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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2886 of 2017**

Dr. Krishna Kumar Kawre S/o Shri Yama Kaware, Aged About 57 Years Occupation Service, Working As Professor, Medicine Department, Gandhi Medical College, Bhopal, District Bhopal (Madhya Pradesh) R/o Doctors Colony, Bhopal.

**---- Petitioner****Versus**

1. State of Chhattisgarh Through Secretary, School Education Development Mahanadi Bhawan, Naya Raipur, Civil & Revenue District Raipur (Chhattisgarh).
2. Board Of Secondary Education, Through Secretary Pensionbada, Raipur Civil & Revenue District Raipur (Chhattisgarh).
3. The Secretary, Board Of Secondary Education Pensionbada, Raipur Civil & Revenue District Raipur (Chhattisgarh).
4. The State Of Madhya Pradesh, Through Principle Secretary Health Services & Medical Education Department, Mantralaya, Bhopal (Madhya Pradesh).
5. The Director, Medical Education, Directorate, Civil & Revenue District Bhopal (Madhya Pradesh).
6. District Education Officer, Bijapur, Civil & Revenue District Bijapur (Chhattisgarh).

**---- Respondents**


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| For Petitioner        | : | Shri Amiykant Tiwari, Advocate.                      |
| For Respondent/State  | : | Shri Satish Gupta, Govt. Advocate.                   |
| For other Respondents | : | Shri SK Kushwaha and Shri Animesh Tiwari, Advocates. |

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**SB: Hon'ble Shri Justice P. Sam Koshy****Order On Board****07/07/2017**

1. The Present writ petition has been filed seeking for quashment of orders dated 30.06.2016 (Annexure P/10) and 10.03.2017 (Annexure P/15). Annexure P/10 is the document which has been issued by the Chhattisgarh Board of Secondary Education, Raipur, whereby the claim for correction of date of birth in the mark-sheet of Higher Secondary School certificate has been rejected on the ground of it

being barred by time. It could have been done only within three years from the date of declaration of result.

2. Likewise, Annexure P/15 also is a letter issued by the Chhattisgarh Board of Secondary Education, Raipur, whereby on the representation made by the petitioner, it was informed by the Board to the petitioner that except for the rules which are governing the change of date of birth, there is no other scheme or mechanism prevailing in the Board pertaining to change of date of Birth.
3. Brief facts relevant for adjudication of the instant case is that, the petitioner is a Professor in the Medicine Department at Govt. Gandhi Medical College, Bhopal. The petitioner originally belonged to district Bijapur (CG) and did his primary school education at Primary School, Gangaloor, District, Bijapur (Chhattisgarh). Subsequently, he appeared in the Higher Secondary Examination from the Govt. Multipurpose Higher Secondary School, Jagdalpur in the year 1974. According to the petitioner, his actual date of birth is 01.07.1959, however, due to some clerical mistake his date of birth at the Higher Secondary School, Jagdalpur, got mentioned as 05.02.1957 instead of 01.07.1959. The said erroneous date of birth continued to remain in existence and in due course of time he got his admission in the Medical College and after completion of his medical education, he was appointed as Assistant Professor in the State of Madhya Pradesh on 04.04.1990 and has been working in the different Medical Colleges in the State of MP. He is presently working as a Professor in the Medicine Department of Gandhi Medical College, Bhopal.

4. According to the petitioner, it was only in the year, 2014 that for the first time he came to know about his actual date of birth being 01.07.1959 and not 05.02.1957. Since then he is making efforts with the respondents seeking for appropriate correction in his date of birth. The officials in the State of MP refused to entertain the said application on the ground that since the petitioner was born in the territorial jurisdiction of present State of Chhattisgarh, the records have already been transferred to respondent No.2. Accordingly, the petitioner also made correspondence to the respondent No.3 and the authorities under the State of Chhattisgarh also on verification found that the date of birth of the petitioner recorded in the school certificate is 05.02.1957, and therefore, the service records accordingly cannot be corrected and his representation so made were rejected.
5. In between, the petitioner again made repeat representation to the respondent No.3 which was duly replied by the respondent that such correction cannot be permitted as correction as per the guidelines can only be done within three years from the date of declaration of result.
6. Subsequently, the petitioner moved the High Court vide Writ Petition (S) No.139 of 2016 which came up for hearing on 12.01.2017, but the petitioner withdrew the same with liberty to approach the respondents for ventilating his grievance. It is then that the petitioner again made a representation to the authorities and the authorities vide letter dated 10.03.2017 rejected the same on the ground on which it was earlier rejected holding that the application for correction of date of birth is

permissible only in the event if such application is made within three years from the date of publication of result. It is this order and the previous order dated 30.06.2016 which has been assailed by the petitioner in the instant petition.

7. Counsel for the petitioner relied upon the decision of MP High Court in case of Board of Secondary Education Vs. Priyanka Shrivastava, 2012 (4) MPJR 107, decided on 18.09.2012.
8. The contention of the petitioner is that it is only recently that he came to know the actual date of birth and immediately he contacted the Primary School where he was initially admitted and sought for duplicate mark sheet of 5<sup>th</sup> standard and also obtained copy of Dakhil Kharij register from the said primary School where his date of birth is mentioned as 01.07.1959. According to him, since he came to know about error in his date of birth only in the year, 2014, thereafter, he has immediately made efforts for getting the correction done. Therefore, it cannot be said to be a case which suffers from delay and laches.
9. Counsel for the respondent vehemently opposes the petition on the ground of delay and laches and also the fact that since the petitioner all through his life for almost about 40 years after clearing the Higher Secondary Examination did not sought for correction so far as his date of birth is concerned. That he also undertook his higher education and also his service career accepting his date of birth to be 05.02.1957 which was the date of birth reflected in his higher secondary certificate, the respondents have rightly rejected the claim

of the petitioner seeking for correction on the ground of same being impermissible under the guidelines framed pertaining to change of date of birth.

