

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.12015 of 2022

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Ugrasen Sahu *Petitioner*
-versus-
State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:
For Petitioners : *Ms. D.J. Sahu, Adv.*

-versus-
For Opp. Parties : *Mr. Biswajit Mohanty, SC*
(for S & ME Deptt.)

CORAM:
MR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-17.05.2022
DATE OF JUDGMENT:-27.05.2022

सत्यमेव जयते

S.K. Panigrahi, J.

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned counsel for the State.
3. This Writ Petition has been filed for correction of the date of birth from 01.02.1963 to 01.02.1965 which has been wrongly recorded in the Petitioner's service book entry.
4. The Petitioner is currently employed as a peon in the Dinapadma High School, Baghamund, in the district of Bolangir and has made representations that his date of

birth has been wrongly recorded as 01.02.1963 instead of 01.02.1965. Moreover, he has also submitted that the date of birth in the Govt. UP School Admission Register and the Aadhar Card is recorded as 01.02.1965 whereas it is mentioned as 01.02.1963 in the service book and school leaving certificate.

5. It is argued on behalf of learned counsel for the Petitioner that if the date of birth of the Petitioner is not subjected to correction within optimal amount of time, then the Petitioner will face the problem of premature retirement and irreparable loss & injury.

6. In this regard we must stress upon the notification (No.2102 – 2R/1-27/94-Gen) that has been issued by the Government of Orissa. The relevant part of the notification dated 30th January, 1995 issued by the General Administration Department, Government of Orissa, is set out as under: न्यते

“(i) No alternation of the date of birth once recorded in the Service Book/Service Roll of an employee, shall be made excepting in case of clerical error without prior approval of the State Government. An application for effecting a change in the date of birth shall be summarily rejected if-

a) filed after five years of entry into Government service, or

b) the change would lower the applicant’s age to an extent that he/she would have been ineligible to appear in any of the academic or recruitment examination for appointment to any service or post under the Government.”

7. Indisputably, in the case at hand, the application that has been made by the Petitioner is time barred and was not filed within five years from the date of joining. In the instant case, according to the Notification dated 30th January, 1995, it is made clear that no alteration of the entry should be allowed after five years.

8. Apart from the notification and the said guidelines, the Hon'ble Supreme Court in a series of cases have categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of the Petitioner's service career.

9. In ***State of Tamil Nadu Vs. T.V. Venugopalan***¹, the Hon'ble Apex 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 Hon'ble Court, in very strong terms, observed as under:

".....The government servant having declared 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

¹1994 SCC (6) 302

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....."

10. In Secretary and Commissioner, Home Department and others v. R. Kirubakaran², the Hon'ble Supreme 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 near-about that time. The Hon'ble Court observed as under :

".....As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about

²AIR 1993 SC 2647

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....."

11. Further reading of the **Secretary and Commissioner, Home Department and others**³ judgment enshrines that the correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The Hon'ble Supreme Court, in very strong terms, observed as under

"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 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 the 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

³ supra

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 and before any such direction is issued, the court 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 time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book.”

12. In another judgment in **State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal**⁴, the 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, the Hon'ble Supreme Court observed that the High Court ought not to have interfered with the decision after almost three decades.

13. From the conspectus of factual matrix taken note of above, this court is of the opinion that the Petitioner's claim is time-barred and hence, cannot be entertained. Moreover, in view of the consistent legal position and even on a plain reading of the Notification and the guidelines set out in the succeeding paragraphs leads to the conclusion that no application

⁴2002 (1) AWC 429 (SC) : 2002 (92) FLR 773

for alteration of date of birth after five years be entertained.

14. It is clear that there is no substance in any of the contentions urged on behalf of the Petitioner and, therefore, this Writ Petition is dismissed with no order as to costs.

15. The Writ Petition is disposed of being dismissed.

*Orissa High Court, Cuttack,
Dated the 27th of May, 2022/B. Jhankar*



**(S.K. Panigrahi)
Judge**