

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

CWP No. 11011 of 2000 (O&M)

Date of Decision: 09.05.2017

***MANAGING COMMITTEE, GURU NANAK KHALSA COLLEGE,
SULTANPUR LODHI, DISTRICT KAPURTHALA AND ANOTHER.***

... Petitioners

V/s.

***THE PRESIDING OFFICER, STATE OF COLLEGE TRIBUNAL,
PUNJAB, CHANDIGARH AND OTHERS.***

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sameer Sachdeva, Advocate,
for the petitioners.

Mr. R.S. Pathania, DAG, Punjab,
for respondent No. 1 and 3.

Mr. S.M. Sharma, Advocate,
for respondent No. 2.

Mr. Namit Kumar, Advocate,
for respondent No. 4.

KULDIP SINGH, J. (Oral)

The petitioner-Managing Committee, Guru Nanak Khalsa College, Sultanpur Lodhi, District Kapurthala has moved this Court for issuance of writ of Certiorari for quashing of order dated 02.06.2000 (*Annexure P-12*) passed by the Presiding Officer, State College Tribunal, Punjab, Chandigarh whereby an appeal filed by the Bachan Singh-respondent No. 2 (Since deceased and now represented by his LRs) was allowed and the order of retirement of Bachan Singh-respondent No. 2, treating his date of birth as 07.09.1935, was set aside and it was held that the date of birth of Bachan Singh was 02.01.1943. Accordingly, he was also allowed the consequential benefits thereof.

The facts which are required to be noticed for the purpose of disposal of the present petition are that Bachan Singh-respondent No. 2 (Since deceased and now represented by his LRs) was appointed as Chowkidar by the petitioner-College on 01.09.1978 vide appointment order dated 31.08.1978 (*Annexure P-1*). It is stated that on the query raised by the Director, Public Instructions (College) Punjab, Bachan Singh-respondent No. 2 had filed an affidavit dated 16.09.1983 (*Annexure P-2*) wherein it was stated that his date of birth is 07.09.1935. The same was accordingly recorded in his service book. Accordingly, on 30.09.1995 he retired from service, on attaining the age of superannuation, vide order dated 07.10.1995 (*Annexure P-3*). Thereafter, he filed a Civil Suit before the Additional Senior Sub Judge, Sultanpur Lodhi for declaration to the effect that the order of retirement, retiring him w.e.f. 30.09.1995, is illegal and liable to be set aside as his date of birth is 02.01.1943. The said suit was later on withdrawn. However, he moved to this Court by way of Civil Revision bearing No. **CR No. 992 of 1997** for modifying the said order of Civil Court so as to withdraw the suit to pursue the remedy before the DPI (Colleges) Punjab. Thereafter, this Court vide order dated 10.09.1997 (*Annexure P-5*), has modified the order passed by the Additional Senior Sub Judge, Sultanpur Lodhi and ordered that the suit is dismissed as withdrawn with liberty to the petitioner (Bachan Singh) to pursue the remedy before the authority under the Punjab Affiliated Colleges (Security of Service) Act, 1974 (*hereinafter referred as "Act of 1974"*) in accordance with law. Accordingly, Bachan Singh-respondent No. 2 has filed a representation before the DPI (Colleges) Punjab which was dismissed vide order dated 25.08.1998 (*Annexure P-6*). Aggrieved by the said order, the Bachan Singh-respondent

No. 2 has moved to the then Colleges Tribunal, Punjab by way of an appeal in which the impugned order dated 02.06.2000 (*Annexure P-12*) was passed.

In the written statement, The Managing Committee, Nankana Sahib Khalsa High School, Sultanpur Lodhi, Kapurthala-respondent No. 4 has stated that in the affidavit submitted on 02.01.1997, Bachan Singh has given his date of birth as 02.01.1943. The Management Committee of School and that of the College is different.

Respondent No. 2-Bachan Singh in his written statement has taken the plea that earlier an affidavit dated 02.01.1971 regarding his date of birth, filed before the respondent No. 4 school has given his correct date of birth as 02.01.1943. It was stated that the order was correctly passed by the Colleges Tribunal, Punjab.

I have heard the learned counsel for both the parties and have carefully gone through the case file.

