

SUPREME COURT OF INDIA

High Court of A.P

Vs.

N.Sanyasi Rao

C.A.No.6964 of 2004

(R.M.Lodha and H.L.Gokhale,JJ.,)

01.12.2011

JUDGMENT

R.M.Lodha,J.,

1. The High Court of Andhra Pradesh, on the administrative side, through its Registrar (Administration) is in appeal, by special leave, aggrieved by the judgment and order dated February 6,2002 whereby the Division Bench of that Court allowed the Writ Petition filed by the respondent herein and held that he was entitled to get entered March 29, 1953 as his date of birth in the service record.

2. The respondent - N. Sanyasi Rao (hereinafter referred to as the " Judicial Officer") - was selected in the judicial service of the State of Andhra Pradesh and was given an order of appointment as District Munsif. In pursuance thereof, he joined the service on October 7, 1985.

3. In the application for recruitment to the Andhra Pradesh Judicial Service for the post of District Munsif made by the Judicial Officer, he mentioned his date of birth as July 1, 1949. That date of birth was given by him on the basis of the Secondary School Leaving Certificate.

4. In 1983, before the application for recruitment to the Judicial service was made by the Judicial Officer, he had filed a suit (O.S. No. 61 of 1983) seeking declaration that his date of birth is March 29, 1953 and not July 1, 1949 and for direction to the concerned authorities to make necessary alterations in the school, college and University records. After conclusion of the trial in the suit and on hearing the parties, the Principal District Munsif at Chodavaram decreed the suit and held that the Judicial Officer was entitled to the declaration of his date of birth as March 29, 1953.

5. Thus, when the Judicial Officer joined the service on October 7, 1985, he referred to the decree dated February 28, 1985 (for short "decree") and declared his date of birth as March 29, 1953. The District Judge, Visakhapatnam, after the Judicial Officer had joined the service

on October 7, 1985, opened his service register on December 30, 1985 and recorded his date of birth as March 29, 1953 based on the decree and also showed his date of birth as July 1, 1949 based on the Secondary School Leaving Certificate.

6. In 1989, after the alteration was made in the education certificates in compliance of the decree, the Judicial Officer made a representation to the Registrar, High Court for the correct recording of his date of birth. The representation was sent through concerned District Judge. The representation made by the Judicial Officer was kept pending for years together. On October 15, 1997, the High Court on the administrative side passed a Resolution (hereinafter referred to as the "Resolution) rejecting the representation made by the Judicial Officer and he was communicated of the Resolution on December 11, 1997. The Judicial Officer sought review of the decision taken by the High Court on the administrative side and that, we are informed, has never been disposed of till today. Since the decision on Judicial Officer's request for review of the Resolution was not taken within reasonable time, the Judicial Officer moved the High Court on the judicial side by filing a Writ Petition challenging the Resolution.

7. As noticed above, the Writ Petition filed by the Judicial Officer was allowed by the High Court on February 6, 2002.

8. Mr. T.V. Ratnam, learned counsel for the appellant submits that the direction given by the High Court in the impugned order is contrary to Rule 2-A of the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 (for short "1984 Rules"). He further submits that the decree obtained by the Judicial Officer declaring his date of birth to be March 29, 1953 is of no help and cannot be taken into consideration in regard to the alteration of date of birth. With reference to Rule 2(4) of 1984 Rules, he submits that the date of birth entered in the service record of the employee is final and binding and the employee is estopped from disputing the correctness of the date of birth so recorded.

9. Mr. K. Ramamoorthy, learned senior counsel for the Judicial Officer supported the judgment of the High Court and heavily relied upon the decision of this Court in the case of High Court of A.P. vs. M. Vijaya Bhaskara Reddy - Civil Appeal No. 4993 of 2002 decided on July 22, 2010. He would also submit that the decision of the Full Bench in G. Krishna Mohan Rao vs. Registrar, Andhra Pradesh Administrative Tribunal, Hyderabad and others 2004 (3) ALD 449(FB) was not a good law, particularly in view of the decision of this Court in M. Vijaya Bhaskara Reddy (supra).

10. The Judicial Officer has been very candid, forthright and honest in disclosing the true and correct facts about his date of birth while making the application for recruitment to the Andhra Pradesh State Judicial Service and also while making the declaration on joining the service. He mentioned his date of birth in the application as July 1, 1949; obviously based on his date of birth shown in the Secondary School Leaving Certificate. By the time, he was selected and appointment letter came to be issued, he had a decree in his favour declaring his date of birth as March 29, 1953 and, therefore, at the time of joining the service, he referred to the decree and stated his date of birth as March 29, 1953. The District Judge,

Vishakhapatnama, at the time of opening the service register pertaining to the Judicial Officer recorded his date of birth as March 29, 1953 based on the decree and also entered his date of birth as July 1, 1949 as per the Secondary School Leaving Certificate. With the above endorsement, the District Judge, Vishakhapatnam forwarded the service register of the Judicial Officer to the High Court. The exact endorsement made by the District Judge, Vishakhapatnam on December 30, 1985 is follows:

"Date of birth of Christian Era and wherever possible is sake Era (both in words and figures as determined by the competent authority) 29.3.1953 as per decree at 28.2.1985 in O.S.61/1983 on the file of Principal District Munsif 1.7.1949 as per H.S.L.C.Registrar."

