

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CWP No.2538 of 2024

Decided on: 25th November, 2024

Bihari Lal Chauhan

....Petitioner

Versus

Himachal Pradesh State Forest Development Corporation

...Respondent

Coram

Ms. Justice Jyotsna Rewal Dua

¹ *Whether approved for reporting?*

For the petitioner:

Mr. Adarsh K. Vashista, Advocate.

For the respondent:

Ms. Kiran Dhiman, Advocate.

Jyotsna Rewal Dua, Judge

About a month and half before petitioner's retirement, he instituted present writ petition, seeking direction to the respondent to correct his date of birth in his service record from 15.04.1966 to 16.1.1969.

2. The **case pleaded by the petitioner** is that: -

2(i) Petitioner was appointed as Daily Waged Fieldman in respondent-Corporation in the year 1987. His services were regularized in the year 1998. During the course

¹ *Whether reporters of Local Papers may be allowed to see the judgment? yes*

of time, petitioner was given departmental promotions from time to time. He was promoted as Deputy Ranger on 10.10.2022.

2(ii) At the time of regularization of petitioner's service in the year 1998, his date of birth was entered in his service record as 15.04.1966. The entry was made on the basis of his matriculation certificate.

2(iii) Petitioner instituted Civil Suit No. 119-A of 2022 against H.P. Board of School Education and General Public, seeking declaration that his actual date of birth is 16.01.1969 and not 15.04.1966, which is recorded in his educational record by H.P. Board of School Education.

2(iv) Defendants did not contest the Civil Suit. They were proceeded against ex-parte. Vide judgment dated 11.01.2024, Civil Suit was decreed and H.P. Board of School Education-defendant No.1 was directed to correct the date of birth of the petitioner as 16.01.1969. The judgment was implemented by defendant No.1, H.P. Board of School Education and date of birth of the petitioner was accordingly changed in the petitioner's matriculation certificate.

2(v) On the basis of aforesaid judgment and decree,

petitioner represented to his employer-respondent on 07.02.2024, seeking correction of his date of birth in his service record from 15.04.1966 to 16.01.1969. Respondents rejected the representation on 23.02.2024, hence, this petition. Petitioner has superannuated from service on 30.04.2024.

3. Heard learned counsel for the parties and considered the case file.

4(i) It is an admitted position that prior to 07.02.2024, petitioner had not represented to his employer for correcting his date of birth in his service record. The first ever representation by the petitioner for correcting his date of birth entry in his service record was filed on 07.02.2024 i.e. just about three months prior to his superannuation on 30.04.2024. The petitioner has not demonstrated as to why he did not represent or raised any grievance to his employer for correcting his date of birth in his service record in accordance with Note 6 of Fundamental Rule 56 and Clause 7.1 of Chapter VII of Himachal Pradesh Financial Rules, 1971.

In terms of Note 6 of Fundamental Rule 56 date

of retirement of a Government servant, be it 58 years or 60 years, as the case may be, has to be determined with reference to 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 Certificate or extracts from the Birth Register. The Note further provides that 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, as under: -

“Note 6-

- (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 or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date of which he first appeared at such examination or on the date on which he entered Government service.”*

Clause 7.1 of Chapter VII of Himachal Pradesh Financial Rules, 1971, provides that declaration of age made by the employee at the time of or for the

purpose of entry into government service be deemed to be conclusive unless the employee applies for correction of his recorded age within two years from the date of his entry into the government service. Clause 7.1(d) of Chapter VII reads thus: -

“(d)(1) in regard to the date of birth a declaration of age made at the time of or for the purpose of entry into Government service, shall as against the Government servant in question, be deemed to be conclusive unless he applies for correction of his age as recorded within 2 years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of the Government servant at any time against the interest of that Government servant when it is satisfied that the age recorded in his service book or in the history of services of a gazette. Government servant is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom.

(2) When a Government servant, within the period allowed, makes an application for the correction of his date of birth as recorded, an inquiry shall be made to ascertain his correct age and reference shall be made in all available sources of information such as certified copies of entries in the Municipal birth register, University or School age certificates, JANAMPATRI (horoscope) as the case may be. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such application on being satisfied and no alteration should be allowed unless it has been

satisfactorily proved that the date of birth as originally given by the applicant was a bona fide mistake and that he has derived no unfair advantages therefrom. In case the matriculation certificate is available, the date of birth recorded in the certificate will be deemed to be the correct age.

(3) The result of every such inquiry should in the case of Gazetted/Non Gazetted Government servants be briefly stated in their service cards/service books and if correction is sanctioned, the fact should be reported to the Accountant General.”

4(ii) In ***Bharat Coking Coal Limited and others Versus Shyam Kishore Singh***², the Hon’ble Apex Court held that request for change of date of birth in the service records at the fag end of service after accepting the same to be correct during service, cannot be entertained. Even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. Relevant paragraphs of the judgment read as under: -

“9. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of State of Maharashtra and

²(2020) 3 Supreme Court Cases 411

Anr. vs. Gorakhnath Sitaram Kamble³, wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:

“16. The learned counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri.⁴ In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in State of Uttaranchal v. Pitamber Dutt Semwal⁵ relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

* * *

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in Home Deptt.v. R. Kirubakaran⁶ reads as under:

“7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public

³ (2010) 14 SCC 423

⁴ (2005) 11 SCC 465

⁵ (2005) 11 SCC 477

⁶ 1994 Supp (1) SCC 155

servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book.”

10. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter

of right. In that regard, in *State of M.P. vs. Premal Shrivastava*⁷, it is held as hereunder;

*“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh*)⁸*

⁷ (2011) 9 SCC 664

⁸ (1993) 2 SCC 162

12. *Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”*

The above principles were reiterated by the Hon’ble Apex Court in ***Karnataka Rural Infrastructure Development Limited versus T.P. Nataraja and others***⁹, wherein after considering its previous pronouncements on the subject, the law on change of date of birth was summarized as under: -

“10. Considering the aforesaid decisions of this Court in law on change of date of birth can be summarized as under: -

⁹(2021) 11 SCALE 110

- (i) *application for change of date of birth can only be as per the relevant provisions/ regulations applicable;*
 - (ii) *application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.*
11. *Therefore, applying the law laid down by this Court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order passed by the High Court is unsustainable and not tenable at law.”*

4(iii) Learned counsel for the petitioner contends that Civil Suit instituted by the petitioner for correction of his date of birth had been decreed by the learned Civil Court on 11.01.2024. Hence, respondents are bound to correct the date of birth of the petitioner in his service record. The argument is not tenable in the facts and circumstances of the instant case. Petitioner had not impleaded his employer in the Civil Suit. The defendants impleaded therein, including the H.P. Board of School Education, were proceeded against ex-parte. They did not contest the Civil Suit. The petitioner

cannot bind his employer with the judgment and decree, in which they were not impleaded as party. In **Laxmi Singh Verma Vs. H.P. Board of School Education**¹⁰, it was held that decree by the Civil Court against the Education Board directing correction of date of birth in the educational certificate will not entitle the employee to get his date of birth as entered in the service record corrected on that basis.

5. In view of above, no case for correction of petitioner's date of birth in petitioner's service record is made out. As noticed earlier, the petitioner stands already retired. The present petition is accordingly dismissed.

Pending miscellaneous application(s), if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

November 25, 2024

R.Atal

¹⁰ CWP No. 1227/2021 decided on 14.12.2021