

R. S. Kallolimath

Vs

State of Mysore and Another

Civil Appeal No. 1659 of 1972

(Jaswant Singh, V. R. Krishna Iyer JJ)

06.05.1977

JUDGMENT

JASWANT SINGH, J. –

1. This appeal by special leave is directed against an order dated July 5, 1971, of the High Court of Mysore at Bangalore dismissing in limine writ petition 1662 of 1971 seeking issuance of a writ quashing order P. W. D. /EBS/70 dated March 31, 1971, passed by the first respondent herein directing that January 28, 1904, be accepted as the correct date of birth of the appellant and the period from January 28, 1959 (the date of his attaining superannuation) to March 31, 1959 (when he actually handed over charge of his officer) be treated as extension of service.

2. Briefly stated, the facts leading to the appeal are : The appellant joined service as a Senior Operator in the Department of Electricity of the State of Mysore on November 23, 1945. Though in the registers of the school and other educational institutions in which the appellant had studied, his date of birth had been recorded as January 28, 1904, he gave March 13, 1912 (AD) as the date of his birth at the time of his entry into service and produced a horoscope in support of his representation. Relying on the horoscope the Deputy Chief Electrical Engineer accepted March 13, 1912 as the date of the appellant's birth and entry in service register came to be made accordingly. In course of time, the appellant was promoted as Assistant Superintendent, Power and Light, Mysore. In or about 1950, the erstwhile Government of Mysore in pursuance of the policy decision taken by it in respect of the dates of birth of Government servants started revising the entries relating to the dates of birth of Government servants started revising the entries relating to the dates of birth in case of those of its employees whose dates as entered in the service register were different from the entries made in the school or college registers. Consequently the appellant was also called upon by the State Government to furnish information regarding the institutions where he had studied. On the appellant's supplying the requisite information, the State Government made inquiries from the heads of the various institutions in which the appellant had prosecuted his studies and on coming to know that his date of birth as entered in the registers of the institutions was January 28, 1904, it accepted that date as the correct date of the appellant thereupon raised a protest and made representations to the concerned authorities against the alteration in the date of his birth contending that the date of birth declared by him at the time of his joining the State service was absolutely correct. On the matter being put up before the Minister for Industries and Electricity, he directed that the appellant be asked to see him on November 16, 1955, to put for this case before him together with evidence, if any. Though the appellant could not appear before the Minister on November 1, 1955, he did appear before him on December 12, 1955 when the latter after hearing the former recorded the following note on the concerned file :

Sri R. S. Kallolimath, Assistant Superintendent, Power and Light, Mysore, has submitted a memorandum through the Chief Electrical Engineer praying that his date of birth may kindly be accepted as December 23, 1912 instead of January 28, 1904 as already ordered by Government. He submits that December 23, 1912 is the date given by him in his application for appointment and that it has been changed in January 28, 1904 on the basis of the information furnished by the College in which he studied. It is asserted that when he was called upon to furnish evidence in the matter, he had only his horoscope written in Marathi and that he was not able to lay his figure (written in pencil as figure above) on other collateral evidence available in his family records. He says that subsequently, other collateral evidence available in his family records. He says that subsequently he had been able to get the original declaration made by Shri Dundappa Kadeppa Jotwar (his patron and benefactor) before the Magistrate of Terdal Taluk, Sangli State. The original declaration has been produced. This declaration before the Magistrate was made on February 4, 1941, and log before Sri Kallolimath got into service. According to the declaration the date of birth is December 23, 1912. There is no reason to doubt the bona fides of this declaration made before the Magistrate in 1941 since it has happened long before the officer entering into service. This cannot be said to have been fabricated. The date of birth in the declaration agrees with the date of the birth given in the application for appointment. It is also corroborated by horoscope. This is a circumstance which makes out a prima facie case for reconsideration of the question, It may be placed before the Counsel for consideration.

3. On October 23, 1956, a communication appear to have been addressed on behalf of the Government to the Chief Electrical Engineer stating that there was no material for reconsideration of the decision taken by the Government with regard to the appellant's age. A copy of this communication was also despatched to the appellant on October 29, 1956. Despite this intimation, the appellant kept on making further representations requesting the Government not to alter the date of his birth as entered in the service register but the same did not evoke any response.

4. On the formation of the Mysore Electricity Board, the appellant's services were lent to the Board with effect from September 30, 1957. Shortly thereafter, i.e. on October 8, 1957, he was promoted as First Grade Superintendent in the scale of Rs. 550-840 and was posted to the Bangalore Power and Light Civil Area, Bangalore-1.

5. On June 14, 1958, the appellant received a communication from the Chief Electrical Engineer informing him that he would be attaining the age of superannuation on January 28, 1959, in accordance with the entries in his college register. The appellant thereupon wrote to the Chief Electrical Engineer on July 4, 1958, stating that his representation to the State Government was still pending and that the order was not binding on him.

