

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

LPASW No. 16/2019 [LPA No. 24/2019]

Reserved On: 1st of June, 2023.
Pronounced On: 9th of June, 2023.

State of JK & Ors.

... Appellant(s)

Through: -

Mr Mohammad Rais-ud-Din Ganai, Dy. AG.

V/s

Nighat Parveen

... Respondent(s)

Through: -

Mr Tasaduq H. Khawja, Advocate.

CORAM:

Hon'ble Mr Justice Tashi Rabstan, Judge

Hon'ble Ms Justice Moksha Khajuria Kazmi, Judge

(JUDGMENT)

(Tashi Rabstan-I):

01. This *intra* Court appeal is directed against the Judgment and Order dated 27th of September, 2018 passed in SWP No. 1235/2017, whereby the learned Single Judge has allowed the Writ Petition filed by the Writ Petitioner/ Respondent herein and directed the Writ Respondents/ Appellants herein to enter the Date of Birth of the Writ Petitioner/ Respondent herein in the service record in accordance with her Date of Birth recorded in the Matriculation certificate issued by the Board of School Education.

02. The brief facts of the case, as emerge from the pleadings on record, are that the Writ Petitioner/ Respondent herein came to be engaged on temporary basis as Assistant Craftsman for Paper Machine Training Centre, Gilkadal, Srinagar vide Order No. 58-HDT of 1978 dated 2nd of February, 1978. Thereafter, the Writ Petitioner/ Respondent herein came to be appointed as Craft Instructor in the year 1992 on substantive basis and, subsequently, was promoted to the post of Senior Craft Instructor. The Writ Petitioner/ Respondent herein pleaded that in the year 2014, when the

records were being re-checked after the Kashmir Valley was hit by floods, she came to know that her Date of Birth had been wrongly recorded in the service records as 26th of September, 1958, instead of 12th of May, 1960. She, immediately, filed an application before the concerned authority for seeking correction, however, since no action was taken despite lapse of considerable period of time, the Writ Petitioner/ Respondent herein filed Writ Petition bearing SWP No. 1235/2017, claiming therein that although she had produced her Matriculation certificate before the appointing authority at the time of her initial appointment wherein the Date of Birth is recorded as 12th of May, 1960, the Writ Respondents/ Appellants have wrongly recorded her Date of Birth as 29th of June, 1958.

03. We have heard the learned Counsel for the parties, perused the pleadings on record and have considered the matter.

04. The Judgment dated 27th of September, 2018 passed by the Writ Court is challenged by the Writ Respondents/ Appellants herein, *inter alia*, on the grounds that the Writ Petitioner/ Respondent herein did not produce any Matriculation certificate at the time of her entry into Government service and, therefore, the Writ Respondents/ Appellants herein have rightly constituted a Committee to determine the age of the Writ Petitioner/ Respondent herein and, accordingly, on the basis of the report of the said Committee, the Date of Birth of the Writ Petitioner/ Respondent herein has been recorded in her service record as 26th of September, 1958. The Appellants further plead that once the Date of Birth declared by a Government servant is accepted by the appointing authority, no subsequent correction therein can be carried out at the fag end of the service career of that Government servant.

05. Mr Mohammad Rais-ud-Din Ganai, the learned Deputy Advocate General, submitted that the correction of the Date of Birth of the Government employee has to be considered in terms of the Jammu and Kashmir Civil Service Regulations and, as per Article 35-AA of the said Regulations, the maximum time limit prescribed for seeking correction of the Date of Birth with respect to a Government servant is five (05) years.

06. *Per Contra*, Mr Tasaduq H. Khawja, the learned Counsel for the Writ Petitioner/ Respondent herein, vehemently argued that the Writ Petitioner/ Respondent herein has passed her Matriculation examination in the year 1972, that is much before her entry into Government service, and the said certificate has been produced before the authority at the time of her initial appointment, but when the records were being re-checked pursuant to the floods of 2014 in the Valley, the Petitioner noticed that instead of recording her Date of Birth according to the Matriculation certificate *viz.* 12th of May, 1960, the Respondents/ Appellants herein have, in an arbitrary manner and without there being any basis, recorded the Date of Birth of the Petitioner as 29th of June, 1958. The Petitioner immediately, after coming to know about the said wrong entry of her Date of Birth, made a representation before the respondents to annul the entry *qua* the Date of Birth recorded in her service record and incorporate it as per her Matriculation certificate.

07. Law on the subject relating to correction in Date of Birth of a Government servant is well articulated by Hon'ble the Supreme in its various judicial pronouncements. In one of the cases titled '**Director, Directorate of School Education v. Ranganathan**' reported as '**2019 SCC OnLine SC 2123**', the Hon'ble Apex Court, while dealing with a similar issue, in Paragraph No.10, held as under:

"10. In view of the above provision, a request for a correction in the date of birth had to be made within a period of five years of the entry into service. The request for a change in the date of birth in the service records was made virtually at the end of the career of the respondent. Even if a representation had been submitted on 11 August 1989, it was only in 2017 that the respondent moved the Tribunal. There was no cause or justification for the delay and was reason enough to reject the OA. Therefore, the Tribunal was correct in coming to the conclusion that the OA had to be dismissed on the ground of delay. The High Court erred in interfering with the judgment of the Tribunal. The High Court has proceeded in a manner contrary to settled principles noted in several decisions of this Court including the decision in Harnam Singh (*supra*) which was drawn to its attention."

