

A GOVERNMENT OF ANDHRA PRADESH AND ANR.

v.

M. HAYAGREEV SARMA

APRIL 6, 1990

B [K.N. SINGH AND N.M. KASLIWAL, JJ.]

Andhra Pradesh Public Employment (Recording and alteration of date of birth) Rules, 1984: Rules 4 and 5—Object and validity of.

C *Service Law—Employee—Service Record—Date of Birth recorded on the basis of S.S.L.C. Certificate—Application for alteration of date of birth—Rejection of—Fresh consideration of alteration of date of birth after the enforcement of 1984 Rules—Permissibility of.*

D *Constitution of India, 1950: Article 254—Repugnancy—VIIth Schedule—List II—State Law, Andhra Pradesh Public Employment (Recording and alteration of date of birth) Rules 1984, Rule 5—Incidental trenching upon Union Law referable to List I, Births, Deaths and Marriages Registration Act, 1886, Section 9—Effect of—Held Rule 5 and Section 9 operate in different areas—No repugnancy.*

E **The respondent joined service in the Department of Examiner of Accounts, Local Fund and in the service book his date of birth was recorded on the basis of S.S.L.C. Certificate. He made an application for alteration of his date of birth but the Head of Department rejected his prayer by an order dated 5.1.1968. After the coming into force of the Andhra Pradesh Public Employment (Recording and alteration of date of birth) Rules, 1984, he made another application for alteration of his date of birth which was also rejected by the Head of Department on the ground of limitation.**

F **The respondent filed a petition before the Andhra Pradesh Administrative Tribunal challenging the order rejecting his application and also the Constitutional validity of Rules 4 and 5 of the 1984 Rules.**

G **The tribunal by its order dated 18th October, 1985 directed the appellants to consider the respondent's application for the alteration of his date of birth on the basis of the extracts of the entry in the births and deaths register, holding that the respondent's application was wrongly rejected by the Head of Department on the ground of limitation; and (ii)**

H **Rule 5 of the 1984 Rules was void as it was repugnant to Section 9 of the**

Births, Deaths and Marriages Registration Act, 1886.

In the appeal it was contended on behalf of the State that (i) since the respondent's application for alteration of his date of birth had been rejected in 1968 he was not entitled to maintain any fresh application; and (ii) there was no repugnancy between Rule 5 of 1984 Rules and section 9 of the 1886 Act.

Allowing the appeal and setting aside the order of the Tribunal, the Court,

HELD: 1. Rule 4 of the Andhra Pradesh Public Employment (Recording and alteration of date of birth) Rules, 1984 lays down a salutary principle prohibiting re-opening of the question of correction of date of birth which may have become final prior to the enforcement of 1984 Rules. Since the question of alteration of the respondent's date of birth had been made on the basis of the School Certificate and his application for alteration had already been rejected in 1968, he was not entitled to claim alteration of his date of birth after the enforcement of 1984 Rules. It was not open to the respondent to claim alteration of his date of birth, even on the basis of extracts of the entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886 as the question of correction of his date of birth had already been finally decided in 1968. [372C-D]

2. Rule 5 lays down that where application of a Government employee for alteration of his date of birth was pending on the date of the commencement of the 1984 Rules the same will be dealt with on the basis of date of birth recorded in the School and College records at the time of the entry of the employee in service. Thus if on the date of entry in service the date of birth of an employee was recorded in his service book on the basis of his age as recorded in the School and College Certificate, in that event the date so recorded shall be treated to be correct date of birth. However, if the date of birth recorded in the service book at the time of entry of the employee is not based on School or College records, Rule 5 does not operate as a bar against consideration of other relevant materials in determining the date of birth of the employee. [372F-G]

In the instant case the respondent's date of birth had been recorded in his service book on the basis of his S.S.L.C. Certificate, at the time of his entry into service therefore, that entry had become final and he was not entitled to reopen the correctness of that entry on the