6. By notification dated August 14, 1958, the State Government directed that "all such Government servants whose date of birth have been revised to an earlier date consequent on the policy of the Government of the former Mysore State to review the dates of birth of all servants as set out in D. O. letter 12255-12325/CB. 121-50-98 dated March 20, 1950 and Official Memorandum 10612-50/R. P. S. 21-5-6 dated November 4, 1952, should be granted extension of service equal to half the period of difference between the date of birth as originally indicates in the Government records and the revised date of birth."

7. On March 30, 1959, when the appellant was serving as Executive Engineer at K. G. F. he was informed by the Chief Electrical Engineer on telephone that he had been returned from service with immediate effect and that he should hand over charge of his office. On April 1, 1959, the appellant

received a formal written communication from the Chief Electrical Engineer reiterating that he had been retired from service with immediate effect. Aggrieved by this order, the appellant filed a writ petition, being writ petition 524 of 1959, in the High Court of Mysore challenging the action of the Government. At the hearing of this petition on December 13, 1961, Counsel for the appellant made a statement before the Court withdrawing the petition 'without prejudice to the other remedies that might be available to his client not only by way of institution of a suit but also under the Official Memorandum issued by the Government on August 14, 1958'. The petition was accordingly permitted to be withdrawn. On March 28, 1962, the appellant filed a suit against the first respondent seeking :

(a) a declaration that he still continued in service and was entitled to all the benefits of his service, and that the communications dated June 14, 1958 and April 1, 1959 were invalid and were liable to be quashed,

(b) issue of a mandatory injunction directing the Government to accept the date of birth as entered in the service register as the date of his birth, to work out the date of his attaining superannuation accordingly, and to refrain from accepting or relying on the entry found in the College Register as the date of his birth and to pay all such amounts or emoluments as might be found due to him (the appellant) including the emoluments to which he was legitimately entitled by way of increments, promotion, etc.,

(c) in the alternative, the appellant prayed for issue of a mandatory injunction directing the Government to implement the communications dated August 14, 1958 issued in their No. GAD 3 DTB 58 and to pay to him all such amounts or emoluments as might be found due to him including the emoluments by way of increments, promotions etc.

8. The suit was contested by the State Government inter alia on the grounds that mere entry of the date of birth in the service register of the appellant at the time of his appointment was not conclusive and that the Government had power and authority to alter the date if it was subsequently found to be incorrect, that the date accepted by the Government, viz., January 28, 1904 was the one which was found in the registers of the institutions in which the appellant had studied; that the Government order dated August 14, 1958, did not enable the appellant to claim extension of service as of right and that the suit was barred by time.

9. On a consideration of the evidence adduced before it, the trial Court decreed the suit vide its judgment dated March 31, 1965 holding that the suit was within time and that the Government order dated April 1, 1959, retiring the appellant from service without giving him a prior show-cause notice and without affording him an opportunity to rebut the case of the State violated the service rules and the principles of natural justice and was invalid. It further held that though the Government had power to review or alter the date of birth and was not estopped from examining, reviewing or altering the appellant's date of birth, it was not justified in altering his date of birth on the basis of the entry in his college register which could not be accepted as final. It, however, observed that the appellant was not entitled to the benefit of Government Order dated August 14, 1958. Aggrieved by this judgment and decree, the State preferred an appeal to the high Court which was partially accepted vide judgment dated September 20 1968. While upholding the part of the judgment and decree of the trial Court which declared that he decision of the Government fixing the appellant's was still in service on the date of the suit, the High Court directed the State Government

to accept the date of birth as entered in the service register as the correct date. The High Court also set aside the judgment and decree of the trial Court in as might be found due to the appellant including the emoluments as he might be ultimately entitled to by way of increments etc., on the ground that an equally efficacious relief could be obtained by filing a suit and there was no prayer in the plaint for a specific amount by way of arrears of salary. With regard to the alternative relief sought by the appellant, the High Court observed as follows :

The alternative prayer for the issue of a mandatory injunction with a direction to Government to implement the communication (sic) of the Government dated August 14, 1958 does not arise for consideration in view of the fact that the order of the Government has been declared invalid.

10. The first respondent then made an application to the High Court for review of its aforesaid judgment and decree which was disposed of by the Court on July 3, 1970. The material portion of the order of the High Court disposing of the review application runs thus :

Consequently, it was held that the plaintiff respondent was entitled to a declaration that he was still in service on the date of the suit. But that declaration can only be understood as declaring that in the absence of any refixation of the date of birth of plaintiff-respondent by the Government, the plaintiff-respondent must be deemed to be in service on the date of the suit. The above said declaration cannot be understood to mean that the Government cannot be understood to mean that the Government cannot refix the date of birth of the plaintiff-respondent, according to law. We consider that this clarification is sufficient and no further order is necessary on the above review petition.

