

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

**CWP No.24904 of 2012
Decided on: 07.04.2016**

Gurdial Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Karan Singh, Advocate for
Mr. Nitin Kaushal, Advocate for the petitioner.

Mr. Aman Bahri, Addl. AG, Punjab.

G.S. Sandhawalia, J.

The petitioner challenges the order dated 17.05.2012 (Annexure P-7), whereby the respondent No.2 has rejected his claim for the change of date of birth from 15.09.1956 to 07.03.1958. The grounds for rejection are that the petitioner had joined service on 12.05.1981, but did not make any request of change of date of birth, thereafter. The notification had prescribed the date when the application could be made between 21.06.1994 to 13.12.1995, but no request had been received from the petitioner. The various communications as many as four had been addressed to the concerned officer to ask him the date of birth of his brother sisters younger and elder to him, but no evidence had been sent apart from the communication that he was the youngest of the siblings. Resultantly, his request was rejected.

Counsel for the petitioner on the other hand has submitted that it is not disputed that the petitioner had filed an application on 19.05.1995 (Annexure P-3) within the prescribed period and the findings were as such contradictory, once information had already been supplied that he was the youngest. It is further submitted that decision was only taken after this Court had directed on 02.09.2011 (Annexure P-6) that the legal notice dated 18.04.2011 (Annexure P-5) be decided. It is, accordingly, contended that as per the certificate issued by the Registrar Birth & Deaths, Punjab dated 05.08.1994 (Annexure P-2), the petitioner was entitled for the change of date of birth, as the said certificate had evidentiary value which was over and above the Matriculation Certificate dated 06.07.1974 (Annexure P-1).

Counsel for the State on the other hand submitted that the order was justified, since the petitioner application had been returned in original in the year 1995 vide endorsement made by the Assistant Registrar himself on the original application on 01.10.1995. Thereafter, the petitioner had never applied and only filed **CWP No.15514 of 2011**, in which directions had been issued on 02.09.2011 (Annexure P-6) to decide the legal notice. Resultantly, in the absence of information supplied, which had been asked for the order was well justified.

Reliance was also placed upon the Division Bench judgment in '**Ambika Kaul Vs. Central Board of Secondary**

Education' 2015 (3) SCT 350 to contend that the entries made regarding the date of birth in the school record were relevant and there was an estoppel for the said request. Once the person had completed his education, any such correction had to be exercised within 3 years from attaining majority on the basis of date of birth in the birth certificates and the persons were, thereafter, bound by the date given in the matriculation certificate.

The pleaded facts of the case are that the petitioner was enrolled as a Inspector in the Cooperative Society in the year 1981 and, thereafter, earned his promotion as Assistant Registrar on 29.11.2004 and, thereafter, as Deputy Registrar on 02.03.2010. It is not disputed that the petitioner's superannuation age is 30.09.2014, as per his date of birth given at the time of his service. It is admitted that presently he is on extension and his second extension of service comes to end on 30.09.2016.

It is the case of the petitioner that in the year 1994 during a family conversation he was told by his elder brother that his date of birth was not correct. Accordingly he had applied to the office of Chief Registrar Births & Deaths as per the prescribed proforma, wherein his date of birth is shown as 06.03.1956, as per the certificate issued on 05.08.1994. He had, accordingly, submitted a representation on 19.05.1995 highlighting that his date of birth was wrongly recorded and, therefore, the correction should be made. After 3 months, the communication had been received

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from the Assistant Registrar to remove rejection raised by the Registrar Office and the petitioner was asked to submit birth certificates of his younger and elder brother-sisters. The petitioner had submitted the desired documents and also brought to the notice of the department there are six other siblings in the family and all other were illiterate except the petitioner.

A reference was made to the instructions issued on 10.05.1995 (Annexure P4) regarding the permissibility of the change of date of birth. On account of that opportunity the petitioner was entitled for active consideration on his application which had been filed. The matter had been kept pending by respondent No.2 and the petitioner had been promoted as Assistant Registrar. He submitted a reminder in December 2004 and he was informed that his matter is still under consideration. He was never informed about the outcome of his initial representation submitted in the year 1995.

Accordingly, legal notice dated 18.04.2011 had been served, since he was attaining the age of superannuation on 30.09.2014. Resultantly, this Court was approached by filing CWP No.15514 of 2011 in which a direction was issued on 02.09.2011 (Annexure P6) to decide the legal notice. Thereafter, the petition had filed an contempt petition and only then while filing reply the decision had been appended rejecting his request. Accordingly, it has been pleaded that certificate issued by the Registrar Births &

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Deaths is admissible in terms of Section 35 of Indian Evidence Act, 1872 and would prevail over any entry made in the school register and the authority had acted in an unfair manner and the impugned order was not justified.

