



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 277 of 2010

Reserved on: 04.08.2026

Date of Decision: 13.08.2026

State of H.P. & Ors ...Appellants

Versus

Suresh Kumar & Anr. ...Respondents

Coram

Hon’ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes

- For the Appellants/State : Mr Jitender Sharma, Additional Advocate General
- For respondent No.1 : Mr Surinder Saklani, Advocate.
- For respondent No.2 : Mr Chander Shekhar Thakur, Advocate.

Rakesh Kainthla, Judge

“Man is born only once. He lives only once, and however great a coward he might be, he dies only once. To this universal law of nature, those in public services should not try to constitute any exception.”

***Bathul Gabriel v. District Manager, APSRTC
Kurnool, 1982 (1) SLR 576***

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

The present appeal is directed against the judgment and decree dated 26.08.2009 passed by learned Additional District Judge (Fast Track Court), Una, District Una, H.P. (learned Appellate Court), vide which the judgment and decree dated 19.05.2007 passed by learned Civil Judge (Junior Division), Court No. 3, Una, District Una, HP (learned Trial Court) was set aside. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking a declaration that his correct date of birth is 01.09.1969 and it was wrongly mentioned as 30.08.1968 in the school record and the service record. A consequential relief of mandatory injunction directing the defendants to correct the plaintiff's date of birth was also sought. It was asserted that the plaintiff had passed the matriculation examination from the HP Board of School Education in March 1985. His date of birth was mentioned as 30.08.1968 in the certificate. The plaintiff joined the services as a Trained Graduate Teacher (TGT), non-medical, and his date of birth was recorded as 30.08.1968 in the service record. The plaintiff went to an astrologer to show his horoscope, who

told him that his date of birth was 01.09.1969. The plaintiff made enquiries and found that his correct date of birth is 01.09.1969. He obtained the birth certificate from the Chief Medical Officer, Una and Additional District Registrar, Birth and Death, Medical Officer (Health) Una, in which his date of birth was mentioned as 01.09.1969. He made a representation to the Director Education Shimla, on 13.05.2003 for the correction of his date of birth. The wrong date of birth was mentioned because of the illiteracy of the plaintiff's parents. The defendants failed to correct the date of birth despite service of notice. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by the defendants. 1 to 4 and 5 by filing a written statement taking preliminary objections regarding lack of maintainability, cause of action, and jurisdiction, the suit being barred by limitation, and the plaintiff being estopped by his act and conduct from filing the present suit. It was asserted that the entries in the service book were made on the basis of the record produced by the plaintiff at the time of joining the service. The plaintiff was admitted to the seventh class in Govt. High School, Bhatsali, based on a school leaving certificate issued by the Headmaster, Govt. High School, Govind Nagar, Ludhiana,

Punjab. The plaintiff's father filed an application form in which he mentioned the plaintiff's date of birth as 30.08.1968. The date of birth was correctly recorded in the service book as per the matriculation certificate. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaintiff was filed.

5. The following issues were framed by the learned Trial Court on 17.01.2005:

1. Whether the plaintiff is entitled for declaration to the effect that the plaintiff's correct date of birth is 01.09.1969 instead of 30.08.1968 as wrongly shown in the school record and thereafter in the subsequent records of the defendants, as prayed? OPP
2. If issue No.1 is proved in the affirmative, then whether the plaintiff is entitled for relief of mandatory injunction, as prayed? OPP
3. Whether the suit is not maintainable in the present form, as alleged? OPD
4. Whether the suit is not within the period of limitation, as alleged? OPD
5. Whether there arises no cause of action to the plaintiff, as alleged? OPD
6. Whether this Court has no jurisdiction to try this suit, as alleged? OPD
7. Whether the plaintiff is estopped by his act and conduct, as alleged? OPD

8. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined M.L. Sharma (PW1), Madhu Sharma (PW2) and Suresh Kumar (PW3). The defendants examined Pawan Kumar (DW1) and Kali Dass (DW2).

