

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.W.P. No.18229 of 2014(O&M)
Date of Decision : 05.05.2015**

Pritam Lal

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Vivek Singla, Sr. Panel Counsel
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner is seeking a writ of prohibition restraining the respondents from retiring the petitioner on 31.12.2014 and allowing him to continue till 31.12.2015.

The petitioner was appointed as a Civilian Cook in the year 1974 in Military Hospital, Jalandhar Cantt. His date of birth was recorded as 29.12.1955. 22 years later the Controller of Defence Accounts realized that there were some discrepancies since in the medical fitness certificate produced by the petitioner at the time of his appointment his date of birth was recorded as 30.12.1954. At that stage a notice was issued to the

petitioner to produce documents evidencing his date of birth as 29.12.1955. The petitioner produced two certificates, one showing his date of birth as 15.02.1955 and the other showing his date of birth as 13.06.1957. A show cause notice was issued to him to explain that if his date of birth is taken as 13.06.1957 why he should not be treated as underage at the time of his appointment. The record does not show whether any action was further taken on that show cause notice. However, it is stated that after consideration of the entire matter the date of birth of the petitioner was changed to 30.12.1954 and entry was made in his service book after intimation to him. It is not disputed that again thereafter the date of birth of the petitioner continued to show as 29.12.1955 in all the documents addressed to him for decades like pay-slips, GPF deduction slips etc.

Today the learned counsel for the respondents has accepted that this was a mistake in the pay slips and the GPF deduction slips etc. but it would not give the petitioner a right with regard to date of birth.

As per the learned counsel for the petitioner, since his age of superannuation was 60 years he was under the bona-fide impression that he would retire on 31.12.2015. However, a letter was issued to him on 02.05.2014 informing him that he would be retired w.e.f. 31.12.2014. It was at that stage he filed this writ petition.

The stand of the respondents is that they had changed his date of birth not at the fag end of his career but in the year 1997 after intimation to him. On the other hand, learned counsel for the petitioner has argued that once after 1997 the date of birth was shown as 29.12.1955 in all the

documents addressed to the petitioner, he was under the bona-fide impression that the matter regarding change of date of birth had been dropped and since this situation continued right upto 2014 it would not lie in the mouth of the respondents to now assert that the change of date of birth was not made at the far end but at an earlier stage.

In my considered opinion, in the facts and circumstances of the present case the arguments of learned counsel for the petitioner cannot be resisted. Of course had, after the change of date of birth after 1997, the changed date of birth been reflected in all the documents addressed to the petitioner this writ petition could not have succeeded but once the respondents have accepted that because of some inadvertent error, in all the documents addressed to the petitioner, his date of birth was shown as 29.12.1955 till even the year 2014 it is now too late in the day to take shelter under the plea that the date of birth was changed in 1997. It has to be held that even after putting the petitioner on notice at one stage that his date of birth was to be changed to his detriment, once the respondents continued to reflect the later date of birth in all official documents addressed to the petitioner, it gave rise to a legitimate expectation in the petitioner's mind that his date of birth has been accepted by the respondents as 29.12.1955. The argument that the pay slip and GPF slips would not give the petitioner a right with regard to date of birth may be correct in theory but in the present case it cannot be lost sight of that these were the only communications made by the respondents to the petitioner and for a period of almost 2 decades in all such documents, his date of birth was shown as

29.12.1955. It cannot also be lost sight of that the respondents themselves are not relying upon incontrovertible evidence but are relying upon medical examination record which has not been produced before the Court despite opportunities having been granted on the ground that it is not available. In any case, any medical examination can only give the approximate age but can never give the exact date of birth. This Court cannot be oblivious of the fact that the petitioner is an illiterate/semi-illiterate Class IV employee and also that retirement brings about a huge change in the life of an employee. A person who has been given a bona-fide belief that he would retire on 31.12.2015 cannot be told suddenly that he will retire on 31.12.2014 (after 6/8 months).

Resultantly, this petition is allowed. It is directed that the date of birth of the petitioner be taken as 29.12.1955. Consequently, he is allowed to continue in service till 31.12.2015 and would be entitled to all consequential benefits.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

May 05, 2015

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**(AJAY TEWARI)
JUDGE**