

Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 125 of 2022

Date of Decision: 12.04.2023

Shri. Gagan Ch Kalita

Vs.

State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Ms. Z.E. Nongkynrih, GA.

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

Oral:

1. The petitioner by way of the instant writ petition, has put to challenge an order dated 22.11.2021, whereby a request for correction of his date of birth, in his service record from 12.04.1965 to 18.01.1969, has

been rejected by the respondent No. 3 (Superintendent of Police, West Garo Hills).

2. The case of the petitioner is that, he had joined service on 01.07.1987, as a Fireman and came to learn about the incorrect entry as to his date of birth, only on 12.08.2020, which he maintains should have been recorded in his service book as 18.01.1969, instead of 12.04.1965. Thereafter, the petitioner had submitted a written application for change in the date of birth along with supporting documents, namely Birth Certificate issued on 25.03.2021, an affidavit dated 31.08.2021, and his High School Leaving Certificate Admit Card, in support of his claim. His request however, was rejected by the impugned order, hence the instant writ petition.

3. Mr. S. Deb, learned counsel for the petitioner submits that, the rejection of the request of the petitioner is unjustified, inasmuch as, the petitioner has produced irrefutable evidence to show that, his date of birth is 18.01.1969, and not 12.04.1965, as recorded in his service book. The only lapse on the part of the petitioner, he submits, is that the request for correction of his date of birth was made at the fag end of his career, and not within 3 (three) years from the date of superannuation, as prescribed by SR 8 of the Meghalaya Fundamental and Subsidiary Rules, 1984. It is submitted that, this lapse occurred due to the advent of the COVID

epidemic, which prevented the petitioner from approaching the respondents within the time as prescribed. It is also submitted that, the Identity Card of the petitioner shows his correct date of birth, and that he came to learn about the discrepancy only when he received his GPF statements for the year 2019-2020.

4. The learned counsel has strenuously argued that, the case of the petitioner falls under exceptional circumstances, and due consideration should have been accorded by the respondents, while considering his prayer. In support of his arguments, the learned counsel has placed reliance in the case of *State of Madhya Pradesh & Ors. vs. Premal Shrivastava* reported in (2011) 9 SCC 664, and submits that, in exceptional cases, such as the case of the petitioner, change in the date of birth in the service record, on the production of irrefutable evidence is permitted.

5. Ms. Z.E. Nongkynrih, learned GA on behalf of the State respondents has strongly refuted the arguments advanced by the learned counsel for the petitioner, and has placed reliance on the affidavit filed by the respondents. The learned GA has drawn the attention of this Court to the service sheet of the petitioner from the date of his initial appointment, wherein the date of birth is recorded as 12.04.1965, which has also been signed and thumb imprinted by the petitioner. With regard to the statement that, the writ petitioner only came to learn about the date of

birth from his GPF Account statement on 12.08.2020, she submits that the same cannot be accepted, as the GPF Account statements are issued annually by the Office of The Principal Accountant General, Meghalaya, Shillong, to the petitioner. The learned GA has also referred to the fact that, the petitioner had submitted Form No. 17 on 16.05.2002, which deals with the details of an employee's family, wherein he had entered his date of birth as 12.04.1965, which was signed by him, countersigned by the Head of the Office, and placed in the service book.

6. The learned GA submits that, the case of the petitioner was examined in detail by the respondents, and in fact, an inquiry was also gone into, but however, by the application of law, the request was rejected. Learned GA finally submits that, the writ petitioner was well aware all along, about the entry of the date of birth in his service record as 12.04.1965, and it cannot be accepted that, he came to learn about the same recently, and that special consideration be given. The learned GA in support of her submissions, has placed reliance in the case of *State of Haryana vs. Satish Kumar Mittal & Anr.* reported in (2010) 9 SCC 337, and submits that, in such matters, request for correction must be made within the time limit prescribed, inasmuch as, if such request accepted at the end of the service career of an employee, the same will result in disruption in the service and benefits of other employees. She finally

