Neutral Citation No. 2024:PHHC:048780-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(113) **LPA-900-2024 (O&M)**
Decided on : 10.04.2024

Jai Bhagwan

……Appellant(s)

Versus

State of Haryana & others

……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Sanjeev Kumar Birla, Advocate for the appellant (s).

Mr.Deepak Balyan, Addl.A.G., Haryana.

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G.S. Sandhawalia, Acting Chief Justice (Oral)

1. Consideration in the present appeal is to the judgment dated 05.03.2024 passed by the Learned Single Judge in CWP-3299-2024 whereby the writ petition was dismissed upholding the order dated 25.07.2017 (Annexure P-6) passed by the State whereby the request for change of date of birth had been rejected.

2. Counsel for the appellant has vehemently submitted that there was a Civil Court decree dated 10.06.2006 (Annexure P-4) in his favour and therefore, the order passed by the State was not justified.

3. The Learned Single Judge noticed that correction in the date of birth of an official was to be done within 2 years of service. The appellant joined the service in the year 1989 and got the date of birth corrected by the Civil Court by a decree which was passed in the year

2006 and it was in ignorance of the rules governing the service in question. The decree did not entitle the appellant to get his date of birth changed and the same is contrary to the provisions of the rules governing the service. Reliance was placed upon the judgment passed by the Apex Court in **Bharat Coking Coal Ltd. & others Vs. Shyam Kishore Singh, 2020 (3) SCC 411**. Resultantly, the Learned Single Judge did not interfere in the order.

4. A perusal of the order passed by the Addl.Chief Secretary while considering the case in pursuance of the decree which had been passed would go on to show that it was noticed that the Department was never made a party and the case was never contested by the Haryana School Education Board. The correction had been done in the date of birth by the School Education Board and thus, the representation had been made on 03.10.2012. It was noticed that there was a notification dated 13.08.2001 whereby the correction of the age as recorded in the service record was to be considered by the Government in consultation with the Chief Secretary which was to be done within 2 years from the date of entry into the Government service. The application having been submitted beyond the period of 2 years i.e. after 23 years from the date of entry in the Government service was held not to be acceptable in view of the instructions of the Government. Accordingly, the application was rejected in terms of Rule 7.3 of the Punjab Financial Rules Vol.-I read with Finance Department's instructions issued vide letter No.2/2/99-3FR-II dated 13.08.2001. The appellant thereafter chose to sleep over the same and eventually filed the representation dated 10.09.2023 (Annexure P-7), seeking the said benefit again and thereafter, filed the writ petition in the

month of January, 2024, which was dismissed, as noticed above and which led to the present appeal being filed.

5. Counsel for the appellant has also pointed out that benefit was granted to one Rati Ram in similar circumstances, on account of the correction made in the Civil Suit, to submit that directions had been issued by the Learned Single Judge to give the consequential benefits and make the necessary correction.

6. We have been informed that an appeal bearing LPA-85-2020 titled *State of Haryana & others Vs. Rati Ram*, filed against the order of the Learned Single Judge is pending consideration before this Court and the judgment of the Learned Single Judge has been stayed on 10.02.2020 and thus it would not be appropriate to comment on the directions given since it would prejudice the case of the employee therein.

7. The Apex Court in **Union of India Vs. Harnam Singh, 1993 (2) SCC 162** has laid down the principles whereby the employee can seek correction in his date of birth, if he is in possession of irrefutable proof relating to his date of birth but the limitation was that it must be done without any un-reasonable delay. In the case of **Burn Standard Co. Ltd. Vs. Shri Dinabandhu Majumdar, 1995 AIR (SC) 1499** the High Court's extra-ordinary jurisdiction of writ Court was commented upon and it was held that the extra-ordinary nature of the jurisdiction is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of entitlement according to their date of birth accepted by the employers. In the said case by virtue of an interim order passed by the Learned Single Judge, the employee had continued in service and though he was to retire on 24.04.1991 and had been informed of the said

fact on 05.06.1990. He prayed for the benefit of extension in service on account of his date of birth found in matriculation admit card, in which it was showed that he was born on 07.07.1934, though his declared date of birth with the employer was 25.04.1931. Resultantly, the following observations were made:-

> "10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of

birth in his `Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his `Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following: When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to Disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically

every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases Interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."

8. In the case of **State of Gujarat & others Vs. Vali Mohmed Dosabhai Sindhi, 1995 AIR (SC) 1499** it was held that once the date of birth was entered in the service book, no entry or alteration is allowed unless it was shown that it was due to want of care on the part of some person and it was obvious clerical error and once the State had framed statutory rules while relying upon the judgment passed in the case of **Harnam Singh (supra)**. It was held that on the eve of the retirement,

questioning the entry of the date of birth and in the absence of rules providing the change in date of birth cannot be permitted, which was in the said case within a period of 5 years in the Bombay Service Rules, 1959.

9. Similar is the position laid down in the case of **Seema Ghosh Vs. Tata Iron & Steel Company, 2006 AIR (SC) 2936** wherein the Apex Court had set aside the award of the Labour Court whereby the benefit had been granted.

10. As noticed though there is no specific pleading or reference to any rule or instructions as such has been made, reference is made to Punjab Financial Rules as applicable to Haryana State. A perusal of the said rules would go on to show that under Rule 7.3 application for correction of date of birth has to be made within a period of 2 years from the date of entry into government service, which further provides that if at a later stage an application is made, a special inquiry should be held to ascertain the correct age.

