servants' date of birth correction do not have any application to the employees in the Co-operative Societies. Once a date of birth is entered in the service book of a government servant, for its correction the necessary procedure provided for by the Government has to be followed. Necessarily, the time limit provided in the said order shall also be applicable. But, so far as the Cooperative Societies' employees are concerned, the entry of date of birth in the Service Register always "shall be that entered in the school admission register, Matriculation Book or S.S.L.C. Book". In other words, it cannot vary from the said records. Whenever there is correction in the said records, naturally that shall reflect in the service book also. That is the statutory provision as contained in R.197 of the Co-operative Societies Rules. Any executive order issued in respect of Government servants even if it is found applicable to Co-operative Societies' employees, cannot, alter the statute as contained in R.197. A Full Bench of this court in Kunhikrishnan v. State of Kerala (1982 KLT 13) dealing with the date of birth correction of aided school teachers, before amendment to R.28 of Chapter XIV-A K.E.R., held that government orders cannot over-ride the statutory provisions. Before amendment to the said rule a Note was added below R.28 Chapter XIV-A K.E.R. It is in the following words,

The date of birth to be entered in the service book at the time of entry in service shall be that entered in the school Admission Register, Matriculation Book or S.S.L.C. Book.

It was taking into account that provision as existed then, the Full Bench held as follows:

What the Note to Rule 28 Chapter XIV-A requires is that the date of birth entered in the Admission Register or one or the other of the books mentioned therein shall be entered in the service book.

(emphasis supplied)

The wording of the Note under R.197 of the Co-operative Services Rules is similar to the Note existed at that time under R.28 Chapter XIV-A KER. Therefore, the dictum laid down in the Full Bench decision squarely applies to this case. Nobody can contend that the Notes cannot have a statutory effect because it had already been held in *Tara Singh v. State of Rajasthan* (AIR 1973 SC 1487) that,

the Notes are promulgated with the rules in exercise of legislative power. The Notes are made contemporaneously with the rules. The function of the notes is to provide procedure and to control direction. The real purpose of the notes is that when rules are silent the notes will fill up gaps.

Therefore, the Note under R.197 of the Co-operative Societies Rules will have to be adhered to, while considering the entry of the date of birth in the Service Register of a co-operative employee. Relying on the Note under R.28 Chapter XIV-A K.E.R. which is *pari materia* the Note under R.197 of the Co-operative Societies Rules, it was held by the Full Bench that,

.....in view of the Note to Rule 28 in Chapter XIV-A in the Rules, on correction of the date of birth of a private aid school teacher in the school records mentioned above, correction of his date of birth in the service book is automatic.

Based on the words of the statute, the said Full Bench decision squarely applies the case on hand. Necessarily, Ext.P4 and the decision of the Co-operative Society which preceded Ext.P4 and which had been considered in Ext.P4 are illegal and the petitioner is entitled to an automatic correction in terms of Ext.P1. The 1st respondent shall effect that correction immediately. Consequences follow.

O.P. is allowed as above. No costs.