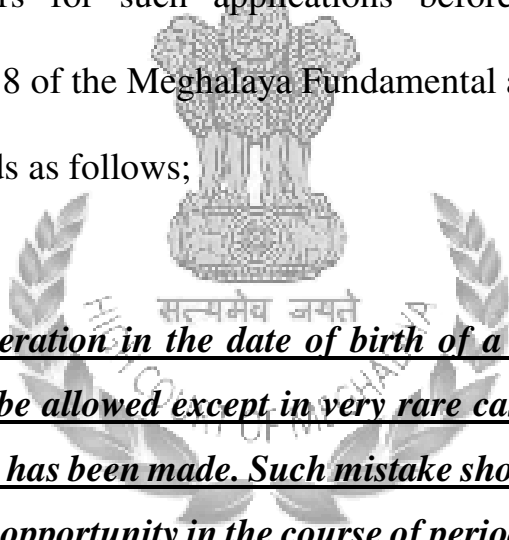
submits that, the writ petition being without any merit is liable to be dismissed.

7. I have heard learned counsels for the parties.

8. As noted above, the petitioner has founded his prayer on the basis that, inspite of irrefutable evidence being produced, the respondents did not accede to his request. An examination of the materials relied upon by the petitioner, that is the Birth Certificate, High School Leaving Certificate Admit Card and the affidavit, reflects that apart from the Admit Card, the other documents are of recent origin. It is noted however that, in the service record of the writ petitioner, at the time of entry into service, his date of birth has clearly been recorded as 12.04.1965, to which he had appended his signature and thumb print, which has not been refuted. Further, the statement that, the writ petitioner came to learn of the alleged discrepancy only from the GPF statements of 2019-2020, is belied by the fact that, GPF statements are supplied annually to government employees such as the petitioner. Furthermore, the writ petitioner on 16.05.2002, as per Rule 52(1)(i) of the Meghalaya Civil Service (Pension) Rules, 1983 (Annexure – 3 to affidavit of respondents No. 1 and 2), had furnished the details as required in Form 17, and had entered his date of birth as 12.04.1965, which was countersigned by the

Head of Office, the Superintendent of Police, West Garo Hills, at the relevant point of time.

9. From the facts, as set out above, the contention that, the writ petitioner was unaware about the entry being recorded as 12.04.1965, in the service record, therefore, cannot be accepted. Another aspect which defeats the case of the petitioner is that, the request for change in the date of birth was made on 31.08.2021, which is less than the prescribed limit of 3(three) years for such applications before superannuation, as mandated by SR 8 of the Meghalaya Fundamental and Subsidiary Rules, 1984, which reads as follows;



“No alteration in the date of birth of a Government servant should be allowed except in very rare cases where a manifest mistake has been made. Such mistake should be rectified at the earliest opportunity in the course of periodical re-attestation of the entries in the first page of Service Book. In no case, request for change in the date of birth of a government servant made on a date within three years of the date of his actual superannuation should be entertained.”

10. The respondents on the request of the petitioner, as it appears from the pleadings in the writ petition and the statements on affidavit, have actively considered the request and had even instituted an inquiry to

go into the claim of the writ petitioner, which however, was rejected by the respondent No. 3, in view of the prohibition prescribed by the Rules. The judgment *State of Madhya Pradesh & Ors. vs. Premlal Shrivastava*(supra) placed by the learned counsel for the petitioner, is of no assistance to his case, and in fact, Para – 8 which is reproduced hereinbelow, encapsulates the law in this regard and has a direct bearing on the instant case.

“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a

long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see Union of India Vs. Harnam Singh)."

[Emphasis supplied]

11. The judgment *State of Haryana vs. Satish Kumar Mittal & Anr* (*supra*) placed by the respondents' counsel need not be discussed, as it reiterates a settled position of law.

12. Accordingly, in view of the facts and circumstances, as deliberated above, no case has been made out for interference by this Court, and the writ petition stands dismissed.

13. No order as to costs.

Judge

Meghalaya
12.04.2023
"D.Thabab-PS"