08. Again, in case titled '**Bharat Cooking Coal Ltd. & Ors. v. Shyam Kishore Singh**', bearing Civil Appeal No. 1009 of 2020 arising out

of SLP (Civil) No. 20627 of 2019, decided on 5th of February, 2020, at Paragraph Nos. 7 and 12, has held as under:

“7. In the above background it is to be noticed as to whether the consideration as made by the High Court is justified. The learned counsel for the respondent with specific reference to para 10 in the order of the learned Single Judge referred to the aspect wherein the learned Single Judge has taken note of the representation made by the respondent in the year 2009 and the verification that was secured by the appellants from the Bihar School Examination Board. Though such reference is made, in our opinion, the same was not appropriate in the present facts when three decades had elapsed from the date of employment. The position is well established that if a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service. In the instant facts the position is that the respondent entered service on 01.03.1982. The date of birth entered as 04.03.1950 has remained on record from the said date. The requirement to submit the nomination form indicating the particulars of the family and the nominee was complied and it was submitted by the respondent on 25.05.1998. In the said Nomination Form the date of birth of the employee was required to be mentioned, wherein the respondent in his own handwriting has indicated the date of birth as 04.03.1950. Apart from that fact, the learned Additional Solicitor General would also point out that since there was a change in the method of maintaining the service register, all the employees were provided an opportunity to verify and seek for change in the service record in the year 1987. At that stage also the respondent did not seek for any change. Therefore, in that circumstance, when the opportunity available at the first instance in 1987 had not been availed and thereafter on 25.05.1998 when the respondent himself in the Provident Fund Nomination Form had indicated the date of birth as 04.03.1950 which corresponds to the date of birth entered in the service register as on the date of commencement of the employment, merely because a verification was made from the Bihar School Examination Board and even if it was confirmed that the date of birth was 20.01.1955 such change at that stage was not permissible.

.....

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.”

09. The same view has also been taken by the Hon’ble Apex Court in cases: (i) ‘**2005 (6) SCC 49**’; (ii) ‘**2011 (9) SCC 664**’; and ‘**MANU/SCOR/25879/2023**’.

10. The Writ Court, in terms of the Judgment impugned, observed that the Date of Birth of the Writ Petitioner/ Respondent herein had to be recorded in tune and in line with what is provided in the Matriculation certificate, inasmuch as the said forms the baseline in recording the Date of Birth of a person in terms of Rule 6.4 of the Jammu and Kashmir Financial Code. The Writ Court further observed that once the Writ Petitioner/ Respondent herein has passed the Matriculation examination in the year 1972, which is much prior to her entry into Government service, therefore, no fault can be attributed to the Writ Petitioner/ Respondent herein for recording her Date of Birth incorrectly for the simple reason that the service record of an employee remains in the custody of the employer and the employee does not have any access to it. Accordingly, the Writ Court allowed the Writ Petition filed by the Writ Petitioner/ Respondent herein and directed the Writ Respondents/ Appellants herein to enter the Date of Birth of the Writ Petitioner/ Respondent herein in her service record in accordance with the Matriculation certificate.

11. Looking at the present case in the perspective of the above law laid down by the Hon'ble Apex Court, the Writ Petitioner/ Respondent herein has admittedly put her signatures on the service record, wherein her Date of Birth has been incorporated as 26th of September, 1958. As per the record, the Date of Birth of the Writ Petitioner/ Respondent herein was incorporated in the service records way back in the year 1992 and the Writ Petitioner/ Respondent herein superannuated from Government service on 30th of September, 2018, whereas the Writ Petition has been filed by the Writ Petitioner/ Respondent herein on 4th of July, 2017, therefore, a person cannot be permitted to sleep over his/ her right. In these circumstances, only on the ground of delay and laches, the Writ Petition filed by the Writ Petitioner/ Respondent herein ought not to have been entertained. The plea of the Writ Petitioner/ Respondent herein that she was not aware about the Date of Birth incorporated in her service record as 26th of September, 1958 is also not tenable in view of the fact that the Writ Petitioner/ Respondent herein has not only put her signature in the service record that has been

prepared on 4th of March, 1992, but also moved an application for seeking withdrawal of the Provident Fund, wherein, her date of Birth was also reflected as 26th of September, 1958. Not only this, the final seniority list of Senior Craft Instructors, Paper Machie, Divisional Cadre Kashmir, issued vide Order No. 822-HD of 2015 dated 27th of October, 2015, also reflects the same Date of Birth of the Petitioner, accepted by the Writ Petitioner/ Respondent herein without any demur. This important aspect of the matter has not been considered by the learned Single Judge while passing the impugned Judgment.

12. The Writ Respondents/ Appellants herein have seriously disputed the fact that the Writ Petitioner submitted any Matriculation certificate at the time of her entry into Government service, which, in itself, is a disputed question of fact and clearly cannot be gone into by the Court in exercise of its Writ jurisdiction. It appears that on the eve of her retirement, the Writ Petitioner has woken up from deep slumber and has filed the Writ Petition in the year 2017 at the fag end of her service career.

13. For the foregoing reasons, coupled with the mandate of law laid down by the Hon'ble Supreme Court on the subject, as discussed hereinabove, we are of the considered opinion that the impugned Judgment passed by the Writ Court cannot sustain in the eyes of law. Accordingly, we **allow** the instant appeal and set aside the impugned Judgment dated 27th of September, 2018 passed by the Writ Court in SWP No. 1235/2017. As a sequel thereto, the Writ Petition filed by the Writ Petitioner/ Respondent herein, is also **dismissed**, along with the connected CM(s).

14. LPA **disposed** of as above, along with the connected CM(s).

(Moksha Khajuria Kazmi)
Judge

(Tashi Rabstan)
Judge

SRINAGAR
June 9th, 2023
"TAHIR"

- i. Whether approved for reporting? Yes.