A basis of extract of birth register. Moreover, since the respondent's application for alteration of his date of birth had already been decided prior to enforcement of Rule 5 he was not entitled to maintain application for any alteration of his date of birth. In either case the respondent was not entitled to claim alteration of his date of birth, his application was rightly rejected although on different grounds. [372H; 373A-B]

B

3. The question of repugnancy cannot arise if the State makes law in exercise of its legislative powers in respect of an entry specified in List II of VIIth Schedule, even though it may incidentally trench upon a law made by the Union in respect of a matter referable to an entry in Union List of the VIIth Schedule. [373E]

C

3.1 The Births, Deaths and Marriages Registration Act, 1886 is a central law which is referable to Union List. Section 9 of the Act merely lays down that copies of entries of the registers relating to births and deaths maintained under the Act will be admissible in evidence for the purpose of proving the births and deaths. It merely relates to admissibility of documents, it does not seek to regulate conditions of service of a State employee. Rule 5 and Section 9 of the Act operate in different areas and there is no question of conflict in the two provisions. There is, therefore, no question of repugnancy between Rule 5 and Section 9. The Tribunal's view that Rule 5 was repugnant to Section 9 of Births, Deaths and Marriages Registration Act, 1886 is wholly misconceived and its order dated October 18, 1985 is not sustainable in law. [373D-E; G]

D

E

Lingerker Vaidyanath v. Government of Andhra Pradesh and Anr., Andhra Pradesh Administrative Tribunal's Judgment dated 2.9.1987, approved.

F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 915 of 1987.

From the Judgment and Order dated 18.10.1985 of the Andhra Pradesh Administrative Tribunal, Hyderabad in R.P. No. 786 of 1984.

G

A.S. Nambiar and T.V.S.N. Chari with him for the Appellants.

Respondent In-person.

The Judgment of the Court was delivered by

H

SINGH, J. This appeal is directed against the judgment and

order of the Andhra Pradesh Administrative Tribunal, Hyderabad dated October 18, 1985 declaring Rule 5 of the Andhra Pradesh Public Employment (Recording and alteration of date of birth) Rules 1984 (hereinafter referred to as '1984 Rules') void and directing the appellants to consider the respondent's application for alteration of his date of birth in the service records in accordance with the extracts from birth register maintained under the Births, Deaths and Marriages Registration Act, 1886.

The respondent was appointed as Audit Clerk in the Department of Examiner of Accounts, Local Fund Accounts, through a competitive examination held in the year 1956. After his selection and appointment he commenced his training with effect from 12.11.1956. On completion of his training he was posted as Audit Clerk on 26.1.1957. Subsequently, he was promoted to the post of District Inspector of Local fund Accounts. At the time of his joining service 9.3.1932 was recorded as his date of birth in the service book on the basis of S.S.L.C. Certificate. He made an application on 5.1.1962 for alteration of his date of birth as entered in his service book, on the ground that his date of birth as recorded in his service book was apparently wrong and incorrect in view of his elder brothers' date of birth, who was also in Government service, recorded as 2.9.1931. The respondent urged that the entry with regard to his date of birth in the service book should be altered and the date 9.3.1932 should be substituted by 27.8.1933 which according to him was the correct date of his birth. The authorities advised the respondent to submit a revised application in terms of the instructions contained in the Government Order No. 1263 dated 6.5.1961. The respondent thereupon submitted a revised application on 24.9.1964 for alteration of his date of birth, that application was forwarded to the Head Master of the School in which the respondent had last studied for verification. After obtaining the views of all authorities including the Head Master of the School, the respondent's case was placed before the Director of Treasuries and Accounts, the Head of Department for necessary orders. The Director of Treasuries and Accounts after considering all relevant documents relied upon by the respondent, and also the comments of officers, rejected the respondent's prayer for alteration of his date of birth by his Order No. 69918/1209/Admn/66-7 dated 5.1.1968 on the ground that the correctness of respondent's elder brother's date of birth was not established. The respondent did not take any further action in the matter for alteration of his date of birth between 1968 to 1983.