7. The learned Trial Court held that the plaintiff's date of birth was mentioned as 30.08.1968 in the school record, the service record, the school leaving certificate (Ext.D2) and the form (Ext.D3) signed by the plaintiff's father. The plaintiff admitted that his father was working at Agricultural University Ludhiana, and the plaintiff's plea that his father was illiterate was incorrect. The plaintiff failed to produce the horoscope or examine the astrologer who had told him about the wrong date of birth. HP Financial Rules provide that the date of birth of an employee can be corrected within 2 years from the date of his entry into the government service. The plaintiff joined the government service on 09.02.2001, and he made the representation on 13.05.2003, which is beyond the period prescribed in the Financial Rules. Therefore, the learned Trial Court answered issues No. 3, 5 and 7 in the affirmative, the rest of the issues in the negative and dismissed the suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal which was decided by the learned Additional District Judge (Fast Track Court), Una, H.P. (learned Appellate Court). The learned Appellate Court held that the plaintiff's date of birth was proved to be 01.09.1969 by the statement of Madhu Sharma (PW2) based on the record maintained by CMO, Una. A government servant is required to make a representation for the correction of his date of birth in the service record within 2 years, but the plaintiff had made the representation after the lapse of 2 years. The period of 2 years was enacted to dissuade a claim made at the fag end of the career by a government employee. The plaintiff joined the service in the year 2001, and he filed the civil suit in the year 2004. The delay was not material. The learned Trial Court had erred in dismissing the suit. Hence, the learned Appellate Court allowed the appeal, set aside the judgment and decree passed by the learned Trial Court and decreed the suit.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants have filed the present appeal, which was admitted on the following substantial question

of law on 02.07.2010 and an additional substantial question of law was framed on 31.05.2024:

1. Whether the First Appellate Court has misinterpreted the H.P. Financial Rules and also misappreciated the law applicable to the present case?
2. Whether the suit filed by the plaintiff was within limitation?

10. I have heard Mr Jitender Sharma, learned Additional Advocate General for the appellants/State, Mr Surinder Saklani, learned counsel for respondent No. 1, and Mr Chander Shekhar Thakur, learned counsel for respondent No.2.

11. Mr Jitender Sharma, learned Additional Advocate General for the appellants/State, submitted that the plaintiff himself had mentioned his date of birth as 30.08.1968 in the service book. His father had mentioned the plaintiff's date of birth as 30.08.1968 in the form signed by him. The plaintiff sought the correction beyond the period of 2 years provided in HP Financial Rules. Learned Appellate Court erred in holding that the period of 2 years prescribed in the HP Financial Rules could be waived. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by learned Appellate Court be set aside.

12. Mr Surinder Saklani, learned counsel for respondent No.1/plaintiff, submitted that the period of 2 years was prescribed for discouraging the claims made at the fag end of the career. In the present case, the claim was made some months after the expiry of 2 years. The learned Appellate Court had rightly held that no prejudice was caused to any person by the correction of the date of birth. There is no infirmity in the judgment and decree passed by the learned Appellate Court. Hence, he prayed that the present appeal be dismissed. He relied upon the judgment of this Court in *Kashmir Singh versus Secretary H.P. Board of School Education 2013: HHC:8983* in support of his submission.

13. Mr Chander Shekhar Thakur, learned counsel for respondent No.2, submitted that the HP Board of School Education has already carried out the correction in the date of birth and is not required to do anything more than that.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

15. Rule 7.1 of HP Financial Rules, 1971 deals with the date of birth of an employee. Note d1 reads as under:

“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 gazetted Government servant is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom.”

16. A perusal of the rule shows that the correction can be carried out if a representation is made by an employee within a period of 2 years from the date of joining of the service. It is undisputed that the plaintiff had joined the service on 01.09.2001, and he made the first representation on 13.05.2003, which is beyond the period of 2 years prescribed in the rules. It was laid down by Hon'ble Supreme Court in *Govt. of A.P. v. M. Hayagreev Sarma*, (1990) 2 SCC 682: 1990 SCC OnLine SC 196, that the State has exclusive power to legislate in respect of State Public Services and proviso to Article 309 confers exclusive power on Governor and the State Legislature to frame rules laying down the terms and conditions of the State employees which may regulate the entry of

the date of birth of an employee, its alteration, correction, and all other allied matters. It was observed at page 686:

“9....Under Article 245 read with Entry 41, List II of the Seventh 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 the date of birth of an employee, its alteration, correction and all other allied matters.....”

17. It was held in *Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155* that the provisions regarding alteration and correction of date of birth contained in the service manual are to be followed strictly, including the time limit prescribed for making such an application. It was observed at page 160:

“9. The Tamil Nadu Service Manual contains Rules 49 and 49-A, which are the provisions in respect of alteration and correction of the date of birth. Whenever any application is filed by persons governed by those service rules, procedures prescribed therein have to be strictly followed, including the time-limit prescribed for making such an application. Clause (b) of the aforesaid Rule 49 provides that after a person has entered in service, an application to alter the date of his birth as entered in the official records “shall be entertained only if such an application is made within five years of such entry in service....”

18. It was held by the Allahabad High Court in *Kavita Kureel v. State of U.P., 2023 SCC OnLine All 2557* that when no

correction in the date of birth was sought within the time prescribed in the Rules, the correction cannot be carried out even if the board had carried out the correction. It was observed:

“26. This court also finds that Rule 2 of the Rules of 1974 provides that the date of birth entered in the High School certificate at the time of entry of a government servant into the government service or if he has not passed out High School examination, then the date of birth entered in the service book at the time of his entry into the government service shall be final for all service benefits and no application or representation shall be entertained for correction of said date of birth in any circumstance whatsoever. Therefore, it is patently manifest that Rule 2 of the Rules of 1974 clearly provides that the date of birth of a government servant for the purposes of service benefits has to be decided at the time of his entry into the government service i.e. either on the basis of date of birth entered in the High School certificate at the time of entry into the government service or if government servant has not passed out the High School examination, then the date of birth in his service book at the time of his entry in the government service shall be final and no application for change of date of birth in any circumstance can be entertained.

27. I find that the petitioner's date of birth in her High School certificate at the time of her entry into the service was recorded as 3.11.1960; therefore, in view of the provisions of the aforesaid Rule 2 of the Rules of 1974, her date of birth for the purposes of service benefits shall be 3.11.1960 and no application for change of her date of birth can be entertained. In the case of the petitioner, her date of birth recorded in the High School certificate has been changed by the U.P. Madhyamik Shiksha Parishad, Prayagraj in the year 2021, but on the said basis her date of birth recorded in her service record cannot be changed in

view of the prohibition contained in Rule 2 of the Rules of 1974.

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34. Since it is an admitted case of the petitioner that her date of birth at the time of entry into the government service in the High School certificate was recorded as 3.11.1960 and therefore, even if the date of birth has been subsequently corrected in the High School certificate, the date of birth entered in the service record cannot be changed in view of the prohibition contained in Rule 2 of the Rules of 1974.

19. It was held in *State of Gujarat v. Vali Mohd. Dosabhai Sindhi*, (2006) 6 SCC 537: 2006 SCC OnLine SC 740 that when the application for correction was made beyond the period prescribed in the Rules, such correction should not be allowed. It was observed at page 540:

“10. Most of the States have framed statutory rules or, in the 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. 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.....

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16. In the instant case, the Rules referred to above clearly indicate the permissible area for correction of date of birth.

In view of the specific provisions made, it was not permissible to effect any change.”

20. It was held by the Bombay High Court in *Taterao v. State of Maharashtra*, 2017 SCC OnLine Bom 9371 that the time period prescribed in the service rules for correcting the date of birth is to be followed. It was observed:

7....As per Instruction (1) given under sub-rule (2) of Rule 38, as it stood prior to amendment of 2008, normally, no application for alteration of the entry regarding the date of birth as recorded in service book or service record of Government servant should be entertained after five years commencing from the date of his entry in Government service. The applicant has produced the Circular dated 03.03.1998 (page 163) issued by the General Administration Department, Government of Maharashtra. In the said Circular, in view of the judgment of the Hon'ble Apex Court in the case of *Union of India v. Harnam Singh*, (1993) 2 SCC 162, it is made clear that the application for correction of date of birth of in-service Government Officers/servants, who have entered into the Government service prior to or after 15.08.1981, should be considered only if they are made within five years of their entering into the service. This Circular was binding on the applicant. It has not been ever challenged by him. Thus, even prior to filing the application for correction of his date of birth, the applicant was aware that his application would be considered only if it was filed within five years of his entering into the service. He entered into the service on 15.06.1988. Consequently, the application for correction of date of birth filed for the first time on 18.07.2005 was not at all tenable.

