

THE HIGH COURT OF MADHYA PRADESH 1
WP 12295/2020 (S)
Preetam Adiwasi vs. State of MP

Gwalior, dated: 28/08/2020

Shri Satendra Singh Rawat, counsel for the petitioner.

Shri Anmol Khedkar, Counsel for the State.

Heard finally through Video Conferencing.

This petition under Article 226 of the Constitution of India has been filed against the order dated 16/10/2018, by which the petitioner has been retired from service on attaining the age of 62 years.

It is submitted by the counsel for the petitioner that the petitioner is an illiterate person and was appointed in the year 1979 as daily-rated employee and since the petitioner did not have any age proof at the time of his appointment, therefore, the date of birth i.e. 04/10/1956 was wrongly mentioned in his service book without any attesting proof. It is further submitted that where the employee does not have any document in support of proof of his age, then the respondents/authorities should have got the employee examined medically by the Medical Board in order to ascertain his age. However, on the basis of incorrect date of birth mentioned in the service book, he has been retired from 31/10/2018.

Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that it is well-established principle of law that the date of birth mentioned in service book is a conclusive date of birth and as per FR 84, the same can be changed only in case of any

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clerical mistake. The petitioner has filed a copy of his service book from which, it is clear that there is no clerical mistake in the date of birth mentioned in the service book. Further, the petition suffers from delay and laches. It is well-established principle of law that a petition for correction of date of birth in the service book is not maintainable at the fag end of service. However, in the present case, the petition has been filed after two years of retirement.

Considered the submissions made by the counsel for the parties.

The Supreme Court in the case of **State of Assam v. Daksha**

Prasad Deka, reported in (1970) 3 SCC 624 has held as under:—

4.....A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of the birth entered in the service record .

The Supreme Court in the case of **State of Maharashtra v.**

Gorakhnath Sitaram Kamble, reported in (2010) 14 SCC 423 has

held as under :

14. In State of T.N. v. T.V. Venugopalan this Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under: (SCC p. 307, para 7)

“7. ... The government servant having declared

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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.”

15. In *Home Deptt. v. R. Kirubakaran* the Court again reiterated the legal position that the courts have to be extremely careful when application for alteration of the date of birth is filed on the eve of superannuation or nearabout that time. The Court observed as under: (SCC p. 160, para 9)

“9. ... As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier.”

16. The learned counsel for the appellant has

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placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri. 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 Semwal 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. 18. Two decades ago this Court in Govt. of A.P. v. M. Hayagreev Sarma has held that subsequent claim for alteration after commencement of the Rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on State of U.P. v. Gulaichi, State of T.N. v. T.V. Venugopalan, Bhadrak (R&B) Division v. Rangadhar Mallik, Union of India v. Harnam Singh and Home Deptt. v. R. Kirubakaran."

The Supreme Court in the case of **State of Gujarat Vs. Vali**

Mohamed Dosabhai Sindhi reported in **AIR 2006 SC 2735** has held

as under :

10.Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained.

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The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Deka* (1970 (3) SCC 624), this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure." In the case of *Government of Andhra Pradesh v. M. Hayagreev Sarma* (1990 (2) SCC 682) the A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was inter alia observed by this Court:

"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."

In *Executive Engineer, Bhadrak (RandB) Division, Orissa and Ors. v Rangadhar Mallik* (1993 Supp.(1) SCC 763), Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that

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case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the Order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor made any representation for correcting his date of birth till September 9, 1986. In case of Union of India v. Harnam Singh (1993 (2) SCC 162) the position in law was again re-iterated and it was observed:

"A Government servant who has declared his age at the initial stage of the employment is, of course, 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 his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public 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

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years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must,

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therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.

Rule 84 of M.P. Financial Code reads as under :

84. शासन के अधीन किसी सेवा अथवा पद पर प्रत्येक नवनियुक्त व्यक्ति को भरती के समय अपनी जन्म तिथि की जहाँ तक हो ऐसे अभिलेखों के साथ जो उस तिथि की पुष्टि करते हों जैसे मैट्रीकुलेशन सर्टिफिकेट, म्युनिसिपल जन्म तिथि सर्टिफिकेट, आदि के साथ क्रिश्चियन ऐरा में, घोषणा करना चाहिए। यदि वास्तविक जन्म तिथि ज्ञात न हो तो लगभग क्या तिथि है यह बताया जाना चाहिए। सेवा विवरण, सेवा पुस्तिका अथवा अन्य अभिलेख जो शासकीय सेवक के संबंध में रखे जायें उनमें वास्तविक जन्म तिथि अथवा नियम 85 के अंतर्गत निश्चित की गई तिथि अंकित की जाना चाहिए। इस तरह एक बार अंकित की गई जन्म तिथि अन्तिम रूप से नियत तिथि समझी जावेगी और केवल लिपिकीय त्रुटि के मामलों को छोड़कर ऐसी घोषणा में किसी भी प्रयोजन के लिये तदुपरांत कोई संशोधन मान्य नहीं किया जावेगा।'

A Division Bench of this Court in the case of **State of M.P. v.**

Mathura Singh reported in **2003 (1) MPHT 148 (DB)**, has held as

under:—

“**Rule 84 of M.P. Financial Code** (Volume I) provides that date of birth once recorded must be deemed to be absolutely conclusive and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatsoever.”

Considering the law laid down by the Supreme Court as well as

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the judgment passed by Division Bench of this Court in the case of **Mathura Singh (supra)**, it is clear that any petition to challenge the date of birth mentioned in the service book at the fag end of service is not maintainable. However, in the present case, the petition has been filed by the petitioner after two years of his retirement, therefore, by no stretch of imagination, this petition can be entertained in view of delay and laches.

Accordingly, petition fails and is hereby **Dismissed**.

(G.S. Ahluwalia)
Judge