The State in its reply took the plea that the matriculation certificate of 1974 had been submitted at the time of entry into service. The change of date of birth application from the school education board and the first application had been received after 21 years passing of matriculation examination and after 14 years of entry into service. Resultantly, reliance was placed upon various judgments that at the fag end of his career the said application was not liable to be entertained. The application had been returned by the Assistant Registrar asking him to move proper application alongwith birth certificates of his elder and younger brothers and sisters, but he never submitted the requisite documents. Once the application had been sent back, the petitioner's case could not be considered. The Government had withdrawn the instructions issued on 21.06.1994 (Annexure R-5) on 13.12.1995 with a rider on 07.10.1996 (Annexure R-7) that applications received between 21.06.1994 and 13.12.1995 would be disposed of on merits. No request had been received from the petitioner between the said period after the return of his application. Again on 07.10.2011, 31.10.2011, 12.11.2011 and 22.12.2011 (Annexures R-1 to R-4, respectively) letters were

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issued to supply the information, which he had failed to do so.

The issue of change of date of birth came up before the Apex Court in '**Union of India Vs. Harnam Singh**' 1993 (1) SCR 862. The Apex Court while considering the issue of the employees seeking the correction of date of birth and while examining the Fundamental Rules and the General Financial Rules 1979 of the Central Government Employees held that such a request had to be made within a period of 5 years from the date of joining of service. It was noticed that the employee had entered into service in the year 1956 and had not challenged the date of birth for almost 3 and half decades till September, 1991 and the claim made was highly belated. Therefore, the order of the Tribunal, whereby the relief had been granted was set aside. It was further held that until the application is made for correction of date of birth as per the time fixed, there can be no matter of right for correction, even if there was good evidence to establish that the recorded date of birth was erroneous. The relevant paragraph reads as under:-

"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 to 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 rigours and the courts or tribunals cannot come to the aid of those who sleep over their rights and allowed 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. Indeed, as held by this Court in **State of Assam v. Daksha Prasad Deka, 1971(2) SCR 687** a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him.”*

In the present case, as noticed from 1981 onwards till 1995 for a period of almost 14 years, the petitioner chose to accept his date of birth. He filed his representation only on account of a window being opened by the State regarding the amendment which was made in the Punjab Civil Services Rules on 21.06.1994 (Annexure R-5), which permitted the employees already in service

to apply for the change of date of birth within a period of 2 years on the strength of the matriculation certificate or the Municipal Birth Certificate. It is not disputed that the State being flooded with requests, thereafter, chose to withdraw the said instructions on 13.12.1995 (Annexure R-6). Thereafter, as per instructions dated 07.10.1996 (Annexure R-7) all applications which had been received during the period were to be decided on merit.

In the present case, as noticed above the petitioner's application had been returned for lack of supply of requisite information. The relevant part of the endorsement on his application reads as under:-

“After sending the same in original to Asst. Registrar, Cooperative Societies, Muktsar, it is written that the Administrator be directed to send the case through proper channel to this office. While sending the case the copies of the birth certificates of his elder and younger brothers and sisters, a copy of the matriculation certificate of the Administrator be sent forth with. It should also be informed as to from what stage and under what rules the date of birth is to be corrected.

Endst. No./ 60/6 dated 31.10.95

The original is hereby returned to Sh. Gurdial Singh, Administrator, Cooperative Societies, Midda and he is informed that after complying with the objection raised by the Head Office, the same be sent to this office alongwith the concerned documents.”

The petitioner, thereafter, did not supply the relevant material regarding the birth certificates of his elder and younger brothers-sisters as asked above and chose to sleep over the issue for a period of 14 years from the 1995 till the serving of the legal

notice dated 18.04.2011. In view of the directions issued by this court, the respondents, thereafter, again asked for information from the petition again vide communication Annexures R-1 to R-4 as referred to above. Perusal of the same would go on to show that the date of birth of the elder brother and sisters was asked for but as per the case of the petitioner could not be supplied, as there was no such information available and as per the argument of the counsel, the same is not relevant also. The application having been returned once, the authorities were well justified in submitting that the window had closed and the case was not to be decided as such on merits, once the instructions itself had been withdrawn on 13.12.1995. The said instructions read as under:-

“Copy of Punjab Government Circular letter No.9/22/88-5PP3/30315 dated 13th December, 1995, from the Department for Personnel and Administrative Reforms, addressed to all the Financial Commissioners and Administrative Secretaries to Government of Punjab and all Heads of Department, etc., etc.,

Subject:- *Change in the date of birth of Punjab Govt., employees withdrawal of instructions.*

Reference this Department's letter No.9/22/88-5PPIII/2039, DATED 5th October, 1995 on the subject noted above.

2. The instructions regarding change in the date of birth of the Punjab Government employees, issued by the Department of Personnel and Administrative Reforms,-- vide its letter No.9/2288-5PPIII/8889, dated 10th May, 1995, which were earlier suspended,- letter referred to above, are hereby withdrawn in toto.”