On 10.4.1983 the Governor of Andhra Pradesh promulgated

A Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance No. 5 of 1983 providing for declaration and alteration of date of birth of State Government employees. The Ordinance laid down that every Government employee should make a declaration regarding his date of birth within one month of joining service and on the receipt of such declaration the appropriate authority was required

B to make necessary enquiries determining the date of birth of the employee. It further provided that if no such declaration was made by the employee the Head of the Office, should determine the date of birth of the employee in accordance with the records as may be available to him after giving opportunity to the employee within six months from the date on which the employee joins service. The Ordinance

C further provided that the provisions contained therein will not apply to those who failed to apply for the alteration of date of birth in accordance with law applicable to them prior to the commencement of the Ordinance or if such an application had been made and rejected. Thus the Ordinance clearly laid down that the opportunity for correction of

D date of birth as provided by the Ordinance shall not enure to the benefit of the employees whose entry relating to date of birth may have become final and binding under the law in force prior to the commencement of the Ordinance. The Ordinance was replaced by Andhra Pradesh Public Employment (Recording and alteration of date of birth) Rules 1984 framed under the Proviso to Art. 309 of the Constitution. Thereupon the respondent made yet another attempt by

E making application on 27.1.1984 for the alteration of his date of birth, placing reliance on the extracts of entry in the register of births and deaths. The Director of Local Fund Audit rejected his application by his order dated 28.3.1984 on the ground that the application had been made beyond the period prescribed for the purpose. The respondent

F filed a petition before the Andhra Pradesh Tribunal challenging the rejection of his application and also the constitutional validity of Rules 4 and 5 of the 1984 Rules.

The Tribunal held that the respondent's application for alteration of his date of birth was wrongly rejected by the Director of Local Fund Audit on the ground of limitation. The Tribunal held that the

G Head of Department should have forwarded the respondent's application to the State Government for passing appropriate order as he had no authority to reject the same. The Tribunal further held that Rule 5 of the 1984 Rules was void as it was repugnant to Section 9 of the Births, Deaths and Marriages Registration Act, 1886. On these findings the Tribunal directed the appellants to consider the respondent's

H application again for the alteration of his date of birth on the basis of

the extracts of the entry in the births and deaths register. Aggrieved the appellants have preferred this appeal by special leave. A

Learned counsel for the appellants urged that since the respondent's application for making alteration of his date of birth as recorded in service book had been rejected in 1968, he was not entitled to maintain any fresh application for the alteration of his date of birth. He further submitted that there was no question of repugnancy between Rule 5 and Section 9 of the Births, Deaths and Marriages Registration Act, 1886 and the Tribunal committed error in striking down the aforesaid Rule 5. The respondent appeared in person before this Court, he submitted his written submissions. According to the respondent the Director of Local Fund Audit had no authority in law to reject his application for the alteration of his date of birth as the State Government was the competent authority under the rules to deal with the matter. Even after enforcement of the 1984 Rules the respondent's application for alteration of his date of birth could validly be considered only by the State Government. B C

The question which arises for consideration is whether the alteration of respondent's date of birth was permissible after the enforcement of the 1984 Rules. The 1984 Rules apply to all persons appointed to Public Services and posts in connection with the affairs of the State. These Rules prescribe conditions of service of State employees, having statutory force, being framed under the legislative power conferred on the Governor under the Proviso to Article 309 of the Constitution. Rules 4 and 5 are as under: D E

"4. No Government employee, in service before the commencement of these rules—

(a) whose date of birth has been recorded in the service register in accordance with the rules applicable to him; or F

(b) whose entry relating to date of birth became final and binding under the rules in force prior to the commencement of these rules. G

shall be entitled to claim alteration of his date of birth.

5. The case in which Government employees have already applied for alteration of their date of birth and which are pending on the date of commencement of these rules. shall H

A be dealt with on the basis of recorded age in school and college records at the time of entry into service.”

