

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**LPA No.1325 of 2015
Date of Order: 11.12.2015**

State of Haryana and another

..Appellants

Versus

Dr. Harbhajan Singh and another

..Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE REKHA MITTAL**

**Present: Ms. Tanisha Peshawaria, DAG, Haryana,
for the appellants.**

**Mr. R.K.Malik, Sr. Advocate, with
Mr. Bhupinder Malik, Advocate,
for respondent no.1.**

**Mr. NDS Mann, Advocate,
for respondent no.2.**

RAJIVE BHALLA, J (Oral)

The State of Haryana has filed this appeal, challenging order dated 27.03.2015, allowing the writ petition, filed by respondent no.1 and directing the appellants to grant all the retiral benefits due to respondent no.1, treating his date of birth as 15.04.1955.

Counsel for the appellants submits that respondent no.1 joined service as a Medical Officer (ad hoc basis) in the Health Department, on 20.09.1982, by disclosing his date of birth as 15.04.1954. The medical fitness certificate along with the candidate statement and declaration dated 06.08.1982 records his date of birth as 15.04.1954. The gradation list performa, dated 20.09.1982, also records the date of birth as 15.04.1954. The original Matric Certificate, issued by Punjab School Education Board, on 06.12.1971, records the date of birth 15.04.1954. The MBBS certificate issued by Medical College, Rohtak, records the same date of birth. Vide

his application dated 14.01.1982, respondent no.1 applied to the Haryana Public Service Commission for a regular post of Medical Officer Class-II, by declaring his date of birth 15.04.1954, and joined the Health Department as a Medical Officer on regular basis on 15.03.1983. Respondent no.1 did not apply to the competent authority for correction of his date of birth within the period prescribed by Rule 7.3 of the Punjab Financial Rules, but eventually made an application on 04.04.1986, on the basis of a corrected Matriculation Certificate to the Director Health Services, Haryana, Chandigarh, for correction of his date of birth, to 15.04.1955. The application was rejected as it was filed 3½ years, after first entry into government service. As respondent no.1 concealed these facts, he was allowed to continue in service beyond 30.04.2013, but when the matter came to the notice of the department, he was retired from service, on 22.04.2103. The writ petition has been allowed by ignoring these facts particularly the facts that respondent no.1 had no right to file an application for correction of his date of birth, and even if his date of birth, in the matriculation certificate had been subsequently corrected but as his service book continues to reflect his date of birth as 15.04.1954, the impugned order directing the appellants to treat the respondent's no.1 date of birth as 15.04.1954 and grant all retiral benefits, is contrary to the record and may be set aside.

Counsel for respondent no.1, on the other hand, submits that the appellants have intentionally concealed that after his earlier appointments, respondent no.1 was selected and appointed afresh as a Senior Medical Officer (direct recruit) in July, 1996. At the time of his fresh selection, he disclosed his date of birth as 15.04.1955, as in the meanwhile the matriculation certificate had been corrected, by the Punjab School Education Board. The seniority list, the service book, the gradation list

published by the Haryana Health Department as on 01.09.1997, 01.06.2000 and 01.09.2003, all record respondent no.1's date of birth as 15.04.1955. The appellants have mischievously relied upon the date of birth disclosed in the earlier appointments, which are irrelevant for respondent no.1's recruitment as a Senior Medical Officer. The appellants accepted the corrected matriculation certificate and appointed respondent no.1 on the basis that his date of birth is 15.04.1955.

We have heard counsel for the parties, perused the impugned order and appraised the entire record.

The facts appear to be little convoluted but admittedly, respondent no. 1 was selected as a direct recruit, a fresh appointment, to the post of Sr. Medical Officer in July, 1996, on the basis of the corrected matriculation certificate that records the date of birth as 15.04.1955. The gradation lists, the service book and all other official record, pertaining to this post, record respondent no.1's date of birth as 15.04.1955. The appellants seeks to rely upon the date of birth disclosed by respondent no.1's, in his earlier appointment which were admittedly based upon the unamended matriculation certificate. The certificate was, admittedly, corrected, by the Punjab School Education Board, before respondent no.1 was appointed as Sr. Medical Officer (direct recruit) in 1996, to reflect his date of birth as 15.04.1955. The appellants are unable to proffer an explanation for their failure to appraise and consider entries in the gradation lists and the service book after respondent no.1 was selected as Senior Medical Officer on the basis that his date of birth is 15.04.1955. The appellants allowed respondent no.1 to continue in service treating his date of birth as 15.04.1955 but eight days before the date of superannuation retired him by considering his date of birth 15.04.1954 and relying upon entries in the service book etc., which were no longer relevant.

At this stage, it would be appropriate to point out that the appellants do not deny that the Matriculation Certificate was corrected by the Punjab School Education Board, before respondent no.1 was appointed afresh as a direct recruit against the post of Senior Medical Officer.

Consequently, finding no error in the impugned order, the appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

December 11, 2015
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(REKHA MITTAL)
JUDGE