10. If we consider the facts of the present case, what would reflect is that the petitioner did his Higher Secondary Examination in August, 1974. Subsequently, he also got is admission in the medical education where too he mentioned his date of birth to be 05.02.1957 and after completion of medical education he got employment with the State Govt. where his date of birth was accepted to be that which was mentioned in the higher secondary certificate i.e. 05.02.1957. His initial appointment was of the year, 1990. However, it is only in the year, 2014 that for the first time it is alleged that he came to know erroneous date of birth and since then he is making efforts for getting his date of birth to be corrected as 01.07.1959 instead of 05.02.1957.
11. So far as the rules and guidelines with respect to correction of date of birth is concerned, the Board of Secondary Education, Chhattisgarh, have vide correspondence dated 30.06.2016 in very categorical terms have intimated him that the guideline permits a request for change of date of birth to be made only within a period of three years from the date of publication of results of the Higher Secondary Examination. Beyond that, the authorities themselves would not entertain the application for correction of date of birth. In the instant case there is nothing which has been brought on record by which it could be believed that the petitioner for the first time came to know about the erroneous date of birth only in the year 2014.

12. The Supreme Court in case of Govt. of Andhra Pradesh Vs. M.Hayagreev Sarma, 1990 (2) SCC 682, in a dispute pertaining to correction of date of birth has held as under:

“A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 was under consideration in this case by this Court. The date of birth of the employee was recorded in the service book on the basis of school certificate at the time of entry into service. The employee's application for alteration in the date of birth so recorded was finally rejected prior to coming into force of the rules. A subsequent claim was made by the employee for alteration after commencement of the rules. This Court held that the subsequent claim for alteration after the commencement of the rules even on the basis of the extracts of entry contained in births and deaths register maintained under Births, Deaths and Marriages Registration Act, 1886 was not open.”

13. It would be relevant at this juncture also to refer the judgment of Supreme Court in case of Union of India Vs. Harnam Singh, 1993 (2) SCC 162 wherein in similar sort of case, it has been held as under:

“.... 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.....”

14. What is also striking the conscious of this court is the fact that the document which have been relied upon by the petitioner seeking for correction of date of birth have all been obtained in the recent past i.e. much after 2014 and all these documents are also duplicate document which further creates as great element of doubt on the authenticity and validity of the documents and which appears to have

been got prepared only for the purpose of taking advantage in his service career.

15. In case of Secretary & Commissioner, Home Department Vs. R. Kirubakaran, 1994 Supp.(1) SCC 155, in paragraphs 7 & 9 dealing with the issue of correction of date of birth after a considerable period of entering into service, the Supreme Court has held as under :

“An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. 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 forever. According to us, this is an important 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 clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the Court 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 time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service book.

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.. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier. ....”

16. In the case of State of UP and Another Vs. Shiv Narain Upadhyaya, 2005 (6) SCC 49 in paragraphs 6 and 9 the Supreme Court has held as under:

“....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."

17. The Supreme Court again in case of Registrar General, High Court f Madras Vs. M. Manickam and Others, 2011(9) SCC 255, dealing with the same issue has held as under:

"30. There must be strong, cogent and reliable evidence in support of the contention that the date of birth entered in the service records or in the S.S.L.C. certificate was wrongly entered by a mistake."

18. In the light of the aforesaid judicial pronouncements, if we look into the facts of the present case, it would clearly reveal that the petitioner passed out Higher Secondary School Examination in the year, 1974. The mark sheet and certificate of this examination was also received in the year, 1974 itself. On the basis of the said mark sheet he undertook further studies including that of MBBS and in the said higher education certificate also the date of birth was clearly reflected as 05.02.1957 and it is the same date of birth which has been entered in his service book as well.
19. What is also pertinent to take note of is that the petitioner as on date is around 57 years of age that means he has put in almost more than four decades after completing his higher secondary examination and for all this period he was not aware of his date of actual birth. What is also relevant is the fact that neither the parents nor the petitioner for all these four decades took care of verifying or questioning the date of birth of the petitioner. It is hard to believe that neither the parents nor the petitioner at any point of time must not have discussed on the

erroneous date of birth if at all if there would had been an error while recoding date of birth. What is also pertinent to take note of is that on an earlier occasion the petitioner had filed a writ petition but without getting an adjudication, the petitioner himself withdrew the said writ petition and now has filed a fresh petition again for the same relief.

20. Before parting with the matter, it would be trite at this juncture to quote a relevant portion of judgment dated 29.01.2001 rendered by Hon'ble Justice Shri Deepak Mishra, as he then was as a Judge of Madhya Pradesh High Court, in Writ Petition No.6293 of 2000, which reads as under :

“If man could have arrested 'Time', the greatest and invincible enemy of man, 'that old common arbitrator' and make it his slave the history of man-kind would have been different. It has been said even when almighty descends of earth in the shape of man, is governed by Rules of time. He who does not act within the framework of time loses not only the gifts of nature but also privileges bestowed by man made law. Delay and laches do always create impediment for obtaining the benefit ordinarily permissible in law because the law helps them who are vigilant to knock at the door of justice within time stipulated.”

21. For all the aforesaid reasons, this court is of the opinion that no strong case has been made out for issuance of any writ to the respondents as regards correction of date of birth in the higher secondary mark sheet of the petitioner.
22. In view of the above, the petition being devoid of merit is liable to be and is hereby dismissed.

Sd/-  
(P. Sam Koshy)  
**Judge**