11. Learned senior counsel for the Judicial Officer and learned counsel for the appellant are ad idem that 1984 Rules are applicable to judicial officers for recording and alteration of date of birth. The 1984 Rules became effective from April 21, 1984. Rule 2 thereof deals with the recording of the date of birth of every Government employee. It reads as follows:

"2: 1) Every Government employee shall, within one month from the date on which he joins duty, makes a declaration as to his date of birth.

2) On receipt of the declaration made under sub rule (1), the Head of Office or any other officer who maintains the service records in respect of such Government employee shall, after making such enquiry as may be deemed fit, with regard to the declaration and after taking into consideration such evidence, if any, as may be adduced in respect of the said declaration, make an order within four months from the date on which the Government employee joins service, determining the date of his birth. Provided that in cases where the date of birth as determined under this sub-rule is different from the one declared by the Government employee concerned under sub-rule (1), he shall be given an opportunity of making a representation, before a final order is made.

3) Where a Government employee fails to make a declaration within the time specified in Sub-Rule (1), the Head of Office or the officer who maintains the service records shall, after taking into consideration such evidence as may be available and after giving an opportunity of making a representation to the Government employee concerned, determine the date of birth of the employee within six months from the date on which the Government employee joins service.

4) The date of birth determined under this rule shall be entered in the service record of the employees concerned duly attested by the Head of the Office or the officer who maintains the service records and date of birth so entered shall be final and binding and the Government employee shall be estopped from disputing the correctness of such date of birth.

5) The date of birth as determined and entered in the service record shall not be altered except in case of bona fide clerical error, under the orders of Government."

12. 1984 Rules were amended subsequently. By G.O. Ms. No. 383, Fin. & Plg., dated November 16, 1993, Rule 2-A was inserted with effect from April 21, 1984. By this provision, it has been provided that the decree of a Civil Court in regard to alteration of date of birth in the school or university record shall not be taken into consideration in derogation of these Rules. We reproduce Rule 2-A as it is:

"2-A: "Civil Courts" Decree not be taken into consideration:- In any proceedings before the Government or any Court, Tribunal, or other authority for the alteration of date of birth in the service records, the decree of a Civil Court in regard to alteration of the date of birth in the School or the University records or the contents in the Judgment leading to such decree, or the effect of its implementation shall not be taken into consideration in derogation to these rules and it is hereby declared that these rules shall have effect notwithstanding anything contained in any judgment, Decree or Order of a Civil Court in regard to the alteration of date of birth in the School or the University records whether or not the Government is a party to such Proceedings."

13. Rule 2 requires a Government employee to make a declaration in respect of his date of birth within one month from the date of his joining duty. The Judicial Officer joined his duty as District Munsif on October 7, 1985 and made a declaration that his date of birth was March 29, 1953. As per Rule 2, on receipt of the declaration, the Head of Office or any other officer who maintains the service records in respect of such employee, after making necessary enquiry, as may be thought fit with regard to the declaration so made by the employee and after taking into consideration the relevant evidence adduced in respect of such declaration is required to make an order within four months from the date on which the employee joins service determining the date of his birth.

14. Strangely, in the present case, no determination of the Judicial Officer's date of birth was made as contemplated and required in Rule 2 of the 1984 Rules. The District Judge, Vishakhapatnam on opening the service register of the Judicial Officer mentioned both the dates namely; March 29, 1953 based on the decree and also July 1, 1949 based on the Secondary School Leaving Certificate. Nothing has been shown to us by the learned counsel for the appellant about the firm date of birth recorded in the service record of the Judicial Officer. As a matter of fact, there has been no determination of the date of birth of the Judicial Officer at all and, therefore, the Division Bench, in the impugned order observed and, in our view rightly, that the judicial officer had not asked for any alteration in the date of birth but his prayer had been for recording correct date of birth in the relevant service record. Curiously, the Judicial Officer has placed on record two half yearly lists of the members of the Andhra Pradesh Higher Judicial Service, corrected up to July 1, 2003 and July 1, 2004. The Judicial Officer had already become member of the Higher Judicial Service by that time and in both these lists published by the High Court of Andhra Pradesh, the Judicial Officer's date of birth has been shown as March 29, 1953. In the impugned resolution

rejecting the representation of the Judicial Officer, no reasons have been stated. It is a non-speaking order on its face. For about nine years, the High Court on the administrative side, sat over the representation made by the Judicial Officer. Treating the Judicial Officer's date of birth as July 1, 1949, the High Court on the administrative side issued an order on June 8, 2009 that the Judicial Officer would retire from the service on attaining the age of superannuation of 60 years on June 30, 2009 and, accordingly, the Judicial Officer has been made to retire on that date.

