

170/00269/2017/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00269/2017

DATED THIS THE 15th DAY OF FEBRUARY, 2018

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sri.C.Indra Kumar,
S/o Sri.D.Cheluvarangan,
Aged about 58 years,
Working as Senior Accounts Officer,
Office of the Accountant General (A& E)
Karnataka, Bangalore – 560 001.

.....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. The Comptroller & Auditor General of India,
Pocket-No.9,
Deen Dayal Upadhyaya Marg
New Delhi-110 124.

2. Accountant General (Accounts & Entitlement)
Karnataka, Bangalore – 560001.

3. Senior Deputy Accountant
General (Administration)
Office of the Accountant General (A& E)
Karnataka, Bangalore – 560 001.

....Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

ORDERHON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

- a) *Issue a Writ of Certiorari or any other Writ or Order to quash the order bearing letter No. 253-Staff(App-II)/80-2014/Vol-III dated 03-03-2017*

issued by the 1st respondent which has been produced as Annexure-A29 as the said order is arbitrary, unjust, illegal, capricious, irrational and the same is issued in utter violation of Article 14, 16, 21 of the Constitution of India apart from contrary to Note-6 incorporated below FR56.

- b) *Issue a Writ of Mandamus or any other appropriate Writ or Order or direction, declare and hold that the date of birth of the applicant as 08-05-1989 and further direct the respondents to make necessary corrections of date of birth in the Service Records of the applicant as 08-05-1959 and on the basis of the said date of birth grant the applicant all consequential benefits which is legally entitled to."*

2. The Facts of the case based on the submission made by the applicant in the OA and the reply statement is as follows:

The applicant joined the respondent organization on 04.10.1982 as Auditor and after receiving various promotions is presently working as Senior Accounts Officer since January, 2012. According to the applicant, his actual date of birth is 08.05.1959 as per the Birth Certificate issued by the Chief Registrar of Births and Deaths, horoscope and the Admission Register of Government Primary Boys School, Nagamangala where the applicant first joined in 1st standard. However when the applicant left the said school and joined the Government Primary Boys School, K.R. Pet his date of birth was recorded as 23.05.1958 and the same was carried forward in the SSLC certificate. At the time of appointment of the applicant the date of birth was registered as 23.05.1958 based on the SSLC certificate. When the applicant subsequently came to know about the wrong entry in the date of birth, he submitted a representation on 17.09.1987 which is within 5 years from the date of his joining services. In terms of Note-6 below FR 56 an alteration of date of birth of government servant can be made on fulfilling of three conditions stipulated therein. On the representation of the applicant, the 3rd respondent took a decision that the condition prescribed in Note 6

- (c) below FR 56 has not been satisfied so as to alter the date of birth of the applicant (Annexure-A8). The 3rd respondent took such a view saying that with the date of birth of 08.05.1959, he would not be eligible to appear in the SSLC examination.
3. The applicant filed an appeal before the 2nd respondent on 15.11.2012 for re-examining the matter and refer the same to the 1st respondent who is the final sanctioning authority for altering the date of birth (Annexure-A10). Thereafter the 2nd respondent referred the matter to the 1st respondent vide communication dated 21.12.2012 (Annexure-A11) saying that the applicant has fulfilled all the conditions stipulated in Note 6 (c) below FR 56 and the date of birth can be altered. Since there was no action on the appeal by the 1st respondent the applicant submitted a further representation on 18.07.2013. The 1st respondent after 2 years directed the 2nd respondent on 16.03.2015 to ascertain certain information/clarification (Annexure-A14). On being communicated the same, the applicant furnished his reply which was further sent to the 1st respondent vide communication dated 10.04.2015 (Annexure-A16). Thereafter the 1st respondent vide letter dated 16.10.2015 (Annexure-A19) addressed to the 2nd respondent informed that while the conditions at 6 (a) and (c) of note below FR 56 have been fulfilled, it is not clear at what stage the mistake occurred in entering the actual date of birth in records and whether the said mistake was genuine and bonafide. The applicant was then asked to clarify and establish the same on the basis of documentary evidence. The applicant furnished the clarification along with the supporting documentary evidence by letter dated 20.01.2016 (Annexure-A21). He submitted that a mistake occurred at the time of change of school and in the Admission Register of Government

Primary Boys School, K.R. Pet the date of birth was wrongly recorded as 23.05.1958 instead of the actual date of birth i.e. 08.05.1959 and which is supported by the Birth Certificate issued by the Chief Registrar of Birth and Death, i.e., Commissioner of Corporation, Bangalore. The said documents were sent by the 2nd respondent to 1st respondent vide letter dated 29.02.2016 (Annexure-A22). The 1st respondent then directed the 2nd respondent to submit further copies of the documents such as extract of Admission Register of both schools. The 3rd respondent sent all relevant documents and stated that apparently two Transfer Certificates dated 23.07.1965 and 31.07.1965 were issued but subsequently it is confirmed by the school authorities that only one TC was issued on 31.7.65. The same was also confirmed by the team formed by the 3rd respondent. Again the 1st respondent asked the 2nd respondent to re-examine the matter and verify the authenticity of the documents submitted by the applicant. Thereafter on the direction of the 1st respondent the 3rd respondent constituted a team of officers to verify all facts in respect of date of birth of the applicant.

4. The team visited both the schools and observed that the date of birth of the applicant was recorded 08.05.1959 in the Admission Register of Government Kannada Primary School, Nagamangala but in the Admission Register of Government Kannada Boys Primary School, K.R. Pet the date of birth of the applicant has been recorded as 23.05.1958 for admission to 3rd standard. In both the schools copies of TCs are not available. The Commissioner, BBMP have stated that the Birth Certificate issued on 10.03.1987 to the applicant was verified and found to be genuine. However the 3rd respondent had observed in his report that relevant Parturition

Register pertaining to date of birth is not available in the concerned hospital and in the hospital register the date of birth could not be verified. Further a letter regarding minimum age required for admission to 1st standard during 1960-1967 was obtained from Director for primary education. It is mentioned that minimum age required for admission to 1st standard in Government school was 5 years and 10 months for regular (compulsory) admission and 5 years on a voluntary admission. The respondent No.3 in his communication to respondent No.1 mentioned that Parturition Register of Lady Curzon and Bowring Hospital was not available for verification and the Transfer Certificate dated 31.07.1965 based on which the admission details were recorded in Admission Register of Government Boys High School, K.R. Pet was not available for verification. Hence the reason of change of date of birth could not be ascertained and whether the change of date of birth occurred due to genuine or bonafide reasons could not be justified. Based on the submission of 3rd respondent the 1st respondent stated that the representation for alteration of date of birth cannot be agreed to (Annexure-A29). Hence the applicant has approached this Tribunal seeking the relief as mentioned earlier.

5. The applicant in the Original Application submitted that the Hon'ble Apex Court in case of Union of India Vs. Harnam Singh (1993) 2 SCC 162 held that "A Government Servant who has declared his age at the initial stage of the employment is not precluded from making a request later on for correcting his age. It is open to a Civil Servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to this date of birth as different from one earlier recorded." The Hon'ble Apex Court in State of Bihar and Others Vs. Pandey Jagadishwar Prasad [2009 (3) SCC

117) held that “it is true that the date of birth mentioned in the Matriculation Certificate should be treated as the date of birth of the respondent but it would be open to employee to place the documents before the authorities that the date of birth shown in the Service Book taken from the matriculation certificate was incorrect.” He further informed that the Hon'ble Apex Court in the case of Mohd Younis Khan Vs. UP Power Corporation Ltd 2008 (14) SCR 1114 (2009) 1 SCC 80 held that “An employee may take action as is permissible in law only after coming to know that a mistake has been committed by the employer and if he filed a representation it must be held that there was no delay on his part in this behalf.”

6. The applicant further submits that the Birth Certificate was issued based on the Register of Birth maintained by the Chief Registrar of Births and Deaths (Commissioner of Corporation) and as per the Birth Certificate the date of birth is 08.05.1959. This also corroborates with the entry in the horoscope. The said date was also entered in the school register at the time of the initial admission in 1st standard. Therefore for a mistake which subsequently took place while on transfer to another school and based on which the SSLC certificate was obtained is actually a genuine mistake and hence he should be given the benefit of actual date of birth as indicated by the Birth Certificate. He also mentioned that the Hon'ble Apex Court in CIDCO Vs Vasudha Gorkhnath Mandevlekar [2009 07 SCC 283] held that the Deaths and Birth Register maintained by the Statutory Authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the School Register.

Thus, the date of birth of the applicant recorded in the Birth Register as 08.05.1959 which is maintained by the Chief Register of Births and Deaths would prevail over the date of birth recorded in SSLC certificate which is based on the wrong entry made in the Admission Register of Government Primary Boys School, K. R. Pet.

7. The applicant further submits that the Hon'ble Supreme Court in *Iswar Lal Mohanlal Thakkur Vs Paschim Gujarat Vij Company Ltd* (2014) 2 SCC (L&S) 291 held that "In the event that there is a dispute in the date of birth between the birth certificate issued by the competent authority and the school leaving certificate, which document will prevail?. It was held Birth Certificate issued by Municipal Corporation should be accepted as a conclusive proof of age, being an entry in the public record as per Section 35 of the Evidence Act, 1872 which should be relied upon and the school leaving certificate cannot be relied upon". Thus in the case of applicant also the birth certificate issued by the BBMP should be taken as a conclusive proof of age and the school leaving certificate cannot be relied upon. It was also recommended by the 2nd respondent in the letter dated 29.02.2016 addressed to the 1st respondent that a decision may kindly be taken considering the matching of the date of birth in birth certificate issued by BBMP with that in admission extract of the first school attended by the applicant. Therefore he prayed for granting the relief as sought for.
8. The respondents in their reply statement has highlighted the fact that the applicant slept over the matter for about 24 years after his request for change in date of birth was declined in 1988 and started making representation only in November, 2012. By making representation the fact

of inordinate delay in approaching the Tribunal cannot be justified. Therefore on the ground of delay alone the OA is liable to be dismissed. In addition they submit that the basic question is whether a genuine and bonafide mistake had occurred. During the visit of the team to both schools, it had noted that the entries by Government Boys School, K.R. Pet was made on the basis of TC dated 31.07.1965. However the copy of the said TC was not available. On the other hand, the Government Kannada Primary School had certified that only one TC dated 23.07.1965 was issued and TC dated 31.07.1965 was not issued (Annexure-R1). The Headmaster of Government Boys High School, K.R. Pet had informed that the date of birth was recorded on the basis of TC dated 31.07.1965 which is not available in the school. Further though the Commissioner, BBMP vide letter dated 29.11.2016 had stated that the date of birth certificate issued on 10.03.1987 to the applicant is genuine he has not confirmed on the basis of which document the date of birth is mentioned as 08.05.1959. Further in the extract of Register of Birth only in the case of applicant the child's name was recorded in applicant's case while in all other cases it was recorded as Male or Female only (Annexure-A27). Further the Parturition Register of the Lady Curzon and Bowring Hospital was not available for verification to ascertain the actual date of birth of the applicant. In the absence of the said register the actual date of birth could not be verified. They also mentioned that in the copy of the horoscope produced by the applicant two date of birth 08.05.1958 and 08.05.1959 has been mentioned. In the absence of Transfer Certificate dated 31.07.1965 it is not possible to conclude whether the change of date of birth from 08.05.1959 to 23.05.1958 occurred due to incorrect entry in TC issued by

- the Government School, Nagamangala or due to a wrong entry by Government Boys Primary School, K.R. Pet. The respondents further submitted that in terms of the Handbook on Education 1964-1965 under Chapter III states that compulsory primary education was introduced in Mysore state with effect from 1st August, 1961 and the child which has completed 5 years and 10 months must be admitted to an approved school. As the applicant has been admitted under compulsory primary education he could not have been admitted to primary education unless his age is 5 years and 10 months. The applicant could appear for SSLC examination only on completion of 15 years and 10 months, i.e., during 1975 but appeared for examination during April, 1974 therefore the date of birth as in SSLC certificate and declared during the appointment appears to be correct. Therefore they submit that the contention of the applicant does not merit any consideration and the decision taken by the 1st respondent to reject his representation is justified.
9. The applicant has filed a rejoinder followed by an additional reply by the respondents but virtually they have harped on the same points as have already been highlighted in the OA as well as reply statement and it is not necessary to reiterate the same.
10. We have heard the learned counsel for the parties. The learned counsel for the applicant while highlighting the submission made in the OA, submitted that the applicant had submitted his original representation for altering the date of birth well within 5 years. The rejection was made at that time by Respondent No. 3 who is not competent as the final order was to be passed by the 1st Respondent. The 1st respondent only issued the final

