

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8292 OF 2015
(Arising out of S.L.P.(C) No.20590 of 2012)

LIFE INSURANCE CORPORATION OF INDIA AND
OTHERS

Appellant(s)

Versus

Respondent(s)

R. BASAVARAJU alias BASAPPA

O R D E R

We have heard learned counsel for the parties.

2. Leave granted.

3. This appeal by special leave is directed against the judgment and order dated 29.11.2011 passed by the Division Bench of the High Court of Karnataka, Bangalore in W.A. No. 909 of 2006(S) whereby the Division Bench partly allowed the Writ Appeal of the respondent preferred against the judgment of the learned Single Judge in Writ Petition No. 8386 of 2003 dated 6.3.2006 dismissing the Writ Petition.

4. This is one of the exceptional case where the High Court, while ignoring all the principles of law laid down by this Court and many other High Courts with regard to the adjudication of dispute relating to date of birth of an employee, passed the impugned

judgment.

5. From the facts it reveals that the respondent entered into the service of the appellant - Life Insurance Corporation of India (in short 'the Corporation') on 19th November, 1986. His date of birth was recorded in the service record as 3.2.1943 on the basis of the Secondary School Leaving Certificate (SSLC). After about ten years of his appointment, sometime in July, 1996, the respondent asked for change of date of birth by making it 16.2.1945. The said request was not accepted by the appellant - Corporation. Consequently, in the year 1997, the respondent filed a suit being Original Suit No. 190 of 1997 for a declaration with regard to his date of birth. Surprisingly, the appellant was not impleaded as party in this suit and a decree was obtained for change of date of birth. Although the suit was said to have been decreed in 1998, but two days before his superannuation i.e. 28.2.2003, he filed a Writ Petition on 26.2.2003 claiming the relief that he, according to decree, shall superannuate on 28.2.2005. The learned Single Judge dismissed the Writ Petition holding that such a relief cannot be granted.

6. As against the said judgment, the respondent filed an appeal which was heard by the Division Bench passing the impugned order.

7. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement.

8. It has not been disputed by the respondent that at the time of appointment his date of birth was recorded in the service record as 3.2.1943 and the said date of birth was duly acknowledged and accepted by the respondent. It was only after appointment, he asked the appellant to change his date of birth, which was not accepted by the appellant-Corporation.

9. This Court in the case of *State of T.N. v. T.V. Venugopalan*, (1994) 6 SCC 302, elaborately dealt with such a demand made by the employee with regard to alteration in the date of birth. This Court observed:

'7. As held by this Court in *Harnam case*, (1993) 2 SCC 162, Rule 49 is to be harmo-

niously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force, i.e., 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in the GOMS No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for,

gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs 3000."

10. In the case of *Home Deptt. v. R. Kirubakaran*, 1994 Supp (1) SCC 155, this Court again observed:

"4. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not.

11. As noticed above, the respondent filed a suit for declaration with regard to his date of birth without

impleading the appellant, who is the employer, and has obtained the decree against the persons, who have no concern with the date of birth of the respondent. It goes without saying that the said decree obtained by the respondent is not binding on the appellant being not a party to the suit.

12. In our considered opinion, the impugned order is wholly illegal and without any basis, which cannot be sustained in law.

13. For the reasons aforesaid, this appeal is allowed, the impugned order passed by the High Court is set aside. It is held that the respondent shall superannuate on the basis of his date of birth i.e. 3.2.1943 recorded in the service record.

.....J.
(M.Y. EQBAL)

.....J.
(C. NAGAPPAN)

New Delhi,
October 06, 2015

ITEM NO.9

COURT NO.10

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 20590/2012

(Arising out of impugned final judgment and order dated 29/11/2011
in WA No. 909/2006 passed by the High Court Of Karnataka At
Bangalore)

L.I.C.OF INDIA & ORS.

Petitioner(s)

VERSUS

R.BASAVARAJU @ BASAPPA

Respondent(s)

(with interim relief and office report)

Date : 06/10/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.Y. EQBAL
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s)

Mr. S. Guru Krishna Kumar, Sr.Adv.
Mr. Sudhir Kumar Gupta, Adv.
Mr. Abhinav Gupta, Adv.
Mr. Manish Gupta, Adv.
Mr. Satish Kumar, Adv.
Mr. R.K. Gupta, Adv.

For Respondent(s)

Ms. Nidhi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[INDU POKHRIYAL]
COURT MASTER

[SUKHBIR PAUL KAUR]
A.R.-CUM-P.S.

(Signed order is placed on the file)