11. The Division Bench of this Court in **Ambika Kaul Vs. Central Board of Secondary Education and others, 2015 (3) SCT 350** had examined the issue of the correction of date of birth, on the basis of the entry in the register maintained by the Registrar (Births and Deaths), which was at variance with the certificates issued by the Central Board of Secondary Education. The Punjab Civil Services Rules and the Financial Rules were also examined and eventually a finding was recorded that the Government employee was stopped from disputing the entry in the matriculation certificate, in terms of the relevant recruitment rules. The same was on the principle of estoppel to the extent that once he had represented and grown up with a particular date of birth, he could not turn

around to say that his date of birth is different. Even by relying upon Section 6 of the Limitation Act, 1963, such suits could not be entertained after three years from the date of attaining the age of majority. Relevant portions of the said judgment read as under:-

> "[16] We respectfully agree with the views expressed by the Division Bench of this Court in Resham Singh's case (supra) that the birth certificate is a public record of births and deaths and must prevail over the matriculation certificate issued by school authorities. But the issue required to be examined is that even though the date of birth recorded in the matriculation certificate is at variance with the date of birth as recorded in the Register of Births & Deaths, whether such person is entitled to seek correction in the matriculation certificate relying upon the birth certificate. We find that he is estopped from disputing the entry in the matriculation certificate, which is made basis for employment in the public service in terms of the relevant recruitment Rules.
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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 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."

12. The said principle would also be directly applicable in the present facts and circumstances. Apparently, the appellant is due to retire in the month of June, 2024 and therefore, at the fag end of his service, he has served the legal notice though there was an order passed against him in

the year 2017 and only has gambled which exercise has been nipped in the bud while dismissing the writ petition.

13. The Apex Court in **State of M.P. and other Vs. Premlal Shrivas, 2011 (9) SCC 664** has noticed that in the said case the employee had applied for correction of his date of birth after 25 years of service and it was held that the exception to get the date of birth corrected would be if there was a clerical error and no evidence had been placed on record to show that it was due to the negligence of some other person. Therefore, on the eve of retirement the Courts were being approached for such correction and the same was held to be unjustified. Resultantly, the appeal was allowed and the judgment passed by the High Court was set aside. Relevant portion of the said judgment reads as under:-

> "15. In Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane 5 (1997) 1 SCC 247 , this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him. Again, in Union of India Vs. C. Rama Swamy & Ors. 6 (1997) 4 SCC 647, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.
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> 16. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the appellants

to correct the date of birth of the respondent under Rule 84 of the said rules."

14. Similarly, in **M/S Bharat Coking Coal Limited (supra),** it as held that even if there was no evidence to establish that recorded date of birth is erroneous, the correction cannot be claimed as a matter of right at the fag end of service. It was noticed that service had been joined in the year 1982 and a representation was made in the year 2009 and employee had to retire in the year 2010. Reliance having been placed upon the matriculation certificate and since the High Court at Jharkhand had allowed the writ petition, which had been upheld by the Division Bench, the said orders were set aside on the ground of delay itself. Relevant portion reads as under:-

> "11. The learned counsel for the respondent, on the other hand, has relied upon the decision of this Court relating the very same employer namely, the appellants herein in the case of Bharat Coking Coal Ltd. & Ors. vs. Chhota Birasa Uranw (2014) 12 SCC 570 wherein this Court with reference to the earlier decisions of this Court has upheld the order of the High Court wherein a direction had been issued to effect the change in the date of birth. Having perused the same we are of the opinion that the said decision cannot render assistance to the respondent herein. This is for the reason that in the said case it was taken note that in 1987 on implementation of the National Coal Wage Agreement (iii) was put into operation for stabilising the service records of the employees and all its employees were provided a chance to identify and rectify the discrepancies in the service records by providing them a nomination form containing details of their service records. In the cited case the respondent (employee) therein had noticed the inconsistencies in the records regarding his date of birth, date of appointment, father's name and permanent address and availed the opportunity to seek correction. Though he had sought for the correction of the errors, the other discrepancies

were set right but the date of birth and the date of appointment had however remained unchanged and it is in that view the employee had again raised a dispute regarding the same and the judicial remedy was sought wherein the benefit was extended to him.

12. On the other hand, in the instant case, as on the date of joining and as also in the year 1987 when the respondent had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 04.03.1950 and had further reiterated the same when Provident Fund Nomination Form was filled in 1998. It is only after more than 30 years from the date of his joining service, for the first time in the year 2009 he had made the representation. Further the respondent did not avail the judicial remedy immediately thereafter, before retirement. Instead, the respondent retired from service on 31.03.2010 and even thereafter the writ petition was filed only in the year 2014, after four years from the date of his retirement. In that circumstance, the indulgence shown to the respondent by the High Court was not justified."

15. Similar law was also discussed in **State of M.P. & others Vs. Premlal Shrivas, 2011 (9) SCC 664**, **Director, Directorate of School Education Vs. V.Ranganathan, 2020 (1) SCT 530** and **Karnataka Rural Infrastructure Development Limited Vs. T.P.Nataraja & others, 2021 (4) SCT 162**.

16. It is also to be noticed that the appellant very cleverly never impleaded the employer which was the Excise & Taxation Commissioner, Haryana and only impleaded the District Collector at that point of time. The employer would have put-forth the true position before the Court regarding the rules which were in force and the correction which can be done within the prescribed period. It is thus an attempt to get the benefit by clever drafting, which we cannot approve in any manner. In such circumstances, we are of the considered opinion that the present litigation is misconceived and filed at a belated stage as in the writ petition it has

nowhere been averred that the order passed in the year 2017 was never communicated or supplied to the appellant as has been now contended.

17. Resultantly, in view of the above discussion, the present appeal is hereby dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

10.04.2024
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No