

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.502 OF 2010

Shri Sunil Chandra Deb Barma,
Assistant Physical Instructor,
Directorate of Youth Welfare & Sports,
Government of Tripura,
Agartala.

..... *Petitioner*

- *Vs* -

1. The State of Tripura,
Represented by the Secretary,
Government of Tripura,
Youth Welfare and Sports Deptt.,
Agartala.

2. The Director,
Youth Welfare and Sports Department,
Government of Tripura,
Agartala.

..... *Respondents*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. D.K. Biswas, Advocate
For the respondents : Mr. S. Chakraborty, Addl. G.A.
Date of hearing : **30.05.2015.**
Date of delivery
of Judgment & order : **02.06.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

Heard learned counsel, Mr. D.K. Biswas for the
petitioner and learned Addl. G.A., Mr. S. Chakraborty for the
respondents.

2. The petitioner, *inter alia*, contended that pursuant to Memo. dated 03.05.1991(*Annexure-1* to the writ petition) he joined the Government service in the post of Jr. Physical Instructor under the respondents. Initially he entered in the service under the same Department as a Gr-D employee, and subsequently, he attained qualification and was appointed as Jr. Physical Instructor. His actual date of birth is 08.08.1954, whereas in his service book it was wrongly recorded as 04.08.1952. In the month of August, 2005 he first came to know about the wrong recording of his date of birth in the service book and therefore he submitted a representation to the authority seeking correction, but by Memo. dated 26.12.2005 (*Annexure-2* to the writ petition) his representation was turned down. Thereafter also he pursued the matter with the Directorate and the Directorate by letter dated 05.10.2010 (*Annexure-3* to the writ petition) refused his request to make any change in the date of birth, already recorded in his service book. He further contended that a seniority list of the Jr. Physical Instructors as on 01.03.1996(*Annexure-4* to the writ petition) was published and his name was shown in Sl. No.597 and in Column 3 of the list as against his name, his date of birth was shown as 08.08.1954 and that was the correct date of birth. The entry in the service book in respect of the date of birth has been wrongly recorded and in support of his contention he produced his admit card of Madhyamik examination and a certificate issued by Pragati Vidyabhaban dated 02.11.2010 and contended that his actual date of birth was

08.08.1954 and therefore he prayed for directing correction of the date of birth.

3. Respondents contended that the petitioner joined the service as a Gr-D employee and his service book was opened on 11.01.1973 and on the basis of the certificate issued by him his date of birth was recorded in the service book as 04.08.1952. The petitioner, thereafter, made no representation for change of his date of birth recorded in the service book based on any authentic document and in the year 2005 he first made the representation which was rejected by the respondents by Memo. dated 26.12.2005(*Annexure-R/3* to the counter affidavit) and the petitioner thereafter remained silent and neither took any step nor approached the Court against such rejection of his representation and again after five years, *i.e.* just on the eve of his retirement he made another application dated 04.06.2010 which was rejected by the respondents by Memo. dated 05.10.2010 (*Annexure-R/4* to the counter affidavit). It is contended by the respondents that the writ petition suffers from delay and laches and therefore no relief can be granted to the petitioner. It is further contended by the respondents that the seniority list was prepared later on after the petitioner was posted as a Jr. Physical Instructor when he appeared in the Madhyamik examination and therefore his date of birth was mistakenly reflected in the seniority list based on his Madhyamik admit card which is not entertainable since at the time of initial entry in the service he has produced the document of his date of

birth in which it was recorded as 04.08.1952 and at this belated stage such record cannot be changed. It is also contended by the respondents that by Memo. dated 24.02.1983(*Annexure-R/2* to the counter affidavit) it was clarified by the State Government that only clerical mistakes can be corrected by the authority in respect of the date of birth and the date of birth once recorded cannot be changed otherwise.

4. Learned counsel, Mr. Biswas has submitted that *Annexure-5* and *Annexure-6*, i.e. the school certificate issued by Pragati Vidyabhaban and the Madhyamik admit card in the name of the petitioner clearly shows his date of birth as 08.08.1954. There is no other document to show that the petitioner had any other date of birth. Burden lies on the respondents to show on the basis of what document the date of birth of the petitioner was recorded in the service book as 04.08.1952. Since in the seniority list prepared and published in the year 1996(*Annexure-4* to the writ petition) shows that his date of birth was 08.08.1954. So it should be presumed that it was the correct date of birth of the petitioner and accordingly the authority was bound to correct his date of birth based on the document marked as *Annexure-5* and *Annexure-6*. The respondents by refusing his prayer deprived his constitutional and legal right and hence the writ petition should be allowed. He has also submitted that it was simply correction of the mistake in the records and not a change in the date of birth. So even as per Memo. dated 24.02.1983 such corrections may be made by the

authority. The mischief of the principles of delay and laches cannot be applied in the case of the petitioner since it was not within the knowledge of the petitioner about the wrong entry made in the service book and he submitted representation immediately after it came to his notice. So, the petitioner cannot be held guilty for delay and laches.