From the arguments addressed by all the counsel, it comes out that the petitioner was previously working in Nankana Sahib Khalsa High School, Sultanpur Lodhi, Kapurthala-respondent No. 4 where he has stated to be given his date of birth as 02.01.1943. However, his appointment as Chowkidar vide order 31.08.1978 (*Annexure P-1*) in Guru Nanak Khalsa College, Sultanpur Lodhi was a fresh appointment. When the petitioner was asked to file an affidavit regarding his date of birth, he filed an affidavit on 16.09.1983 stating that his date of birth is 07.09.1935. Therefore, the same was recorded in his service book accordingly. The said affidavit was obtained after the objection raised by the DPI (Colleges) Punjab, to supply the date of birth. It is not the case of the respondent No. 2 that the date of birth was obtained under pressure

and coercion. Bachan Singh-respondent No. 2 continued to serve the petitioner-College without any objection about date of birth entered in the service book/records until he retired from service w.e.f. 30.09.1995 on attaining the age of superannuation i.e 60 years. Thereafter, he moved to the Civil Court for challenging the order of his retirement. After availing the remedy before the Civil Court and this Court, he filed a representation before the DPI (Colleges) Punjab, which is an authority under the Act of 1974 that his retirement order is illegal and the same was dismissed. Therefore, there is a controversy regarding the date of birth of Bachan Singh- respondent No. 2.

First of all, the question would arise as to whether the date of birth of the petitioner is 02.01.1943, as claimed by him and has been given in the affidavit before the respondent No. 4-School on 02.01.1971 before joining the petitioner-College or it is 07.09.1935 as given to the petitioner-College vide affidavit dated 16.09.1983.

It comes out that during the service the petitioner did not object to the date of birth recorded in his service book. It was only after he was superannuated on the basis of date of birth mentioned in the service record that he raised hue and cry. Therefore, the interest of justice requires that after the employees is retired on the basis of the date of birth mentioned by him at the time of joining of the service, the same should not be altered after the date of superannuation, on the ground that his date of birth is different than mentioned by him at the time of appointment. The principle of estoppel will apply against the employee who obtained the service on the basis of representing a particular date of birth and then on superannuation claim a different date of birth. Therefore, the College was justified in superannuating the respondent No. 2-

Bachan Singh on the basis of date of birth as entered in the service record. The said order is not punitive in nature.

The next question would arise as to how date of birth of Bachan Singh-respondent No. 2 is to be established. Whether the date of birth could be established before the Colleges Tribunal, Punjab or before the DPI (Colleges) Punjab, as sought to be done in the present case or it should have been established by way of regular civil suit before the Civil Court?

It comes out that in the present case, Bachan Singh-respondent No. 2 had approached the Civil Court claiming that his date of birth is 02.01.1943 and not 07.09.1935. He had withdrawn the said Civil Suit.

The Colleges Tribunal, Punjab was established under the Act of 1974 wherein under Section 4, the Colleges Tribunal, Punjab, has the jurisdiction only to entertain the appeals against the orders of dismissal or removal. The impugned order was passed on 02.06.2000 (*Annexure P-12*) when the said earlier Act was in operation. It is to be added here that w.e.f. 15.02.2008, some amendments were made in the said Act and the Colleges Tribunal, Punjab was substituted with the Education Tribunal and was empowered to decide some disputes between the employees and the Management as given in Section 7-A of the said act. However, the case of the petitioner is governed by the old Act. Therefore, in these circumstances, the Colleges Tribunal, Punjab did not have any power to determine the date of birth of the employees of the College and then record the findings that the order of superannuation is illegal. Accordingly, the impugned order dated 02.06.2000 (*Annexure P-12*) passed by the Presiding Officer, State Colleges

Tribunal, Punjab is without jurisdiction and against the provisions of the Act of 1974 and is liable to be quashed.

In view of the matter and for the reasons recorded above, the present petition is allowed and the impugned order dated 02.06.2000 (*Annexure P-12*) passed by the Presiding Officer, State Colleges Tribunal, Punjab is hereby quashed.

May 9, 2017
Suresh Kumar

(KULDIP SINGH)
JUDGE

<i>Whether speaking / reasoned</i>	:	✓ Yes	/	No
<i>Whether Reportable</i>	:	✓ Yes	/	No