

In the High Court of Punjab and Haryana at Chandigarh

**C.W.P. No. 20751 of 2015
Date of Decision : September 30, 2015**

Jai Pal

... Petitioner

Versus

National Institute of Technology, Kurukshetra

... Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. A.P. Kaushal and
Mr. M.S. Atwal, Advocates,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari setting aside impugned letter dated 30.09.2013 (Annexure P/5) vide which claim of the petitioner for correction in his date of birth has been dismissed. Further prayer is made for directing the respondent to alter/correct the date of birth of the petitioner as per the policy/rules provided by NIT, Kurukshetra.

I have heard learned counsel for the petitioner and perused

the paper-book.

Learned counsel for the petitioner contends that actual date of birth of the petitioner is 05.06.1958, but inadvertently, his date of birth is mentioned as 30.08.1956 in his service book.

The petitioner remained silent for number of years and when he was about to retire, application for correcting the date of birth has been moved. Hon'ble Supreme Court in **Registrar General High Court of Madras vs. M. Manickam and others, (2011) 9 SCC 245**, has held as under:-

*“16. In **Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another** reported in (2010) 6 SCC 482, this Court while dealing with the issue of limitation in the case of application for change of date of birth, held as follows:-*

"13. If the correct date of birth of Respondent 1 was 27-3-1938 and this was supported by the certificates issued by the schools in which he had studied before appearing in the matriculation examination, then he would have immediately after joining the service made an application to the University for change of the date of birth recorded in the matriculation certificate and persuaded the authority concerned to decide the same so as to enable him to move the State Government and the High Court for making corresponding change in the date of birth recorded in his service book in terms of Para 1 of Annexure A to Chapter II of the Punjab Civil

Service Rules, Volume I.....

15. The High Court or for that reason the State Government did not have the power, jurisdiction or authority to entertain the representation made by Respondent 1 after more than twelve years of his entering into service. Therefore, neither of them committed any illegality by refusing to accept the prayer made by Respondent 1 on the basis of change effected by the University in the date of birth recorded in his matriculation certificate. Unfortunately, the trial court, the lower appellate court and the learned Single Judge of the High Court totally misdirected themselves in appreciating the true scope of the embargo contained in the relevant rule against the entertaining of an application for correction of the date of birth after two years of the government servant's entry into service and all of them committed grave error by nullifying the decision taken by the State Government in consultation with the High Court not to accept the representation made by Respondent 1 for change of the date of birth recorded in his service book.

17. This Court has time and again cautioned the civil courts and the High Courts against entertaining and accepting the claim made by the employees long after entering into service for correction of the recorded date of birth. In [Union of India v. Harnam Singh](#) this Court considered the question whether the employer was justified in declining the respondent's request for

correction of the date of birth made after thirty-five years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the original application filed by him. While reversing the order of the Tribunal, this Court observed: (SCC pp. 167-68, para 7)

7. A government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale

claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a government servant can be entertained. A government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age." (emphasis supplied)

Again in Union of India Vs. Harnam Singh reported in (1993) 2 SCC 162, this Court said about limitation in paragraph 7 in the following manner:-

"7. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the

correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age."

28. *The aforesaid evidence adduced by respondent No. 1 in support of his case is most unreliable. Change of date of birth is a very important responsibility to be discharged for there is a general tendency amongst the employees to lower their age and change their date of birth to suit their career and to lengthen their service career. In paragraph 6 of the judgment of this Court in [State of U.P. v. Shiv Narayan Upadhyaya](#) reported in (2005) 6 SCC 49, this Court held thus: -*

"6. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under [Article 226](#) of the Constitution or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the date of birth recorded is correct or

not."

Again in Para 9 of the said judgment it was stated thus:

"9. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order....."

The petitioner has not mentioned when he joined service of the department. Pleadings in writ petition are lacking in many aspects. In para no.6 of the writ petition, departmental instructions have been reproduced. As per these instructions, age of superannuation is 58/60 years. The petitioner, as per service record, will retire on 30.08.2016.

In view of the judgment of Hon'ble Supreme Court in **M.Manickam (supra)** the prayer of the petitioner cannot be granted at

the fag end of his service. Otherwise also, disputed facts are involved which cannot be appreciated in exercise of the writ jurisdiction.

Dismissed.

September 30, 2015
vkd

[Paramjeet Singh]
Judge