5. Learned Addl. G.A. on the other hand has submitted that the petitioner joined the service as a Class IV staff in the year 1971 and his service book was prepared in the year 1973. The authorized officer verified his date of birth and made entry in the service book pursuant to the document submitted by him. He appeared in the Madhyamik examination in the year 1991, long after his first entry in the service. He has suppressed the fact that his service book was prepared in the year 1973 pursuant to his entry in the job under the respondents as a Class IV employee. While appearing in the Madhyamik examination he might have changed his date of birth since he appeared as an external candidate and recorded his date of birth as 08.08.1954 and on the basis of such document which was collected later on, after his entry in the service, there is no reason of changing his date of birth in the service book.

6. It is an admitted position that the petitioner has retired in the year 2010 on completion of his requisite period of service.

7. Learned Addl. G.A. produced the original service book of the petitioner. It is submitted by learned Addl. G.A. that the petitioner joined the service in the year 1971 and his attestation form could not be traced out and therefore could not be produced before the Court though it was directed by this Court to produce the attestation form. On perusal of the service book of the petitioner I find that the petitioner originally entered into the service as a Class IV staff under the respondents in the same Department on 06.08.1971 and his service book was opened on 11.01.1973. The Deputy Director, Youth Programme of the Government of Tripura verified the entry in respect of his date of birth in the service book and it is recorded, "*Age verified with School leaving certificate*". His educational qualification has been recorded as read upto Class VII. It is, therefore clear that in the year 1971 when the petitioner entered into service his educational qualification was upto Class VII and the service book shows that he produced a school leaving certificate which shows his date of birth as 04.08.1952. *Exbt.5* and *Exbt.6* show that he appeared in the Madhyamik examination as an external candidate under Pragati Vidyabhaban, and the examination was held on 11.03.1991 *i.e.*, after twenty one years of his entry into service as a Class IV employee. The petitioner did not categorically mention in the writ petition that his service book was opened in the year 1973 pursuant to his entry in the service as a Gr.-D employee in the year 1971. It is, no doubt, a suppression of fact on the part of the petitioner. While approaching this Court by a writ petition it is the duty of a petitioner to clearly state the facts

which are material for decision of the issues involved in the writ petition and since the petitioner did not reflect all those facts regarding his date of entry as a Class IV employee under the Department and regarding his service book opened in the year 1973 pursuant to his entry in the service in the year 1971 the petitioner, no doubt, guilty of suppressing the material facts.

8. It is evident from the materials which are placed on record that the petitioner produced some certificate before the authority in the year 1973 when his service book was opened which reflected his date of birth as 04.08.1952. *Exbt.5* is a school certificate issued in the year 2010 by the In-charge Headmaster of Pragati Vidyabhaban which does not speak that the petitioner was a student of that institution from initial stage and *Annexure-5 i.e.* the school certificate simply shows that he appeared in the Madhyamik examination as an external candidate in the year 1991. So, while appearing in the Madhyamik examination as an external candidate he might have shown his date of birth as 08.08.1954 in lieu of his original date of birth as 04.08.1952 which was already recorded in his service book. *Annexure-6* is the admit card issued by the Board and that was issued, naturally, on the basis of the approach made by the petitioner while appearing as an external candidate. Since he was not a regular student of Pragati Vidyabhaban from the initial stage, while appearing in the Madhyamik examination as an external candidate, his date of birth mentioned in the certificate or the admit card cannot have any authenticity at all. He did not

produce any school certificate of his initial primary education reflecting his date of birth. Service book shows that he joined as a Class IV staff in the year 1971 and he produced a school certificate of Class VII pass. So, the certificate of primary school of the petitioner was the relevant document for consideration on the basis of which the entry has been made in the service book.

9. Once a date of birth has been entered in the service book based on the document submitted by the petitioner and that was certified by the authority, it can only be changed if there is clerical mistake as per Memo. dated 24.02.1983. The claim of the petitioner cannot be termed as a clerical mistake and so the respondents rightly rejected the prayer of the petitioner.

10. The petitioner joined the service in the year 1971 as a Class IV staff. He was appointed as a Jr. Physical Instructor in the year 1991 presumably after he appeared in the Madhyamik examination. He did not approach the authority for change of his date of birth even after his entry as a Jr. Physical Instructor in the year 1991. It is contended by the petitioner that he first came to know in the year 2005 and thereafter he made representation. *Annexure-2* shows that the representation made by him on 06.08.2005 was turned down by the authority by Memo. dated 26.12.2005(*Annexure-2*). Thereafter again he remained silent. Admittedly, he retired in the year 2010. *Annexure-3 i.e.* Memo. dated 05.10.2010 shows that before his retirement on 04.06.2010

he again made a representation for correction of his date of birth after remaining silent for four/five years and that representation was rejected by *Annexure-3, i.e. Memo. dated 05.10.2010.*

11. The petitioner, therefore, may be termed as guilty of the mischief of delay and laches. On this ground also the petitioner is not entitled to any relief sought in the writ petition.

12. In view of the discussions made above, the writ petition stands dismissed. Cost to be borne by the respective parties.

Return the service book of the petitioner to learned
Addl. G.A.

JUDGE