The observations in the case of **Harnam Singh** (*supra*) would thus come into play against the petitioner that he

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has no legal or vested right as such. Admittedly, as per the Punjab Civil Services Rules (Vol.1) Part 1 Rule 2.5, the date of birth cannot be altered and it to be treated final which had entered into the service book except in the case of clerical error.

Counsel for the State was well justified in pointing out to the certificate of date of birth also upon which the counsel for the petitioner has laid great stress. It is pointed that the certificate itself does not show the mother's name and has been prepared much later on 05.08.1994, in which the date of birth is shown as 06.03.1958 and the registration is of 07.03.1958 and the petitioner's name has been mentioned. This certificate also thus showing the petitioner's name on the very next day of birth does not inspire much confidence in this Court. The petitioner has also not cooperated with the respondents in supplying the information which had been asked for regarding the age of his other siblings which would have gone to show that whether any of them was born close to alleged date of birth claimed by the petitioner i.e. 06.03.1958 (within 9 months).

The Apex Court in the '**State of U.P. and another Vs. Shiv Narain Upadhaya' 2005 (3) Civil Court Cases 143** held that until there is clear case on the basis of clinching materials which can be held to be conclusive the Court or the Tribunal should not make any such declaration. The application has to be filed within the prescribed time and the evidence as produced has to be given

which should amount to irrefutable proof. The relevant observations read as under:-

“9. An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. 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. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the

entries in respect of their date of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior.”

The Apex Court in **'State of M.P. and others Vs. Prem Lal Shrivastava' (2011) 9 SCC 664** held that for correction in the service book there has been irrefutable proof relating to the date of birth. The practice of raising the dispute by a public servant for correction of his date of birth in the service and pressing the issue on the eve of his retirement was accordingly frowned upon. While examining Rule 84 of the M.P. Financial Code, it was, accordingly, held that only in case of clerical error or negligence on behalf of anyone such correction could be done. Resultantly, the relief given by the High Court was set aside. The relevant part reads as under:-

“12. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1st June, 1942 and not 30th June, 1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27th September, was mentioned to be 23 years and his father's name was recorded as

Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1st June, 1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record was vitiated. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex-facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.

13. Rule 84 of the M.P. Financial Code, heavily relied upon by the respondent reads as under :

"Rule 84. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under Rule 85 should be recorded in the history of service; Service book or any other record that may be kept in respect of the Government servant's service under Government. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for

any purpose whatever."

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

15. In Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane (1997) 1 SCC 247, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him. Again, in Union of India Vs. C. Rama Swamy & Ors.(1997) 4 SCC 647, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

16. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules."

Reliance upon the Division Bench judgment in ***Ambika Kaul (supra)*** was accordingly well placed by the State, wherein the right to correct the certificate with the Education Board has been restricted to within a period of 3 years from the date of attaining of his majority on the principle of estoppel. The relevant part reads as under:-

“[42] The fact is that every person grows with the date of birth as mentioned in the matriculation certificate. He is aware of such date of birth. Giving allowance of minority will lead to uncertainties and inconsistencies in the records of public authorities. Therefore, though a person is estopped to dispute the date of birth entry recorded in the matriculation certificate, but even if he approaches the Civil Court to seek exclusion of the minority period in terms of Section 6 of the Limitation Act, 1963, such suit cannot be entertained after three years from his alleged date of attaining the age of majority. In no case, the date of birth recorded in the matriculation certificate should be corrected after three years of attaining majority on the basis of date of birth in the birth certificate.

[45] The right to seek actual date of birth has to be exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. But, after expiry of period of three years from the cessation of disability, no person can rely upon the birth certificate. He is bound by the date given in the matriculation certificate. Therefore, in any case, the right of a person to seek actual date of birth on the basis of entry in the birth certificate by the Registrar of Births and Deaths is three years after attaining the majority on the basis of date of birth in the said certificate.

[46] We do hope that the schools within the jurisdiction of this Court insist upon birth certificate issued from the Registrar of Births and Deaths at the time of admission to the schools so that such date of birth is correctly reflected in the matriculation certificate. If it is not being followed, all schools, Government, Public and/or Private, shall not grant admission to the child unless he produces his birth certificate from the Registrar,

Births & Deaths. Thus, the date of birth in the school record leading to matriculation certificate would be in sync with the date of birth from the records of the Registrar of Births & Deaths.”

Resultantly, keeping in view the above discussion, this Court is of the opinion that the petitioner had not supplied necessary material and the application had been returned to him. Thereafter, he chose to sleep over the application and in the meantime, the State withdrew the instructions on the basis of which he could seek correction and therefore, he cannot claim his legal right on the basis of his birth certificate which does not also inspire any confidence. Accordingly, the order passed is well justified and does not warrant any interference and the present writ petition stands dismissed.

APRIL 07, 2016
Naveen/sailesh

(G.S. SANDHAWALIA)
JUDGE