

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No. 709 of 2013 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. T.A. Khan, Senior Advocate, assisted by Ms. Sadaf, Advocate, for the petitioner. Mr. Ahrar Baig, Advocate, for the respondent. As per the Gazette Notification No. 5692(HI)/36-2-110(HI)/77 dated 27th September, 1988, issued by the then State of U.P., in its clause (tha) (tha), it provided that the age of superannuation of an employee working in an industrial organization, would be 60 years. It further provided, that for the purposes of determining the age of superannuation, the foundation would be the date, as it has been prescribed and recorded in the Provident Fund Account. There are certain undisputed facts, that the respondent was appointed on 21st November, 1960. As per the provident fund account, from which, the deductions were made, his date of birth stood recorded as to be 4th March, 1942, as per the provident fund register. The respondent was noticed by the petitioner on 8th January, 2002, informing thereof, that based on the date of birth recorded in the provident fund register, i.e. 4th March, 2042, he would be attaining the age of superannuation, and as such, he would retire from the services on 3rd March, 2002. Accordingly, he did retire from the services on 3rd March, 2002. Upto this stage, there is no dispute as such with regard to recording the name of the petitioner in the EPF Scheme of 1995, his date of birth as to be that of 4th March, 1942. It is only after the attainment of the age of superannuation, and his cessation of relationship of master and servant, the respondent had filed an application, which was numbered as Case No. LL 3/2002, whereby, the petitioner was noticed by an order of 15th February,

			2002. The petitioner filed an objection on 28th February, 2002, which was responded by the respondent by filing replication to it. Since, the respondent was not vacating the premises, which he was supposed to occupy during the subsistence of his tenure of service, he was noticed to vacate but when he did not comply, there was an independent suit filed, being Suit No. 165 of 2006, in which status quo was directed to be maintained. As far as the aspect of initiation of the proceedings by way of Suit No. 165 of 2006, is concerned, that may not be relevant for the instant Writ Petition, where the controversy pertains to as to what would be age of superannuation for the petitioner in the context of his date of birth as recorded in the service record. The respondent in his case filed as LL No. 3 of 2002, contending that his date of birth would have been recorded as 10th June, 1946, instead of 4th March, 1942, and in order to substantiate his stand taken by him, he submitted that in accordance with the medical report, as well as in accordance with the date of birth as certified by the horoscope, his date of birth is that of 10th June, 1946. The aspect as to whether, what would be the parameters required to be followed for the purposes of determining the age, for the purposes of extension of the benefit of the notification dated 27th September, 1988, the legislature in its explicit terms has provided, that the date of birth of an employee in an organisation has to be determined as to be the date of birth, which exists under the proviso of the EPF Scheme of 1995, which admittedly according to the petitioner, his date of birth was 4th March, 1942, and hence, he was supposed to retire on 3rd March, 2002. The application for extension as preferred by the respondent by way of Case No. LL3 of 2002, which was based upon the horoscope and certificate issued by the CMO, are the basis, which are not contemplated under the Government Notification dated 27th September, 1988, apart from that, it may not be a very credible evidence to be considered for the purposes of determination of the age because, there is no precision in the determination of date of
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		birth as such, because the horoscope and the certificate of the CMO only expresses a tentative opinion about the probable date of birth, which is not conclusive in nature to be taken as to be considered for the purposes of extension of age in accordance with the Government Notification dated 27th September, 1988. Despite of the aforesaid, the impugned award dated 16th February, 2013, has been passed by the Deputy Labour Commissioner, directing to treat the respondent's date of birth as to be 10th April, 1946. There is a logical reason behind it, because under the general service jurisprudence, once a person has been employed into services, his date of birth normally would be the date of birth as mentioned in service records or the date of birth, as it appears in the high school certificate. Further, the law contemplates, that if at all a person, whose date of birth has been recoded in the service records, contends that it is not a correct date of birth, then it is expected that he / she, should have raised an objection at an appropriate stage of time for seeking correction of date of birth and the law does not permit the correction of date of birth at a fag end of service, and particularly when here the case is at worse because the correction of date birth, herein, has been sought even after attainment of age of superannuation on 3rd February, 2002, and we should not be oblivious of the fact, that the Government Order dated 27th September, 1988, was in subsistence when the respondent was already in service, and if, he at all wanted his date of birth to be corrected in accordance with the notification dated 27th September, 1988, he had sufficient time to file an appropriate case before his retirement for correction of the date of birth, but he could not have been permitted to file an application for correction of date of birth after acceptance of factum of attainment of age of superannuation. The basis which has been assigned by the respondent for the correction as already observed above is not a concrete legally safe basis to determine his date of birth as to be 10th April, 1946. The learned Labour Court or the Court of Deputy Labour Commissioner, ought to have considered,
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		that once the respondent has waived for his right for seeking a correction of date of birth based upon a persisting Government Order of 27th September, 1988, prior to his retirement, he would be rather estopped to seek its correction by filing a subsequent proceeding by way of LL 3 of 2002, which stood instituted on 12.12.2002, which would be contrary to the cannon of law, governing the filed of correction of date of birth. In view of the fact, that the petitioner has ceased of his rights to seek his correction in the date of birth in the service records, after attaining the age of superannuation, the principles enshrined in the notification dated 27th September, 1988, will not come into play to his rescue to get his date of birth determined as 10th April, 1947, seeking its extension which otherwise too, at this stage, would be not in consonance to the government order and the conditions contained therein. Hence, the decision taken by the Deputy Labour Commissioner on 16.02.2013, is absolutely contrary to the general principle of law, governing the field of correction of date of birth into the service record, apart from not being in consonance to the notification dated 27th September, 1988. Thus, the correction of date of birth as directed by the order of 16th February, 2013, to be corrected from 4th March, 1942 to 10th June, 1946, is contrary to the basic cannons of law. Thus, the impugned order cannot be sustained. The same is accordingly quashed. The Writ Petition accordingly hereby stands allowed. (Sharad Kumar Sharma, J.) Dated 18.09.2023 Shiv
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