15. In *M. Vijaya Bhaskara Reddy* (supra), this Court was concerned with a case where the Judicial Officer-M. Vijaya Bhaskara Reddy was appointed as District Munsif on August 16, 1976. He made a declaration that his date of birth was June 15, 1948. M. Vijaya Bhaskara Reddy then applied for change of his date of birth to August 15, 1949. When nothing was done after giving the notice under Section 80 of the Code of Civil Procedure, 1908, he filed a suit which was decreed on March 31, 1982. He then made a representation for implementation of the decree. His representation came to be rejected which was challenged by him in a Writ Petition. The High Court by an order dated September 3, 1987 directed the State Government to consider the representation made by him and when nothing was done within a reasonable time, he filed yet another Writ Petition before the High Court. That Writ Petition was allowed by the Single Judge of the High Court vide order dated April 13, 1993 and a direction was given that the decree of the Court has got to be honoured and entries in the service register of M. Vijaya Bhaskara Reddy have got to be made accordingly.

16. Against the judgment of the Order of the Single Judge, Writ Appeal was filed by the High Court on the administrative side. The Division Bench allowed the Writ Appeal and set-aside the order of the Single Judge passed on April 13, 1993. It was held that it was not competent for the State Government to take a decision in the matter and the High Court on the administrative side alone was the competent authority either to enter the date of birth or after the date of birth was recorded in the service register of the members of the Andhra Pradesh State Judicial Service, to change the same.

17. The Division Bench, accordingly, requested the High Court on the administrative side to consider and dispose of M. Vijaya Bhaskara Reddy's representation. Pursuant thereto, the High Court on the administrative side took up the representation of M. Vijaya Bhaskara Reddy along with the representations of 24 other Judicial Officers (including the representation of the present Judicial Officer) and passed the Resolution on October 15, 1997 rejecting the representations made by M. Vijaya Bhaskara Reddy and the present Judicial Officer.

18. M. Vijaya Bhaskara Reddy then filed a Writ Petition challenging the Resolution dated October 15, 1997 (same resolution which was challenged by the present respondent in the Writ Petition in which the impugned order came to be passed). The Division Bench of that Court in the Writ Petition filed by M. Vijaya Bhaskara Reddy, on hearing the parties, set-aside the Resolution giving three reasons in support thereof namely; (1) The Resolution was not in a speaking order; (2) 22 years' time was already spent in consideration of the

representation and (3) nothing was stated by the High Court against the authenticity, relevancy and admissibility of the evidence produced by the Judicial Officer.

19. Dealing with the appeal arising from that order, this Court found no justification in interfering with the order of the Division Bench and the appeal preferred by the Andhra Pradesh High Court on the administrative side was dismissed by this Court on July 22, 2010.

20. In our view, the Resolution in respect of the present Judicial Officer also suffers from all the three fundamental infirmities which have been noticed by this Court in *M. Vijaya Bhaskara Reddy*.

21. However, having regard to the peculiar facts and circumstances of the present case, we feel it appropriate that the High Court must determine on the administrative side the Judicial Officer's date of birth. This has become unavoidable as nothing has been shown to us that there has been determination of the Judicial Officer's date of birth as contemplated and required in Rule 2(2) of the 1984 Rules. Certain materials have been placed on record by the High Court on the administrative side in this appeal. One of such materials is that the Judicial Officer got admitted in 6th standard in 1961-62 and it was not possible that somebody born on March 29, 1953 would be in 6th standard in 1961-62 as at that time, he would hardly be 8-9 years old. We do not want to comment on such material. However, we strongly feel that the High Court on the administrative side must objectively determine the Judicial Officer's age in accordance with the statutory provisions which is not shown to have been done at any point of time, after giving an opportunity to the Judicial Officer.

22. We, accordingly, dispose of this appeal by the following order:

“a) The High Court on the administrative side shall determine the Judicial Officer's date of birth in accord with Rule 2 of the 1984 Rules.

b)The above exercise shall be completed within four months from the date of communication of this order.

c) In case the Judicial Officer's date of birth is determined as March 29, 1953, an appropriate order for

his reinstatement with all consequential benefits shall be issued as early as may be possible and in no case later than two weeks from the date of such determination.”

23. The impugned order is modified as indicated above.
No order as to costs.