

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision:-8th October, 2012

+

LPA 675/2012

DIRECTOR OF EDUCATION

..... Appellant

Through: Mr. Shariq Mohammad, Adv.

versus

RAJ RANI

..... Respondent

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

: D. MURUGESAN, CJ (ORAL)

1. This appeal, at the instance of the Director of Education, challenges the order dismissing the writ petition filed by the respondent. The respondent was employed as a part time water woman in a school under the Directorate of Education, Government of NCT of Delhi. As she did not have proof of her date of birth, she was sent for medical examination. Considering her physical appearance, the medical report suggested her date of birth as 1.9.1938 which date was recorded by the appellant herein in the service register. Her services were regularized on 14.7.1988. At that time, she filed an affidavit stating that her date of birth was 2.4.1947 which fact is not in dispute. Under the impression that her date of birth might had been altered/corrected on the basis of the said affidavit, she did not pursue the matter further with the appellant. However, on coming to know that her date of birth was still maintained in the records as 1.9.1938, even before a period

of three years of retirement on 31.9.1998, she made an application to correct the date of birth entry in the service record on the basis of school certificate. The said request was rejected by the appellant on 8.5.1995 and consequently the respondent was superannuated on 31.9.1998. Hence, the respondent raised a dispute before the Labour Court in I.D. No. 310/1999. The Labour Court factually found that on the basis of the affidavit filed by the respondent at the time when she was regularized in service and in the absence of any specific provision stipulating the time for making an application for alteration/correction of date of birth under the rules, and the application for such correction of date of birth was made prior to three years of retirement, accepted the case of the respondent and accordingly set aside the order of the rejection and answered the dispute in favour of the respondent-workman, for correction of date of birth as 22.06.1943 as per date of birth entered in the school certificate.

2. The said award was questioned in a writ petition unsuccessfully as the learned Single Judge refused to interfere with the award as it was factual findings by Labour Court.

3. The above order is put in issue in the instant appeal. We have extensively heard learned counsel for the appellant. The law on the correction of date of birth is well settled to the extent that a Government servant entering into service should file an application for correction in date of birth within the period prescribed under the rules, if any, applicable to such Government servant or within a reasonable period in the absence of rule prescribing the period. This law has been reiterated keeping in mind that a Government servant cannot fall back at the fag end of the service to seek for alteration of date of birth and the Government servant would be

diligent to have the date of birth corrected on the basis of sufficient materials and evidence at the earliest points of time.

4. In the case at hand, there is no rule prescribing the period of limitation for the respondent to apply for correction of date of birth. In that event, the Court should consider as to whether the request for alteration of date of birth was made within a reasonable period and with supportive materials. In the given set of facts, we find that the date of birth was recorded in the register as 1.9.1938 on the basis of the medical report which was given on physical appearance of the respondent. That report was necessitated in the absence of any document at the relevant point of time. Nevertheless, when the service of the respondent was regularized, she filed an affidavit stating that her date of birth was 2.4.1947 which fact had not been disputed by the appellant herein. The respondent, being only a water woman, would have believed that the said affidavit was accepted and her date of birth was corrected. Having noticed that the same was not done by the appellant, she made an application three years prior to her date of superannuation. The period of seven years from 1988 till 1995 we consider reasonable keeping in mind the status of the respondent who was only a water woman. What can be the reasonable period would depend upon the facts of each case. The respondent was initially appointed as water woman (Class-IV) during the year 1972 temporarily. Her services were regularized only on 14.07.1988 on which date she was asked to produce proof of her date of birth. As she could not furnish any document, she filed an affidavit stating that her date of birth was 22.06.1943 and there are no materials to show that the said affidavit was not accepted. When she came to know even before retiring that she has a school certificate to prove her date of birth as 22.06.1943, she made an application. Considering the above facts, particularly she was only

a Class-IV employee and as of now retired, we find that the application was filed within reasonable period.

5. That apart, she had produced a certificate from a school in support of the request for alteration of date of birth. The above are all factual aspects and both the Labour Court as well as the learned Judge have concurrently found the facts in favour of the respondent. In the school certificate submitted by the respondent, the date of birth has been mentioned as 22.06.1943 which date alone has been taken note of by both the Labour Court and learned Single Judge. Sitting in appeal, we are not inclined to go into those materials and re-appreciate the same. Hence, we do not find any infirmity in the order of the learned Single Judge. Accordingly, the appeal is dismissed.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

OCTOBER 08, 2012
pk