11. Pursuant to the observations made by the High Court on September 8, 1970 [while disposing of another writ petition (1354 of 1969) filed by the appellant to the effect that the Government's power to servant did not come to an end with the retirement of the Government servant from service, the Government vide order PWD/11EBS/70 dated November 18, 1970 directed Shri T. S. Narayana Rao, Joint Secretary to Government of Mysore, General Administration Department, to make an enquiry for the purpose of determining the correct date of birth of the appellant. The Enquiry Officer accordingly held an enquiry and submitted his report to the Government, the operative portion whereof runs thus :

I have carefully considered the oral documentary evidence placed before me on behalf of Government. Shri Kallolimath, in his declaration dated April 21, 1950 (Exhibit H) admitted that he studied in Karnatak School, the Wilsom College and the Royal Institute. The years of his stay in the these institutions are also indicated there. The Registers of these Institutions for the relevant periods are produced by uniformly indicate that the date of birth furnished by Sri Kallolimath right through his scholastic career was January 28, 1904. Evidently, he never disputed this date, which he certainly would have done had a mistake occurred, particularly so if his date of birth, as now claimed by him, was March 13, 1912. The difference being very nearly eight years he would be the first get it rectified. The circumstances clearly indicate that his date of birth is January 28, 1904 and not March 13, 1912.

On the basis of the evidence placed before me, I have no hesitation in coming to the conclusion that the correct date of birth of Shri R. S. Kallolimath is January 28, 1904. I record my finding accordingly.

12. Thereafter the State Government vide its order PWD/11EBS/70 dated March 31, 1970 accepted

the findings of the Enquiry Officer observing and directing as follows :

He (the Enquiry Officer) has found that the correct date of birth of Shri R. S. Kallolimath is January 28, 1904.

Government has considered the records. From the entries in the registers of the educational institutions where, admittedly, Shri R. S. Kallolimath studied and the other circumstance it is clear that Shri R. S. Kallolimath's date of birth is January 28, 1904 and not March 13, 1912 as had been entered in his service register.

Government records it finding accordingly and directs that January 28m, 1904 be accepted as the correct date of birth of Shri R. S. Kallolimath. Consequently the date of his attaining superannuation would be January 28, 1959. As he was actually retired on March 31, 1959, the period from January 28, 1959 to March 31, 1959 is treated as extension of service. Pension, gratuity and other retirement benefits which have to be settled on the aforesaid basis have, it is ascertained from the Mysore State Electricity Board, where he had been working since the formation of the Board, been settled, Shri R. S. Kallolimath is entitled to only such amounts as have been so settled. Payment in terms thereof less amounts, if any, already drawn, shall be authorised and it is ordered accordingly.

13. The appellant challenged the above order before the High Court by means of writ petition 1662 of 1971, which, as already stated, was dismissed in limine on July 5, 1971. Dissatisfied with this order, the appellant applied to the High Court for grant of certificate of fitness to appeal to this Court under Article 133 (1) of the Constitution which was rejected by the High Court vide order dated March 3, 1972. Thereupon the appellant applied to this Court under Article 136 of the Constitution for special leave to appeal which was granted. This is how the case is before us.

14. We have heard learned Counsel for the parties. Although in view of the decision of this Court in *State of Orissa v. Dr. (Miss) Binapani Deri* (1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266) it can no longer be disputed that the State is not precluded merely because of the acceptance of the date of birth of its employee, in the service register from holding an enquiry if there exist sufficient reasons for holding such enquiry and refixing his date of birth, it passes our comprehension as to why after granting an extension of service to the appellant presumably in terms of its Memorandum dated August 14, 1958, the Government retraced its steps and suddenly terminated the services of the appellant on March 31, 1959. Nothing tangible has been brought to our notice which could have justified the Government to deprive the appellant of the benefit of the clear and categorical directions contained in its aforesaid memorandum where it was clearly laid down that "all such Government servants whose dates of birth have been revised to an earlier date consequent on the policy of the Government of the former Mysore State to review the dates of birth of all Government servants as set out in Demi Official letter 12255-12325/CB. 121. 50-98 dated March 20, 1950 and Official Memorandum 10512-50/R. P. S. 21-51-6 dated November 4, 1952, should be granted extension of service equal to half the period of difference between the date of birth as originally indicated in the Government records and the revised date of birth..... " The course adopted by the Government in not allowing the appellant to continue in service for half of the period of difference between the date of birth as originally recorded in the service register and the revised date of birth has manifestly resulted in grave injustice to the appellant. This is, therefore, a pre-eminently fit case in which the High Court instead of dismissing in a summary manner the writ petition 1662 of 1971 which raised substantial questions of law and fact should have heard it on merits and enforced the directions contained in the aforesaid Memorandum dated August 14, 1958. As the impugned order which seems to have been passed by the High Court without the

consideration which it merited has undoubtedly resulted in gross injustice, we allow the appeal in part and instead of remanding the case and asking the High Court to proceed with the writ petition and dispose it of after a regular hearing which is bound to involve undue delay, prolong the agony of the appellant and lay the parties under unnecessary additional monetary burden and thus tend to retard the course of justice, we direct the State Government to allow all the monetary benefits in terms of its aforesaid Memorandum dated August 14, 1958 which but for the order dated April 1, 1959 would have been available to the appellant. In the circumstances of the case, the appellant shall also be entitled to costs from the first respondent which we assess at Rs. 1000.

15. In conclusion, we may observe in passing that we are constrained to give the above relief to the appellant as despite sufficient opportunity allowed to the respondents, they have not so far accepted the offer made by the appellant at our suggestion which may have been more beneficial to them.

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