The object underlying Rule 4 is to avoid repeated applications by a Government employee for the correction of his date of birth and with that end in view it provides that a Government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth. Rule 4 laid down a salutary principle to prohibit reopening of the question of correction of date of birth which may have become final prior to the enforcement of 1984 Rules. Since the question of alteration of the respondent's date of birth had been made on the basis of the School Certificate and his application for alteration had already been rejected in 1968, he was not entitled to claim alteration of his date of birth after the enforcement of 1984 Rules. It was not open to the respondent to claim alteration of his date of birth, even on the basis of extracts of the entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886 as the question of correction of his date of birth had already been finally decided in 1968.

As regards validity of Rule 5 is concerned, the view taken by the Tribunal is wholly misconceived. Rule 5 lays down that where application of a Government employee for alteration of his date of birth was **pending on the date of the commencement of 1984 Rules** the same will be dealt with on the basis of date of birth recorded in the School and College records at the time of the entry of the employee into service. In substance Rule 5 lays down that the pending applications of the employees for alteration of their date of birth shall be decided on the basis of the age as recorded in the School and College records. Thus if on the date of entry into service the date of birth of an employee was recorded in his service book on the basis of his age as recorded in the School and College Certificate in that event the date so recorded shall be treated to be correct date of birth. However, if the date of birth recorded in the service book at the time of the entry of an employee is not based on School or College records the Rule 5 does not operate as a bar to consideration of other relevant materials in determining the date of birth of the employee. In the instant case as already noted the respondent's date of birth had been recorded in his service book on the basis of his S.S.L.C. Certificate, at the time of his entry into service, therefore, that entry had become final and he was not entitled to reopen the correctness of that entry on the basis of extract of birth

register. Moreover, since the respondent's application for alteration of his date of birth had already been decided prior to enforcement of Rule 5 he was not entitled to maintain application for any alteration of his date of birth. In either case respondent was not entitled to claim alteration of his date of birth, his application was rightly rejected although on different grounds.

The Tribunal's view that Rule 5 was repugnant to Section 9 of Births, Deaths and Marriages Registration Act, 1886 is wholly misconceived. Under Article 245 read with Entry 41, List II of VIIIth Schedule, which relates to State Public Services, the State has exclusive power to legislate in respect of State Public Services. Proviso to Article 309 also confers exclusive power on the Governor and the State Legislature to frame rules laying down the terms and conditions of the State employees, such rules may regulate the entry of date of birth of an employee its alteration, correction and all other allied matters. The Births, Deaths and Marriages Registration Act, 1886 is a central law which is referable to Union List. Section 9 of the Act merely lays down that copies of entries of the registers relating to births and deaths maintained under the Act shall be admissible in evidence for the purpose of proving the births and deaths. It merely relates to admissibility of documents, it does not seek to regulate conditions of service of a State employee. There is, therefore, no question of repugnancy between Rule 5 and Section 9. It is well settled that question of repugnancy can not arise if the State makes law in exercise of its legislative powers in respect of an entry specified in List II of VIIIth Schedule, even though it may incidentally trench upon a law made by the Union in respect of a matter referable to an entry in Union List of the VIIth Schdule. Rule 5 and Section 9 of the Act operate in different areas and there is no question of conflict in the two provisions. We are informed that a Full Bench of the Andhra Pradesh Administrative Tribunal has taken similar view in *Lingerker Vaidyanath v. Government of Andhra Pradesh and Anr.*, (Andhra Pradesh Administrative Tribunal's Judgment dated 2.9.1987) in holding that Rule 5 is neither repugnant to Section 9 of the aforesaid Act nor void. In this view the Tribunal's order dated October 18, 1985 is not sustainable in law.

In the result we allow the appeal and set aside the order of the Andhra Pradesh Administrative Tribunal. There will be no order as to costs.

T.N.A.

Appeal allowed.