

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 234 of 2012**

Shayamu Prasad Kashyap S/o Arjun Prasad Kashyap, aged about 52 years, R/o Birgaon, P.S. Jarhagaon, Tahsil, and District Mungeli Chhattisgarh, presently residing at Ward No. 1, Chulghat Road, Takhatpur, District Bilaspur Chhattisgarh.

---- **Petitioner****Versus**

1. State of Chhattisgarh, through Secretary, Public Works Department, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. Engineer in Chief, Public Works Department, Raipur, Chhattisgarh.
3. Sub Divisional Officer, Public Works Department, Sub Division No. 3, Bilaspur, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri Anumeh Shrivastava, Advocate.
For Respondents/State	:	Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Order on Board****31/08/2015**

1. Heard Learned Counsel for the Petitioner and the State.
2. Learned Counsel for the Petitioner submits that the Petitioner was appointed in 1979 and regularised in 2008. His date of birth is 22.5.1959 wrongly recorded in service book at the time of entry in service as 17.4.1958. The Petitioner had submitted documentary evidence in the form of a School Transfer Certificate dated 1.7.1965 and a mutation register in support of his date of birth but which was not adequately considered while making entries in the service book. It was therefore a clerical error on the part of the Respondents amenable to correction under Rule 84 of the Chhattisgarh

Finance Code Part I. The present is not a case where the Petitioner has come to the Court at the fag end of his service and even according to the entered date of birth, he still had eight years of service left when he filed the writ petition.

3. Learned Counsel for the State submits that if the Petitioner was in possession of documentary evidence with regard to his date of birth being 22.5.1959, the onus lies on him to explain why he signed the service book mentioning his date of birth as 17.4.1958 and did not protest. Furthermore, at the time of regularisation, his entire service records must have been assessed again. Even at that point of time, he did not object. The representation has been filed belatedly on 21.10.2011.

4. If the date of birth of the Petitioner is mentioned in his service book, which is opened in normal circumstances when a person is appointed and it bears his thumb impression, the Petitioner owes an explanation why he put his thumb impression on the same being aware that it did not bear correct date of birth as according to him, he was already in possession of transfer certificate and mutation register which he allegedly placed before the authorities. The Petitioner has not been able to discharge that burden of proof. On the own showing of the Petitioner, he is raising a disputed question of fact.

5. In (2011) 9 SCC 664 (State of Madhya Pradesh v. Premlal Shrivastava) considering Rule 84 of the Financial Code, it was observed that corrections could be made only if there had been a clerical error and for which onus lay on the employee to demonstrate that the incorrect entry had been made on account of some person other than the employee seeking correction despite the fact that the correct date of birth had been shown on the documents present or signed by the employee concerned. Moreover, Rule 84 of the Finance Code in which no time limit has been prescribed obviously postulates moving within a reasonable time and not in the year 2011 pursuant to

appointment in 1979 and regularisation in 2008. The dispute sought to be raised by the Petitioner with regard to his date of birth is obviously based on disputed question of fact which cannot be examined in a writ petition.

6. There is no merit in the writ application. It is accordingly dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE