

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

Date of decision: 02.03.2016

CWP No.9982 of 2013

Nitya Nand

...Petitioner

Vs.

Punjab State Water Resources Management
and Development Corporation & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Padamkant Dwivedi, Advocate,
for the petitioner.

Mr. P.S.Thiara, Advocate,
for respondents No.1 & 2.

RAJIV NARAIN RAINA, J.

The petitioner an original inhabitant of Jharkand has been hounded by the respondent-Corporation where he worked; for producing a disputed false date of birth certificate at the time of entry to service in 1975. The dispute is whether it is 14th September, 1957 or 14th September, 1953. The dispute arose on a complaint made by a Union leader. Among other documents relied upon by the petitioner, the records of the Regional Provident Fund Commissioner communicated to corporation vide letter dated 23rd May, 2014 spelled out from record maintained in Form 10-D that the date of birth entered was 14th September, 1957 and pensionary benefits have been settled accordingly. The petitioner alleges that his date of birth was changed by the Corporation surreptitiously to 14th September, 1953 and he was made to retire accordingly in the year 2013.

2. It is the pleaded case of the petitioner that the dispute regarding date of birth has been settled more than once by different agencies including the police. The issue was firstly raised in the year 1986 in domestic setting, which was closed after proper inquiry in the same year. The case was reopened on the basis of another similar complaint made in the year 1996. An inquiry was conducted on charge sheet issued to the petitioner, which after inquiry was dropped on 8th November, 1996. Then again in the year 2001 the matter became subject of a complaint to the police by the Corporation for registration of FIR. The Senior Superintendent of Police, Ferozepur got an inquiry conducted and it was found that the allegations were false. This was in the year 2003. While this was going on, another charge sheet issued in the year 2001 against the petitioner on the same subject matter was also withdrawn on 11th October, 2006. The leader of the Workers' Union again raised the same set of allegations against the petitioner upon which the impugned order has been passed on 18th April, 2013 ordering the change of date of birth in the service book and thereupon petitioner has been retired and relieved from service.

3. Briefly stated, the petitioner was appointed as a Peon in the respondent – Corporation on 10th March, 1975. A medical examination was conducted by the Chief Medical Officer, Sangrur and as per entry made on 9th January, 1976 in the medical certificate of fitness, the age of the petitioner was recorded as 20 years “as per his own statement and as per his physical appearance.” The petitioner was schooled at a place called Pathuria, District Bokaro, Jharkhand. The primary document involved in the *lis* is the matriculation certificate issued by the High School at Pathuria, which records the date of birth as claimed by the petitioner. The document was called for by the Corporation from the Head Master of Pathuria High School during inquiry

who confirmed that the petitioner was 10th class pass and the certificate was genuine. Head Master confirmed from the admission register of the school that 14th September, 1957 is recorded as the student's date of birth.

4. Not satisfied, a five Members' Committee was constituted on 27th March, 2012 by the Corporation for verification of date of birth of the petitioner on the complaint moved by respondent No.3 – Om Parkash, President, Punjab Water Resources Employees Union, Punjab, Chandigarh. The petitioner appeared before the inquiry committee and submitted reply and relevant documents in respect of his case. The dispute was that the date of birth document produced at the time of appointment does not tally with the entry in the service book of the petitioner. He submitted other evidence before the committee in his detailed reply, namely, his identity card; PAN card; Aadhar card and Learners' Driving Licence in support of his date of birth; 14th September, 1957. To cut the long story short, the Committee report submitted was ambivalent. It confirmed nothing positively and left the matter hanging, to be decided administratively at the level of the Corporation by an officer. Effort was virtually wasted. However, the competent authority, the Managing Director – respondent No.1 ordered correction of the date of birth from 14th September, 1957 to 14th September, 1953 vide impugned order dated 18th April, 2013 and consequently cancelled the sanctioned leave of the petitioner granted up to 13th May, 2013 for the wedding of the petitioner's daughter in Jharkhand and shortened it quo terminus to 18th April, 2013, the date of the order. Thereby, the petitioner stood automatically retired.

5. The petitioner says that he is the victim of party faction among the Workers' Union. Respondent No.3, the Workers' Union leader, instigating the Corporation to show him the door prematurely.

6. Learned counsel for the petitioner submits that the veracity of the school leaving certificate has been examined by the Police and has not been found to be a fake document. In fact the finding of the Police in investigation on the complaint is that the document is genuine and in support of this the learned counsel has drawn attention of this court to the findings recorded in the inquiry report submitted to the Senior Superintendent of Police, Mohali, which is extracted from Annex P-24 (colly). The operative part is reproduced below for ready reference:

“The enquiry conducted till date, earlier enquiry conducted by SSP Ferozepur, departmental inquiry conducted by Five Members Committee and as per records received from Pathuria High School and statement of Principal, the allegations levelled by the department are not proved. Because Sh. Nitya Nand has stated in his statement that at the time of appointment the certificate produced before the department contained date of birth as 14.09.1957 which the department has changed to 14.09.1953 at their own level. I do not know the reason for same. If according to department date of birth of Nitya Nand was 14.09.1953 then the retirement date of Nitya Nand should have been in the month of September, 2011 but Nitya Nand was retired by the department on 18.04.2013. And if according to birth certificate and service book of Nitya Nand his date of birth is 14.09.1957 then his retirement will fall in September, 2015. Thus, he has been retired two years before the date of his retirement. From this, it is clear that the department is having personal grudge against him and has been making false complaints and getting conducted inquiries and it is necessary to obtain opinion of DDA Legal SAS Nagar in this regard.”

7. A perusal of the inquiry report confirms that the petitioner has been absolved from the allegations levelled by the respondent-corporation regarding production of false date of birth certificate. Moreover, the five Members' Committee set up by the Corporation itself had concluded that the charge regarding submission of false certificate by the petitioner to the department did not stand proved. The relevant extract from the final report of the Committee reads as under:

“In view of above the Committee has reached at the conclusion that the abovesaid documents being contradictory and in absence of any strong evidence, it is not possible to recommend to change/correct the date of birth of Sh. Nitya Nand recorded in the service book. The School Leaving Certificate produced by Sh. Nitya Nand, Ferro Printer during enquiry cannot be approved as per Rule 2.5 since as per rules only Matriculation Certificate or Date of Birth Certificate issued by Municipal Committee can be considered.

On the above basis, this Committee recommends it is primary responsibility of Sh. Nitya Nand, Ferro Printer, being the beneficiary, to produce documents under Government rules in support of his date of birth before the department so that this matter could be resolved. The committee also considers that for resolving this matter, educational qualification certificate of Sh. Nitya Nand reflecting his date of birth or original record of concerned Village/Panchayat/ Municipality in which his date of birth was recorded at that point of time are required and final decision can be taken on the basis of these important documents. This matter being administrative in nature, the Committee recommends that necessary steps be taken under the supervision of the senior officers of Head Office of the Corporation so that the actual date of birth issue be resolved.”

8. Respondent No.2, the competent authority, who while passing the impugned order dated 18th April, 2013 (Annex P-20) has made use of the said report, relying on it but selectively ignoring the recommendations made by the Committee on the fact-in-dispute that falsity of the matriculation certificate is not proved. The only recommendation made by the Committee was to further inquire into the matter by some Senior Officer of the Head Office of the Corporation. Notwithstanding this, the fact remains that the inquiry conducted under the supervision of Senior Superintendent of Police, Mohali amply reveal that the allegations imputed by the department rather corroborate the stand taken by the appellant/petitioner throughout that the corpus of the dispute is not bogus.

9. At Annex P-9 is a letter written by the Headmaster, High School, Pathuria to the Senior Superintendent of Police, Ferozepur regarding educational qualifications of Nitya Nand Chaubey – petitioner informing the police that Nitya Nand Chaubey son of Sh. Shri Niwas Chaubey, Village and Post Babhnaul, District Rohtas is recorded at Serial No.39 dated 15.03.1974 in the registration book. His date of birth is 14.09.1957. He has passed 10th class.

10. The foremost evidence is the opening page of service book entry where date of birth has been recorded as claimed by the petitioner, which has been changed in 2013 by the impugned order. It is not even the case of the Corporation that on the date of entry into service, the petitioner was a minor and therefore was not of employable age. He was 17 years old and cites vintage instructions of Punjab Government permitting employment at that age. A stray entry in a medical fitness certificate issued by the Chief Medical Officer who examined the petitioner before joining service recording his personal assessment on physical appearance showed that the petitioner was 20

years old is neither here nor there, as the same is not sufficient evidence on its own without corroboration. As the saying goes looks can be deceptive.

11. The question before the court today mainly is on whom trust can be reposed in this jumble. The multi member committee cannot be trusted because it has concluded nothing and left the matter hands free to be delved into on the administrative side by some senior officer. There is a letter of the Headmaster to the police in favour of the petitioner, a contra letter by the successor Headmaster of the school where the petitioner claims he read. In the circumstances, I think it is far safer to place faith and trust on the inquiry conducted by the police, in which is found that the school leaving certificate is a genuine document. The petitioner has been subjected to a tirade of complaints inquiries and investigations almost throughout his service career, which has brought nothing forth with any clarity and the layers of exercises carried out from time to time, appear to be a colossal waste of time sparked by union disputes. If the document was a fake one and a job was obtained on it, then a regular departmental inquiry was a clear option open to the Corporation but which was not resorted to. If the document was proven bogus disciplinary action could be taken visiting the petitioner with the extreme punishment of dismissal or removal from service. Instead, the Corporation reversed the entry of date of birth in the service book arbitrarily on an inconclusive report submitted by the Committee. Moreover, the report was acted upon without putting it to the petitioner and affording him the opportunity to put forward his views.

12. After hearing the debating counsel on the documents involved and the noting arguments addressed on either side, I do not think the impugned order can be sustained in law. Suspicion however strong cannot take place of proof. Date of birth is pure question of fact, which has to be determined by

evidence, where the document is disputed and has potentially grave effect on employment. Such an inquiry to determine legal character has to be by the competent administrator in a seriously disputed date of birth matter taking a rational decision after determining facts from the source. The Corporation was free to hold inquiry and depend on the preponderance of probabilities. Long ago the Corporation could have asked the petitioner to obtain a decree from a competent civil court declaring his date of birth failing which it could have taken action as per law. This court in writ jurisdiction is ill-equipped to examine such disputed issues on affidavits and without evidence available on record except what is found in the paper-book. In this case, where the field is occupied by many layers of investigation, inquires etc. both parties still grope in the dark. If the Committee did not conclude the matter then the second respondent could not have concluded anything on the date of birth and anything said is mere ipse dixit. To pass the impugned order in a summary fashion by selectively overlooking the basic finding of the Committee that nothing could be said conclusively on the date of birth certificate is not free from irrationality and unreasonableness which renders the decision arbitrary. The dispute may be emotive but the administrator has to hold a steady pen of firm paper. It appears to me that the competent authority to retire the petitioner in his order dated 18th April, 2013 has rested it mostly on the advice of an Advocate, which reads like this:

“In view of the facts stated above, in my considered opinion the documents mentioned above are sufficient for correction of date of birth entry in the service-book of Mr. Nitya Nand. Thus, in my opinion correction be made forthwith. I further suggest that his earlier complaint made to the police for registration of case against Mr. Nitya Nand was not taken into its logical and so

action may be taken and fresh report may be made to the police, as record reveals that fraud has been played.”

13. Last but not the least, the adverse material sought to be used against the petitioner is an application dated 4th march, 1975, which the petitioner made before the Divisional Engineer, PSTC, Sangrur for appointment to the post of Peon on which he has given his date of birth as 14th September, 1953 and eligibility as 9th passed. The petitioner was appointed on 10th March, 1975 as a Peon on ad hoc basis for three months and his services were regularized on 9th August, 1976. From this it was concluded that the petitioner has no document regarding date of birth. At the time of opening of service book, one hand-written attested school leaving certificate has been pasted in the service book, which has been attested by the officer opening the service book where the date of birth is as claimed by the petitioner. When application dated 4th March, 1975 was shown to the Court, I asked whose hand writing was on it and the consensus was that it was not in the hands of the petitioner. Thus, the petitioner cannot be bound down to that which is not in his own hand and to pin it on him as inculcating evidence and then to peer into the past at this distance of time. I may record that I have seen the original of Annexure P-1, which is the school leaving certificate. It is a document aged more than 30 years old and appears to look the age. A presumption of truth attaches unless rebutted by probative and cogent evidence demolishing its veracity.

14. The impugned order rests itself also on the cornerstone of an inquiry conducted by the Corporation from the School in Jharkhand. The letter written by the Headmaster of the High School, Pathuria dated 24th April, 2001 is at Annex R-4, which is much touted, where the Corporation has been advised that the petitioner was neither a student of the school nor had he

appeared for examination from the school nor had passed the matriculation examination. In short the school leaving certificate was not issued by the school, says the successor Headmaster. On its part, when asked to verify facts regarding the matriculation certificate, The Bihar School Examination Society, which appears to be the examining body, have written letter through its Assistant Secretary addressed to the Corporation that they cannot help in the matter of verification in the absence of details of roll number, examination centre and year of passing the examination. This leaves the company nowhere and in mid-stream.

15. One is now left with an analysis of two letters both from the Headmaster, High School, Pathuria. One bearing No.83 dated 19th March, 1986 (Annex P-5) and the other bearing No.12/2001 dated 24th April, 2001 (Annex R-4). They are 15 years apart. Now the question is which one is to be believed. Both the letters are addressed directly to the Corporation. The inquiry conducted by the Police at Mohali on complaint No.4663/5A/P.S. Phase-I, Mohali dated 3rd December, 2013 submitted by the Corporation regarding registration of criminal case against the petitioner in which the senior officers of the Corporation were associated during the investigation make no mention of the letter dated 24th April, 2001 (Annex R-4) even though it was available to the Corporation for production when it was the complainant pursuing its case for registration of an FIR against the petitioner. In the report, the Police have made it clear after investigation that the department bears personal grudge against the petitioner and has been making false complaint in getting inquiries conducted, for which the opinion of the Deputy District Attorney (Legal), SAS Nagar is required. The report of the Committee [5 member] was taken cognizance of in the police inquiry report. Statements of witnesses have been recorded of the functionaries of the Corporation and the petitioner. The

petitioner has faced charge sheets earlier on the same issue, which have been dropped. If two charge sheets on the same allegation was issued in 1996 and 2006 and both of them filed then it appears rather unfair to keep the dispute alive. Equally well settled it is when a predecessor-in-interest has taken a conscious decision to drop the inquiry, twice over, then the successor-in-interest should not re-open what is closed, only to attempt taking a different view. Such a course can be adopted when the incumbent authority is faced with unimpeachable and irrefutable evidence to avoid a miscarriage of justice which material was either not to the knowledge of the decision maker in the past while it existed or comes to notice later which would alter the decision so materially that avoidance in cognizance would result in grave injury to employer. Then the case can well be reignited. But such is not the position in the instant case where the employer has been out for years fox hunting the petitioner down; a small man rising from Peon to Ferro Printer.

16. In the circumstances, it would be far safer to place reliance on letter dated 19th March, 1986 (Annex P-5) and the police report which are both in favour of the petitioner. The Corporation had full opportunity and plenty of time to conduct a regular inquiry and taking it to its logical conclusion. But there was a failure to do so. What remains at the end of the day is doubt and doubt is not sufficient to return a judicial finding on the dispute. The case must lean in favour of the petitioner by placing faith in the police inquiry and findings of the five Members' Committee holding that "nothing could be said beyond doubt". If five Honourable Members of the Committee constituted by the Corporation itself could not reveal the truth, then it is not for this court in writ jurisdiction to make a fishing inquiry as to the correctness of the date of birth. The court remains satisfied when the police say that the certificate is genuine and no criminal case is made out against the petitioner. Then the

impugned order (Annex P-20) has no legs to stand on and should not be allowed to operate since it is based on irrelevant considerations while relevant material has been excluded from consideration.

17. Consequently, the writ petition is allowed. The impugned order is set aside. The petitioner would be deemed to have retired in 2015 keeping in view his date of birth as 14th September, 1957 recorded in the service book before the red entry was made changing the date of birth arbitrarily of a small fry by the impugned order. The monetary benefits of the intervening period become a debt owed by the Corporation to the petitioner which has to be discharged by payment of back wages which the petitioner would have earned but for the impugned order truncating his service abruptly. Respondent No.2 is directed to make due payment to the petitioner within one month of the expiry of period of limitation prescribed for appealing against this order.

02.03.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE