

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13636 of 2017
Date of decision:13.07.2017

Sugan Chand

....Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.M.S.Rana, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

Petitioner challenges the order dated 22.02.2017 (Annexure P-7) whereby his request for correction in his date of birth in the department records/service book, as 15.10.1959 instead of 06.06.1959, has been declined by the respondents. Resultantly, the request for extension in service from 01.07.2017 to 31.10.2017 has been rejected.

It is the case of the petitioner that he had joined service on 18.11.1982 and was working as a Head Clerk and his date of birth was recorded, as such, of 06.06.1959, on the basis of the relevant entries in the matriculation certificate. In December, 2016, he had come to know that his actual date of birth was 15.10.1959 and he had got issued his date of birth certificate from the Registrar (Births & Deaths) Sonapat (Annexure P-1). He resultantly, filed a representation for correction of his date of birth on 22.12.2016 (Annexure P-2). Resultantly, explanation was called as to why he had not enclosed the said certificate at that point of time while joining service. In his reply dated 30.12.2016 (Annexure P-3), his explanation was that he was not having knowledge of the difference of 4 months in his date of birth, which he came to know, thereafter.

Resultantly, his case was forwarded to the Registrar, Cooperative

Societies-respondent No.2, which has now passed the rejection order, placing reliance upon the Punjab Financial Rules Volume-I (Haryana State), relevant portion of which reads as under:

“1. [In regard to the date of birth a declaration of age made at the time of, or for the purpose of entry into Government Service, shall as against the Government employee in question, be deemed to be conclusive unless he applied for correction of his age as recorded within two years from the date of his entry into Government service. No application submitted beyond the stipulated period of two years for change in date of birth will be entertained, wherever the application for correction of his age is submitted by the employee within a period of two years from the date of his entry into Government service, the same would be considered by the Government in consultation with the Chief Secretary to Government of Haryana. Government however, reserves the right to make a correction in the recorded age of Government employee at any time against the interest of that Government employee when it is satisfied that the age recorded in his service book or in the history of services of a Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage there from.]”

Counsel has relied upon a Division Bench judgment in *Dimpy Sharma Vs. State of Punjab 2006 (3) SCT 345*, to submit that the limitation of 2 years is not to apply where the employee has got corrected his date of birth after 2 years of entry into service. It is, accordingly, contended that since the certificate issued by the Registrar (Births & Deaths), Sonapat (Annexure P-1) was only issued on 20.12.2016, therefore, the period of 2 years should be considered from that date.

The said argument is only to be noticed and rejected. The case cited above is where the petitioner was fighting with the Punjab School Education Board for the correction of the date of birth prior to her entry in service. She passed the matriculation examination in March, 1985 and the corrected certificate was issued on 18.01.2001. In the meantime, she had been appointed in August, 1994 as a Lecturer (Fine Arts). On the basis of the corrected certificate, she had approached the authorities and it was, in such circumstances, held that she was entitled for correction of her date of birth.

In the present case, it is not that the petitioner was disputing his matriculation certificate with the Education Department. He was well aware when he joined service in the year 1982 and could have got issued his birth certificate on the basis of which he now seeks extension in service and change of date of birth in the service record. It has been time and again held by the Apex Court that the approach by the Government servants for change in the date of birth recorded in the service records, at the fag end of service, is not permissible. 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 **Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg (2010) 6 SCC 482**, the view was followed and the correction allowed by the Civil Courts and upheld by the High Court, was set aside by the Apex Court, by observing as under:

“15. By applying the ratio of the above noted judgments, we hold that the suit filed by respondent No.1 for correction of the date of birth recorded in his service book after twelve years of his joining the service was clearly misconceived and the trial Court committed a serious error by passing a decree in favour of respondent No.1 and the lower appellate Court and the High Court repeated the same error by refusing to set aside the decree passed by the trial Court. The learned lower appellate Court and the High Court also committed an error by relying upon the amendment made in the rule by notification dated 21.6.1994 which enabled the government servant to seek correction of date of birth within next two years. It is neither the pleaded case of respondent No.1 nor it was argued by the learned counsel appearing on his behalf

that the amendment made in 1994 was retrospective or that his client had applied for correction of date of birth after 21.6.1994. Rather, in response to the Court's query, the learned counsel candidly stated that his client had applied for correction of the date of birth recorded in the service book for the first and last time in 1985 after the University entertained and accepted his application for correction of his date of birth recorded in the matriculation certificate.”

In *State of Haryana Vs. Satish Kumar & another 2010 (4)*

RSJ 795, the Apex Court set aside the benefits granted by the Courts below, while considering the said Rule and held that belated claims are not to be entertained. The relevant part reads as under:

“14. As recorded above, it has been held time and again that the application for correction of date of birth is also to be looked into from the point of view of the concerned department and the employees engaged therein. The other employees have expectations of promotion based on seniority and suddenly if such change is permitted; it causes prejudice and disturbance in the working of the department. It is, therefore, quite correct for the State to insist that such application must be made within the time provided in the rules, say, two years, as in the present case.

15. It is also seen that such applications are made very often, almost at the end of the service of the employee or in any case, belatedly. Whatever may be the reason, the fact remains that in the present case, the application was made after some nine years of joining into service. Even assuming that first respondent came to know in June 2001 that there was an error in his date of birth entered in the matriculation certificate, as claimed by him, he took more than three years to issue the notice under Section 80 of the CPC and then to file the suit. Whether the suit was time barred or not, the claim was in any case belated. It has to be filed within the time provided or

within a reasonable time and it is not to be entertained merely on the basis of plausible material as held in Kirbukaran (supra). As observed by this Court in [State of UP vs. Shiv Narayan Upadhyaya](#)[2005 (6) SCC 49]”

In ***Ambika Kaul Vs. Central Board of Secondary Education & others 2015 (2) LAR 264***, it was held by the Division Bench that a person cannot be permitted to dispute his entry in the date of birth and that there is a 3 years period of limitation provided for getting the correction done in the date of birth in the matriculation certificate, after attaining majority and the rule of estoppel applies to a person once he has taken the benefit of the employment on the basis of the certificate issued by the educational institutions. Relevant observations read as under:

“38. On the basis of the judgments referred to above, it can be safely concluded that entry from the office of the Registrar Births and Deaths carries a presumption of correctness being maintained by a public office in discharge of the official duties. But even though the date of birth is recorded differently in the certificate of birth than in the matriculation certificate, the rule of estoppel will apply. No person will be entitled to dispute the same under the guise to correct the mistake in the entry of date of birth in the matriculation certificate. He has taken admission in the school on the basis of a given date of birth and qualified the same. It will be unreasonable to infer that the candidate or his parents, who admitted the child to the school, were not aware of the correct date of birth. The rule of estoppel debars the candidate or a person to dispute the date of birth given in the matriculation certificate if it is not in sync with the certificate issued by the Registrar of Births & Deaths.

39. The correction contemplated to be carried under By-law 69.2 is in respect of the clerical mistake. Clerical mistake is

not an entry of actual date of birth. Clerical mistake is that while recording the date of birth, by mistake, some digit of date of birth was wrongly recorded by oversight or inadvertently. It is only the correction of clerical mistake not requiring any intrinsic evidence to support such mistake, which is permissible under the said by-laws. Therefore, by-law 69.2 does not authorize any person to seek correction of date of birth as mentioned in the registers of births and deaths.

40. The other question which may arise is that the date of birth was given in the school records by the parents of a child when he was minor, therefore a minor on attaining the date of majority can dispute the date of birth given in the matriculation certificate.

41. Section 6 of the Limitation Act, gives a right to the person suffering from legal disabilities including a minor to assert his rights after the cessation of such disability. The right to seek correction in the actual date of birth on the basis of certificate issued by the Register, Births and Deaths, is not free from doubt after long years on the basis of rule of estoppel, but for the purposes of the present appeals, we will assume that a person has a legal right to seek correction of his date of birth on attaining the majority.

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.”

Accordingly, this Court is of the opinion that the above-said claim, at the belated stage, at the fag end of the service career, is without any basis. In such circumstances, finding no merit in the present writ petition, the same is, hereby, dismissed in limine.

13.07.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes