



IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

[3504]

(Special Original Jurisdiction)

FRIDAY, THE TWENTIETH DAY OF JUNE

TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO

KUNCHEAM

WRIT PETITION NO: 41332/2016

Between:

Sankarappa

...PETITIONER

AND

APSPDCL Chairman M D Tirupati 2 and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1.B. ABHAY SIDDHANTH MOOTHA

Counsel for the Respondent(S):

1.VENKATA RAMA RAO KOTA SC FOR APSPDCL

The Court made the following:

ORDER:

The present writ petition is instituted, seeking a declaration that the order passed by the 3rd respondent in Memo No.DEE/O/HUP/Admin./JAO2573/ 2016, dated 19.08.2016, refusing to change the date of birth of the petitioner at the verge of his retirement as illegal, arbitrary, and for direction to grant all the consequential benefits.

2. Heard Sri B. Abhay Siddhant Mootha, learned counsel for the petitioner, as well as Sri P.Venkata Rama Rao, learned Standing Counsel for APSPDCL, appearing for the respondents 1 to 3.

Brief case of the petitioner:-

3. The petitioner was initially appointed as Helper on 25.08.1986 in Rural Electric Co-operative Society, Kadiri, in the erstwhile Ananthapuram District. Thereafter, on 08.11.1986, the petitioner joined the service of the A.P. State Electricity Board, presently known as A.P. Southern Power Distribution Company Limited, as a Watchman by following due procedure. It is claimed by the petitioner that he is illiterate and was asked to go for a medical examination. Accordingly, he was examined by the Doctor on 10.11.1986 and the said Doctor issued a Physical Fitness Certificate, wherein, according to the petitioner's statement, his age was 25 years, and by appearance, it was about 28 years.

4. According to the petitioner, in the said certificate, his age was altered from 25 years to 28 years. As a result, the year of date of birth of the petitioner was mentioned as 1961 in the Physical Fitness Certificate, and the same was also entered in his service record as 25.08.1961.

5. Subsequently, his age was altered from 25.08.1961 (25 years) to 10.11.1958 (28 years). It is further the case of the petitioner that he was promoted from the post of Helper to Assistant Lineman on 12.01.1992 and ultimately, he was promoted to the post of Lineman on 16.01.2010.

6. It is further case of the petitioner that, in the year of 2010, he appeared for the 9th class examination conducted by the District Common Education Board, Ananthapur as a private candidate, wherein he stated his Date of Birth as 10.11.1958 only (corresponding to 28 years). The petitioner claims that, after knowing about the alteration of his Date of Birth in the service record, he submitted representations to the 3rd respondent. In response, the 3rd respondent, after obtaining clarification from the 2nd respondent regarding the change of Date of Birth, ultimately, *vide* No.DEE/O/HUP/Admin./JAO2573/2016 dated 19.08.2016, turned down the petitioner's claim for change of Date of Birth.

7. Aggrieved by the same, the petitioner filed the instant Writ Petition seeking to set aside Memo dated 19.08.2016 issued by the 3rd respondent and grant all consequential benefits. Hence, the Writ Petition.

Case of the respondents Corporation:-

8. *Per contra*, the respondents Corporation filed its counter affidavit, *inter alia*, denying the assertions made in the writ affidavit and also stated that, at the time of joining the service, the petitioner was illiterate and after joining, he has submitted Medical Certificate issued by the Government Doctor as proof of his age. As per the said certificate, his age, according to the statement of the petitioner, is about 25 years and by appearance, his age was 28 years.

9. It is further stated in the counter affidavit that the concerned case worker, due to oversight, entered the petitioner's Date of Birth as 25.08.1961 (25 years) instead of 10.11.1958 (28 years) in his service record. Subsequently, the then Additional Assistant Divisional Engineer, who maintains the service record of the respondent Corporation's employees, struck out the entry of 25.08.1961 in the Date of Birth column and corrected it to 10.11.1958 (28 years).

10. It is also stated in the counter affidavit that, when the Departmental Promotion Committee (DPC) meeting was held on 20.01.1988, the date of birth furnished by the petitioner was 10.11.1958. Consequently, the Seniority List was prepared by placing the petitioner's name at Serial No.81, mentioning his Date of Birth as

10.11.1958, to which the petitioner did not raise any objection, either at that juncture. It is further averred in the counter affidavit that, the petitioner himself affirmed his Date of Birth as 10.11.1958, when he appeared for the 9th Class examination held in April, 2010. To that effect, the District Educational Officer cum Chairman, District Common Examination Board, Ananthapuram also issued an Educational Certificate in favour of the petitioner. The 3rd respondent *vide* Memo dated 19.08.2016, refused the representation of the petitioner to correct the date of birth by taking into consideration the relevant rules in vogue, more particularly, in terms of B.P.Ms.No.972 dated 05.11.1984 issued by the erstwhile APSEB Clause 10(2)(a) and (d).

11. It is further case of the respondents Corporation that the petitioner, after 28 years from the date of joining, raised a dispute about his date of birth only at the fag end of his service, with an intention to gain undue benefit by making false allegations against the respondent authorities, solely for the purpose of maintaining the writ petition.

Submissions of the learned counsels:-

12. Learned counsel for the petitioner, while reiterating the averments made in the writ affidavit, mainly contended that the

respondent authorities, with a malafide intention altered petitioner's date of birth in the service record from '25.08.1961' (25 years) to '10.11.1958' (28 years), thereby affecting the petitioner's service benefits.

13. Conversely, learned Standing Counsel for the respondents stated that, according to the petitioner himself, he was illiterate at the time of joining the service, and he had produced a Physical Fitness Certificate (Ex.P.6) issued by the Civil Asst. Surgeon, Government Hospital, Hindupur, as proof of his age. The said certificate clearly reveals that, at the time of its issuance, his age as per his own statement was about 25 years, but by appearance, it was found to be 28 years. Based on the said ambiguity, the concerned case worker, due to oversight, initially entered the petitioner's age as 25 years instead of 28 years event. Subsequently, the responsible officer of the respondents Corporation corrected the petitioner's Date of Birth to '10.11.1958' (28 Years) with the knowledge of the petitioner only.

14. He also contended that the respondents followed the procedure stipulated in Clause 10 (2) (a) and (d) of B.P.Ms.No.972 dated 05.04.1984. The learned Standing Counsel had also taken this Court's attention to Ex.P.10 (9th Class Mark List of the Petitioner) of

the material papers filed along with the writ affidavit and pointed out that, even according to the writ petitioner also, his Date of Birth is 10.11.1958 (28 years) only and he himself got entered the above date, when he appeared for 9th class examinations held in the year of 2010 itself also. The learned Standing Counsel for the Respondents, also stated that, the petitioner submitted his date of birth as 10.11.1958 in the Departmental Promotion Committee Meeting held on 20.01.1988 and basing upon the said Date of Birth only the Petitioner's name was ranked at Serial No.81 and his Date of Birth was specifically mentioned as 10.11.1958 only. But all these years, the petitioner never raised any objection regarding his Date of Birth until the fag end of his service.

15. Learned Standing Counsel for the respondents vehemently argued that the petitioner initially joined the respondents' Corporation in the year 1986, and also got 3 promotions in his entire career; he himself only claimed his Date of Birth as 10.11.1958 in this Educational Certificate as well as in the Departmental Promotion Committee Proceedings. But, at the fag end of his service, petitioner is attempting to shift the blame onto the respondent Authorities and is trying to seek correction of his date of birth to gain undue benefit. The learned counsel for the Respondents lastly submitted that the

petitioner retired from his service on 30.11.2018 (in terms of date of birth as 10.11.1958) and that he received all the retirement benefits.

Analysis:-

16. In light of the above rival submissions, this Court is proposing to consider the following core issue:-

Whether the petitioner can raise a dispute regarding the Date of Birth recorded in his service record at the fag end of his career or not?

17. After going through the material on record as well as the submissions made by the respective counsels, it is evident that the petitioner joined the respondents corporation on 08.11.1986 in the cadre of Watchman and subsequently received multiple promotions, and ultimately reached the post of Lineman as on 16.01.2010 itself.

18. In this scenario, a perusal of Ex.P6 (Physical Certificate), reveals that the age of the petitioner, as per his own statement, is 25 years and by appearance, it is found to be 28 years.

19. As per the version of the petitioner, in the said certificate, his age was changed from 25 years to 28 years, and the entry of his date of birth in the service record was also changed from 25.08.1961 (25 years) to 10.11.1958 (28 years)

20. Whereas the respondents Corporation, argued that initially, the Date of Birth of the petitioner was mentioned as 25.08.1961 in the service record by the concerned case worker due to oversight and subsequently, the then Additional Assistant Divisional Engineer, who maintains the service record of the respondents Corporation employees, corrected the Date of Birth of the petitioner as '10.11.1958'. In the said process respondents corporation, followed the due procedure as per prevailing rules of the corporation and the same was done within the knowledge of the petitioner only and there is no illegality as alleged by the petitioner.

21. A perusal of Ex.P.10 (9th Class Mark List) would make it clear that in the year 2010 itself, the petitioner had affirmed his Date of Birth as 10.11.1958, which is the same as entered in his service record. Thus, in view of the above, rival versions, it is crystal clear that though the petitioner's Date of Birth was initially entered mistakenly by the case worker as 25.08.1961. Subsequently, the responsible officer, who maintains the service record of concerned employees by following the procedure in vogue, corrected the Date of Birth of the petitioner from 25.08.1961 to 10.11.1958.

22. Apparently, even as per Ex.P10 produced by the writ petitioner also, he was conscious of his date of birth as 10.11.1958 even prior to the year 2010 and voluntarily stated the same in his educational documents that, his Date of birth is 10.11.1958. This directly contradicts his claim raised in the Writ Affidavit that his date of birth is 25.08.1961. Therefore, undisputedly, the petitioner has consistently acknowledged his Date of Birth as 10.11.1958 only.

23. Further, the petitioner was appointed in the respondents Corporation in the year 1986 and since then, he was promoted thrice by the respondents Corporation Authorities by taking into consideration of the details of the service record as well as the Date of Birth furnished by him as 10.11.1958 before the Departmental Promotion Committee and it is apparent that all these long years, the petitioner did not bother to raise his objection about his Date of Birth.

24. Petitioner at the fag end of his career when his superannuation was approaching, preferred representations to the respondent authorities, by simply blaming the respondents as if his Date of Birth had been changed. But, the petitioner is not able to substantiate his assertion regarding the alleged alteration of the entry of the Date of Birth in the service Record. In the absence of the prerequisite

foundational facts regarding his case, it is not apt for this Court to go into an arena which is purely a disputed question of fact, while exercising the powers under Article 226 of the Constitution of India

25. It is also evident from the record that, did not raise any objection with respect to the Seniority List prepared by the respondents' corporation even today. But for the sake of extension of his services after 28 years of service from the date of joining, he is disputing his date of birth in the service register.

26. In the case of ***Burn Standard Co. Ltd. Vs. Dinabandhu Majumdar***¹, a note of caution has been sounded by the Hon'ble Supreme Court regarding entertaining writ petitions by High Courts for correction of date of births:-

“.....10. The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his service record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches.

¹ (1995) 4 SCC 172

11. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'service and leave record could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court.

12. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'service and leave record or service register with the avowed object of continuing in service beyond the normal period of his retirement.

27. In the case of ***G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others***², the Hon'ble Supreme Court had held as under:-

.....17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the

² (2000) 8 SCC 696

employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature.....”

28. The Apex Court in ***Executive Engineer, Bhadrak (R&B) Division, Orissa and others Vs. Rangadhar Mallik***³, had categorically appreciated in identical facts and wherein also a government employee preferred a representation seeking change of his Date of Birth in the Service records at the fag end of his career the same was rejected by the authorities. Being aggrieved by the same, he approached the Administrative Tribunal. The Tribunal allowed the said application. Against the said orders matter landed in the Apex Court. The Hon’ble Supreme Court, after appreciating all the facts, pleased to held that the government rightly rejected the representation of the petitioner therein.

³ 1993 Supp (1) SCC 763

29. In respect of the alleged alteration of the Date of Birth entry in the relevant records, the petitioner has taken a plea of malafide. However, the mere usage of such an expression is not sufficient unless it is supported by a substantial foundation of facts. It is also well settled that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.

30. Another facet involved in the lis is that, even as per the case projected by the petitioner, he joined the respondents Corporation in the year 1986 as a Watchman and was promoted thrice. Lastly, he reached the post of linemen in the respondents' Corporation on 16.01.2010. The petitioner himself produced his Educational Certificate issued by the concerned District Education Officer on his own volition, in which his Date of Birth is stated as 10.11.1958, which correlates with the version of the respondents Corporation. But, on the fag end of his career, he has taken the plea that his date of birth is 25.08.1961, so as to extend his service and receive its consequential benefits. Thus, the case of the petitioner directly comes under the ambit of 'Approbate and Reprobate', which in general words means one cannot take advantage of one part while rejecting the rest. In

other words, a person cannot be allowed to have the advantage of a document while challenging the same. In such an event, the petitioner either has to affirm or disaffirm the said transaction.

31. The Apex Court explained about the 'Approbate and Reprobate' in ***Rajasthan State Industrial Development and Investment Corporation Vs. Diamond & Jem Development Corporation Limited***⁴. The relevant para Nos.15 & 16 are extracted hereunder:-

I. Approbate and reprobate

15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao², CIT v. V. MR. P. Firm Muar, Ramesh Chandra Sankla v. Vikram Cement, Pradeep Oil Corpn. v. MCD, Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. and V. Chandrasekaran v. Administrative Officer.]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had...."

⁴ (2013) 5 SCC 470

32. The said 'Principle of Approbate and Reprobate' was also dealt with by the Supreme Court in India in its dictum held in ***Mumtaz Yarud Dowla Wakf Vs. Badam Balakrishna Hotel Pvt. Ltd.***⁵.

33. Coming to the present facts on hand, a perusal of the impugned Memo.No.DEE/O/HUP/Admin./JAO2573/ 2016 dated 19.08.2016 shows that the respondents Corporation, has rightly appreciated the facts and passed the orders.

34. In the result, for the reasons detailed above, and also in view of the well-settled legal position expounded by the Constitutional Courts, this Court is of the firm opinion that the writ petition is liable to be dismissed.

35. Accordingly, the writ petition is dismissed. No costs. The miscellaneous applications pending, if any, shall stand closed.

JUSTICE MAHESWARA RAO KUNCHEAM

Date: 20.06.2025
GVK

⁵ 2023 SCC OnLine SC 1378

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THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION No.41332 of 2016

Date: 20.06.2025

GVK