21. It was held in *State of Haryana v. Satish Kumar Mittal*, (2010) 9 SCC 337: (2010) 2 SCC (L&S) 740: 2010 SCC OnLine SC 973

that an application for correction of date of birth should not be entertained beyond the period specified in the Rules. It was observed at page 341:

“13. Thus, as seen from the above position, the relevant rule always required an application for correction of the date of birth to be submitted within two years from joining the service. The amended Rule of 20-12-2000 made a slight modification that an application filed after two years could be considered, which would be only on the recommendation of the Administrative Department. This provision has now been removed after the Rule was amended on 13-8-2001.

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15. As recorded above, it has been held time and again that the application for correction of date of birth is also to be looked into from the point of view of the department concerned and the employees engaged therein. The other employees have expectations of promotion based on seniority, and suddenly if such change is permitted, it causes prejudice and disturbance in the working of the department. It is, therefore, quite correct for the State to insist that such application must be made within the time provided in the rules, say, two years, as in the present case.

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18. This being so, the courts should not have entertained the claim of the first respondent belatedly and beyond the period provided in the Rules. The Rules, in the instant case, all throughout required such application to be made within two years. Therefore, the courts clearly erred in finding fault with the appellant for allegedly applying the Notification of 13-8-2001 retrospectively, which was not the case over here.”

22. It was held in *State of Punjab v. S.C. Chadha*, (2004) 3 SCC 394 that when an entry was made in the service record, and

the employee did not make any attempt to have the service record corrected, any amount of evidence subsequently produced will have no consequences. It was observed:

13. As observed by this Court in *State of T.N. v. T.V. Venugopalan* [(1994) 6 SCC 302: 1994 SCC (L&S) 1385: (1994) 28 ATC 294] and *State of Orissa v. Ramanath Patnaik* [(1997) 5 SCC 181: 1997 SCC (L&S) 1141] when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran case* [1994 Supp (1) SCC 155: 1994 SCC (L&S) 449 : (1994) 26 ATC 828: JT (1993) 5 SC 404] was adopted.

23. It was held in *Union of India v. C. Rama Swamy*, (1997) 4 SCC 647: 1997 SCC (L&S) 1158 that the date of birth mentioned by the employee constitutes an estoppel and should not be changed even if shown to be incorrect. It was observed at page 660:

26. In such a case, even in the absence of a statutory rule like Rule 16-A, the principle of estoppel would apply, and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged, the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration, obviously with a view that it would be to his advantage. Once having secured entry into the service, possibly in preference to other candidates, then the principle of estoppel would clearly be applicable, and relief for change of date of birth can be legitimately denied. To that extent, the decision in *Manak Chand case* [(1976) 1 SLR 402 (HP)] does not lay down the correct law.

24. Therefore, it is apparent that the rules providing a time limit for the change in the date of birth are to be strictly followed and cannot be ignored on equitable consideration. Once the rule provides that the entry can be corrected within a period of 2 years, it is impermissible for the Courts to hold that the entry can be corrected beyond the period of 2 years on any equitable consideration. It was not the province of the Court to adjudicate the rationale for laying down the rule and to relax it if the relaxation was as per the rationale. Therefore, the judgment of the learned Appellate Court holding that the representation made beyond the period of 2 years could be entertained, and correction could be carried out after two years cannot be sustained.

25. In *Kashmir Singh* (supra), the question of interpretation of Financial Rules was not involved, and the cited judgment does not apply to the present case.

26. It is undisputed that the plaintiff himself had mentioned the date of birth as 30.08.1968 and he had not sought correction within two years provided under the rules. Therefore, the learned Appellate Court erred in holding that the correction

could be made dehors the rule. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No. 2:

27. It is an admitted case of the plaintiff that his date of birth was recorded as 30.08.1968 in the matriculation certificate issued by HP Board of School Education for the exams held in March, 1985. Thus, the threat to the rights of the plaintiff accrued in the year 1985. He could have filed a suit for declaration within 3 years from the date of issuance of the matriculation certificate or date of attaining majority. However, he sought the declaration for correction of his matriculation certificate by filing a suit in the year 2004. It was laid down by the Hon'ble Supreme Court in *Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman*, (2003) 12 SCC 408: 2003 SCC OnLine SC 1449, that the delay defeats equity and a period of three years for correcting the date of birth is reasonable. It was observed at page 413:

“12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting in depriving of the remedy is a principle based on public policy and utility and not equity alone. There ought to be a limit of time by which human affairs stand settled, and uncertainty is lost. Regulation 8 confers a right on the applicant and a power

coupled with an obligation on the Board to make correction in the date of birth subject to the ground of wrong calculation or clerical error being made out. A reasonable procedure has been prescribed for processing the application through the Inspector of Schools, who would verify the school records and submit a report to the Board so as to exclude from consideration the claims other than those permissible within the framework of Regulation 8. Power to pass an order for correction is vested in a high functionary like the Secretary of the Board. An inaccuracy creeping in at the stage of writing the certificates only, though all other prior documents are correct in all respects, is capable of being corrected within a period of three years from the date of issuance of the certificate.

13. The three-year period provided by the Regulation is very reasonable. On the very date of issuance of the certificate, the student concerned is put to notice as to the entries made in the certificate. Everyone remembers his age and date of birth. The student would realise within no time that the date of birth as entered in the certificate is not correct, if that be so, once the certificate is placed in his hands. Based on the certificate, the applicant would seek admission elsewhere in an educational institution or might seek a job or career where he will have to mention his age and date of birth. Even if he failed to notice the error on the date of issuance of the certificate, he would come to know the same shortly thereafter. Thus, the period of three years, as prescribed by Regulation 3, is quite reasonable. It is not something like prescribing a period of limitation for filing a suit. The prescription of three years is laying down a dividing line before which the power of the Board to correct ought to be invoked and beyond which it may not be invoked. Belated applications, if allowed to be received, may open a Pandora's box. Records may not be available, and evidence may have been lost. Such evidence — even convenient evidence — may be brought into existence and may defy scrutiny. The prescription of three years' bar takes care of all such situations. The provision is neither

illegal nor beyond the purview of Section 24 of the Act and also cannot be called arbitrary or unreasonable. The applicants seeking rectification within a period of three years form a class by themselves, and such prescription has a reasonable nexus with the purpose sought to be achieved. No fault can be found therewith on the anvil of Article 14 of the Constitution.”

28. It was laid down by the Punjab and Haryana High Court in *Ambika Kaul v. Central Board of Secondary Education, 2015 SCC OnLine P&H 1669* that a person can seek a correction of the date of birth recorded in the matriculation certificate based on the entry in the register of birth and death within three years of attaining majority. It was observed:

“[42] The fact is that every person grows up with the date of birth as mentioned in the matriculation certificate. He is aware of such date of birth. Giving allowance of minority will lead to uncertainties and inconsistencies in the records of public authorities. Therefore, though a person is estopped to dispute the date of birth entry recorded in the matriculation certificate, even if he approaches the Civil Court to seek exclusion of the minority period in terms of Section 6 of the Limitation Act, 1963, such suit cannot be entertained after three years from his alleged date of attaining the age of majority. In no case should the date of birth recorded in the matriculation certificate be corrected after three years of attaining majority on the basis of date of birth in the birth certificate.

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[45] The right to seek actual date of birth has to be exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. But, after expiry of the period of three years

from the cessation of disability, no person can rely upon the birth certificate. He is bound by the date given in the matriculation certificate. Therefore, in any case, the right of a person to seek actual date of birth on the basis of entry in the birth certificate by the Registrar of Births and Deaths is three years after attaining the majority on the basis of date of birth in the said certificate.”

29. The plaintiff claimed that he became aware of his exact date of birth after he had visited an astrologer. But that is irrelevant because the right to sue had accrued when his incorrect date of birth was mentioned, and the ignorance of the plaintiff to this extent was immaterial.

30. It was submitted that the learned Trial Court had held the suit to be within limitation and no appeal was filed. Therefore, it is impermissible for the defendants to claim that the suit is beyond limitation. This submission cannot be accepted. Section 3 of the Limitation Act provides that the Courts are bound to dismiss the suit if it is filed after the prescribed period of limitation, even though the limitation has not been taken up as a defence. Therefore, the fact that the defendant had not taken up the plea of limitation will not assist the plaintiff.

31. Hence, the suit as laid could not be said to be within limitation for correction of date of birth in the matriculation

certificate, and this substantial question of law is answered accordingly.

Final Order:

32. In view of the above, the present appeal is allowed and judgment and decree passed by learned Appellate Court are ordered to be set aside while those passed by learned Trial Court are ordered to be restored.

33. The appeal stands disposed of, so also the pending application(s), if any.

34. A copy of this judgment, along with the record of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)
Judge

13th August, 2026
(Nikita)