order only on 03.03.2017 and hence the actual cause of action arises on 03.03.2017. He refers to a judgment of Hon'ble Apex Court in S S Rathore Vs. State of Madhya Pradesh saying that the Hon'ble Apex Court held that the actual cause of action shall be taken to arise not from the date of the original order but from the date when the order of the higher authority where a statutory remedy is provided by entertaining the appeal or representation made. He further mentioned that the Respondent No. 1 has not rejected his appeal on the ground of any delay but the fact that he could not establish that genuine mistake has occurred. Hence there is no issue of delay involved as has been highlighted by the respondents in their reply statement. He further submitted that the date of birth certificate issued by the Chief Registrar of Birth and Death (Commissioner Corporation of Bangalore) is a valid document and shall have to be taken as authentic. The 1st standard Admission Register of the Government Primary School, Nagamangala also indicates the same date of 08.05.1959. There was a mistake when recording date of birth by the Government Primary Boys School, K.R. Pet which he joined on transfer and this was carried on to the SSLC certificate. The applicant came to know during September, 2012 about the mistake in the ground taken by the 3rd respondent while rejecting his prayer when on obtaining information under RTI Act regarding conditions of age for appearing in SSLC Examination through Karnataka Secondary Education Board it was informed that as per Rule 37 there is no minimum age to appear for SSLC Examination in 1974. The minimum age was fixed only from January, 2013. Hence the rejection by the 3rd Respondent earlier on the ground that Note 6(c) regarding condition for age for appearing in SSLC Examination has not been satisfied was

incorrect and hence he started making representations to the respondents who is the competent authority. Respondent No. 1 sought various details and passed an order on 03.03.2017 based on the recommendation by the 3rd Respondent saying that since the Transfer Certificate and Parturition Register in the hospital are not available the reason for mistake in recording date of birth could not be justified this view without taking into account the fact that the Birth Certificate and the Admission Register of the school where the first admission took place are available is grossly incorrect. Moreover the order passed by the 1st Respondent is not a speaking order. Hence he submitted that the applicant is entitled to his prayer for change in the date of birth based on his actual date of birth as per the Birth Certificate issued by the competent authority. The applicant has also submitted a written argument highlighting the above aspects.

11. The learned counsel for the respondents on the other hand reiterated the submissions made in the reply statement and emphasized on the fact that the applicant slept over the matter for nearly 24 years when his prayer was first rejected in 1988 and started making representation only in 2012. Though the appeal was considered and rejected, still it cannot obviate the fact that there was an undue delay in approaching this Tribunal and hence on that ground the OA should be dismissed. He further mentioned that even after receiving the appeal, the matter was examined in great detail and even a team of officials was asked to enquire in to all aspects. Regarding the Birth Certificate, he mentioned that though the Commissioner, BBMP had confirmed that the date of birth certificate issued on 10.03.1987 to the applicant is genuine, they could not confirm the document based on which the date of birth is mentioned as 08.05.1959.

Moreover in the extract of the Birth Register only in the case of the applicant the child's name was recorded while in the other case it was recorded as Male or Female which gave suspicion about the possibility of manipulation in the said register. Further the Transfer Certificate based on which the date of birth was entered in the Government Primary Boys School, K.R. Pet is not available to substantiate the allegation. Thirdly as per the Handbook on Education, 1964 unless somebody is of 5 years 10 months he cannot be admitted under compulsory primary education and hence one can appear in SSLC Examination only on completion of 15 years 10 months which in the applicant's case should be during 1975. The applicant could not have appeared for the examination during April 1974 if his date of birth was not prior to 1959. Therefore based on all these facts, the competent authority rightly held that all the condition under Note 6 below FR 56 have not been satisfied and hence there is no ground to change the date of birth from what has already been entered at the time of joining the service. Therefore he submits that the contention of the applicant does not merit any consideration.

12. We have carefully considered the facts of the case and submission made by either side. The issue relates to change in the date of birth and the provisions under Note 6 below FR 56 which pertains to alteration of the date of birth reads as follows:

Note-6:

"The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the Appropriate Authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register.

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The date of birth so declared by the Government servant and accepted by the Appropriate Authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if —

- (a) *a request in this regard is made within five years of his entry into Government service;*
- (b) *it is clearly established that a genuine bona fide mistake has occurred; and*
- (c) *the date of birth so altered would not make him ineligible to appear in any School or University of Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.”*

13. It appears from the records and submissions that the date of birth of the applicant as recorded in the Service Book was based on the date of birth mentioned in the SSLC certificate, i.e., 23.05.1958. The applicant on coming to know about his actual date of birth submitted representation on 17.09.1987 which is within the stipulated period of 5 years from the date of joining the service since the applicant joined the respondent organization on 04.10.1982. At that time the matter was considered and it was turned down by the 3rd Respondent that the condition prescribed in Note 6 (c) has not been satisfied and hence alteration in the date of birth is not possible. Thereafter there was no action on the part of the applicant till he filed an appeal on 15.11.2012. According to the applicant, he came to know in 2012 based on information obtained by him through RTI that there are no condition of minimum age for appearing in 1974 SSLC examination as per Rule 37 of Karnataka Secondary Education Examination Regulation. Hence he felt that the ground on which his request for alteration of date of birth was rejected is unjustified and hence he started making representation. The respondents have highlighted the delay in filing the

appeal as the major ground in rejection of the contention of the applicant. We, however, note that on the applicant making representation in 2012 the matter was examined by all the respondents i.e. Respondent No. 3, 2 and 1 and they did not reject the contention of the applicant on the ground of delay but examined the matter in detail. There were several correspondences between the respondents seeking authenticity of the documents, investigation by a team of officials etc., and the final rejection was not on account of any delay but on specific ground. Taking into consideration the submission of the applicant that the order of 13.01.1988 was not passed by the 1st Respondent who is the competent authority and the final order was passed by the 1st Respondent only in 2017 and the fact that the respondents while considering the appeal never raised the issue of delay, we are of the view that the point raised by the respondents regarding delay in approaching the authority or the Court does not appear to be convincing or justified. Hence we hold that the relief sought by the applicant is not time barred and hence examine the issue on merit.

14. The date of birth of the applicant as indicated in the Birth Certificate issued by the Chief Registrar of Birth and Death which in the present case is Commissioner Corporation of Bangalore is 08.05.1959. The respondents have accepted that the corporation has confirmed that the Birth Certificate issued to the applicant was genuine. However, they have raised two points questioning the Birth Certificate itself. They mention that the Parturition Register in the Lady Curzon and Bowring hospital where the child was born could not be made available by the hospital authority and secondly in the register while it is mentioned as Male or Female against the child in all the cases in the case of the applicant his name is mentioned which cast a

doubt about the genuineness. The availability or otherwise of the Parturition Register by the hospital cannot cast a doubt on the Birth Certificate issued by the competent authority. Further at the time of birth of a child in the hospital, name is not given by the parents due to which the hospital only indicates Male or Female against the child but if the name is mentioned then that is also recorded. We note that the name of another child Ramamurthy was also mentioned in the said register. Therefore mention of the name of the child in the register cannot prima facie indicate any manipulation in the date of birth. Therefore the grounds on which the respondents have cast a doubt on the genuineness of the Birth Certificate by the Chief Registrar of Birth and Death appears to us as misplaced more so when the authority itself has confirmed the issue of Birth Certificate to the applicant.

15. The next issue that has been highlighted is the fact of non-availability of the Transfer Certificate with the Government Primary Boys School, K.R. Pet. It is not disputed by the school where the applicant took first admission, i.e., Government Kannada Primary School, Nagamangala that the date of birth of the applicant was recorded as 08.05.1959 in their register. They said that they have issued T.C. No. 48/65-66 which is not available in the Government Primary Boys School, K.R. Pet for verification. The school however recorded the date of birth as 23.05.1958 which the applicant claims to have been wrongly done. There could have been a mistake in recording the date of birth by the second school, i.e., Government Boys High School, K.R. Pet or there might be a mistake in the TC as well. If the Transfer Certificate could not be made available by the school, that it cannot be construed that there cannot be a mistake as claimed by the

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applicant. The very fact that the birth certificate issued by the Commissioner, Bangalore Corporation as well as the date of birth recorded in the admission register of the first school where the applicant was admitted are the same and mentions as 8.5.1959, the applicant's contention about his actual date of birth being 08.05.1959 appears to us as quite possible. Hence we are inclined to hold that there is a strong possibility that a genuine and bonafide mistake occurred while recording the date of birth at the second school on transfer.

16. The third issue that has been raised is whether the date of birth altered would make a person ineligible to appear in examination in school or university. According to the applicant's contention, when he sought information under RTI Act as to whether regular student born on 1959 was eligible to appear for SSLC examination held in April, 1974, the Karnataka Secondary Education Examination Board informed him that they can only provide relevant documents and provided extract of Rule 37 (1) under Sub Rule (1) (2) of the Board's Act 1966 regarding eligibility to appear for SSLC examination. Rule 37 pertaining to conditions of eligibility to appear for the examination as a school candidate reads as follows:

“(1) No person shall be eligible to appear for the examination as a school candidate unless he has –

(i) sent his application through a recognized high school in which he was studying as a regular student of the X standard at the time of sending his application for admission to the examination and has completed the course of study prescribed for the X Standard;

(ii) put in attendance of not less than seventy-five percent of the number of working days (excluding holidays and vacation) or such other percentage of the number of working days as may be prescribed by the Department of Public Instruction as the minimum attendance required to be put in by a student of the X Standard in a recognized High School or deficiency in the required number of working days to be attended has been condoned under clause (2) or (3)”

There is no mention of any minimum age for appearing in the SSLC examination. The respondents on the other hand referred to Handbook on Education, 1964-65. The relevant provision in the said Handbook relating to admission indicates that compulsory primary education has been introduced in Mysore state with effect from 1st August 1961 and a child which has completed 5 years and 10 months on 22nd May must be admitted to an approved school. However the children who have completed the age of 5 years may also be admitted to 1st standard on a voluntary basis after the admission of the children coming under Compulsory Primary Education Act subject to the availability of facilities and accommodation and teachers. The said stipulation does not preclude that a child less than 5 years cannot be admitted to an approved school if seats are available while saying that they must be admitted on reaching that age. Since the condition of eligibility to appear for the SSLC examination of the candidate does not prescribe any minimum age for appearing in the SSLC examination, we are inclined to accept the contention of the applicant that he would have been eligible to appear in the SSLC examination even if his date of birth was recorded as 08.05.1959.

17. In Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Co. Ltd., the Hon'ble Apex Court in Civil Appeal No. 4558 of 2014 (2014) 6 SCC 434 vide para 19 has held as follows:

“19. Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the award of the Labour Court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per [Section 35](#) of the

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Indian Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27-6-1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent Board prematurely terminated the services of the appellant by taking his date of birth as 27-6-1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant's elder brother was born on 27-1-1937 as per the School Leaving Certificate, and there cannot be a mere 5 months' difference between the birth of his elder brother and himself. Therefore, it is apparent that the School Leaving Certificate cannot be relied upon by the respondent Board and instead, the birth certificate issued by the BMC which is the documentary evidence should have been relied upon by the respondent. Further, the date of birth is mentioned as 27-6-1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by the BMC on the face of all these discrepancies as the same was issued on the order of the JMFC."

18. After examining the entire records and considering the matter in detail, we are of the view that the date of birth as recorded in the Birth Certificate issued by the Chief Registrar of Birth and Death (Commissioner Corporation of Bangalore) and which also reflected in the Admission Register of the Government Primary Boys School, Nagamangala, i.e., 08.05.1959 should be accepted as the actual date of birth of the applicant. Therefore we are inclined to accept the contention of the applicant that a genuine mistake had occurred while subsequently recording the date of birth as 23.05.1958 by the Govt. Primary Boys School, K.R.Pet instead of the actual date of birth recorded in the earlier school i.e. 08.05.1959. According to our view, the applicant fulfills all the three conditions stipulated under Note 6 below under FR 56 and hence his prayer for change in the date of birth appears to us as justified. We therefore hold that the order of Respondent No. 1 dated 03.03.2017 at Annexure-A29 which was based on the recommendation made by Respondent No. 3 is erroneous and hence the same is set aside. We direct the respondents to take the applicant's date of birth as 08.05.1959 in terms of the certificate issued by the

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Commissioner Corporation of Bangalore and make necessary changes in the Service Book of the applicant accordingly. This shall be done within one month from the date of receipt of a copy of the order.

19. The OA is accordingly allowed in terms of the aforesaid direction. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

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Annexures referred to by the applicant in OA No. 170/00269/2017

- Annexure-A1: Copy of Form No.9 Certificate of Birth dated 10.3.1987.
 Annexure-A2: Copy of Horoscope
 Annexure-A3: Copy of the 1st Standard Admission Register of Government Primary Boys School, Nagamangala.
 Annexure-A4: Copy of the Admission register of the in Government Primary Boys School, K.R.Pet
 Annexure-A5: Copy of the SSLC Certificate
 Annexure-A6: Copy of the Note-6 below F.R.56
 Annexure-A7: Copy of the Representation dated 17.9.1987
 Annexure-A8: Copy of the Memo dated 13.01.1988 of the 3 rd respondent
 Annexure-A9: Copy of the Regulation 37 (Karnataka Act No.16 of 1966)
 Annexure-A10: Copy of the Appeal/Representation dated 15.11.2012 of the applicant.
 Annexure-A11: Copy of the letter No.ES I/A 8/2012-13/335 dated 21.12.2012
 Annexure-A12: Copy of the representation dated 18.7.2013.
 Annexure-A13: Copy of the letter No.660-RTI/440- 2017 dated 11.4.2017
 Annexure-A14: Copy of the letter No.399 Staff(App-II)/80- 2014/Vol.III dated 16.3.2015.
 Annexure-A15: Copy of the letter No.ES I/A8/2014-15/498 dated 24.3.2015
 Annexure-A16: Copy of the letter No.ES I/A8/2015-16/01 dated 10.4.2015
 Annexure-A17: Copy of the letter No.1001-Staff(App- II)/80-2014/Vol- III dated 10.7.2015.
 Annexure-A18: Copy of the letter No.ESI/A2/2015-16 dated 3.8.2015
 Annexure-A19: Copy of the letter No.1686-Staff(App- II)/80-2014/Vol- III dated 16.10.2015.
 Annexure-A20: Copy of the letter No.ESI/A2/2015-16/124 dated 13.11.2015
 Annexure-A21: Copy of the representation/letter dated 20.1.2012 addressed to PAG (A& E)
 Annexure-A22: Copy of the letter No.ESI/A2/2015-16/190 dated 29.2.2016
 Annexure-A23: Copy of the letter No.619-Staff(App- II)/80-2014/Vol- III dated 5.5.2016
 Annexure-A24: Copy of the letter No.ESI/A2/2016-17/61 dated 09.06.2016.
 Annexure-A25: Copy of the letter No.1500-Staff(App- II)/80-2014/Vol- III dated 25.10.2016
 Annexure-A26: Copy of the letter No.JDS/VR/PR No.110/2016-17 dated 29.11.2016 issued by BBMP
 Annexure-A27: Copy of the Register of Birth during May 1959
 Annexure-A28: Copy of the letter No.ESI/A2/2016-17/195 dated 22.12.2016
 Annexure-A29: Copy of the letter No.253-Staff(App- II)/80-2014/Vol- III dated 3.3.2017
 Annexure-A30: Copy of the letter No.ESI/A2/2017-18/03 dated 04.04.2017.

Annexures referred in Reply Statement

- Annexure-R1: Copy of letter dated 25.11.2016 from the Headmaster of Government Kannada Boys High School, Nagamangala.

- Annexure-R2: Copy of letter dated 25.11.2016 from Government Primary Boys

170/00269/2017/CAT/BANGALORE

School, K.R. Pet.

Annexure-R3: Copy of letter No. ESI/A2/2016-17/174 dated 28.11.2016.

Annexure-R4: Copy of Handbook on Education 1964-65.

Annexures referred in Rejoinder

Annexure-A31: Copy of Note of the Office of the Accountant General regarding representation of the applicant.

Annexure-A32: Copy of information furnished under RTI

Annexure-A33: Copy of Tamil Panchangam

Annexure-A34: Copy of translation of Horoscope and important details

Annexure-A35: Copy of Registration of Births and Deaths Act, 1969

Annexure-A36: Copy of letter dated 28.11.2016 issued by the respondent office

Annexure-A37: Copy of letter dated 08.12.2016 issued by the respondent office

Annexure-A38: Copy of letter dated 08.12.2016 issued by KSEEB

Annexure-A39: Copy of Notification amending the Regulation 37 of KSEEB 1966
