

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8983 of 2017

=====

Kamleshwar Prasad Singh Son of alte Teni Singh, Resident of Village-Kasina,
P.O. Gohpur, Gorkha, P.S. Gorkha, District-Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar
3. The Inspector General of Police, Muzaffarpur Division Muzaffarpur.
4. The Superintendent of Police, Muzaffarpur
5. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Saxena, Adv. Mr. Amrendra Kumar Singh, Adv.
For the Respondent/s	:	Mr. P.K. Verma- AAG3 Mr. Saroj Kumar Sharma, Adv.
For the BSEB	:	Mr. Gyan Shankar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 04-12-2018

Heard learned counsel for the parties.

In this case, the prayer has been made that the respondent authorities should be asked to make correction in the date of birth of the petitioner as he has wrongly been superannuated treating his date of birth as 17.3.1958 whereas, as per the age recorded in the Matriculation Certificate, his date of birth is 17.3.1960.

Such type of issue has been examined by this Court and the Hon'ble Apex Court on several occasions with regard to correction of the date of birth. Primarily, the Court has held that if the wrong date of birth has been entered into the service book, the



government servant is required to raise the objection at the earliest and if the government servant comes and challenge the wrong entry of date of birth at the fag end of his service career without proper explanation, he cannot be allowed to challenge the same. Numerous judgments are available and they are not required to be cited herein but, the facts of the present case are to be considered for arriving to the rightful conclusion of the present case. The petitioner was appointed on 3.7.1979, at the time of entry in service and the original service book has been produced by the State reflects that the date of birth has been recorded as 17.3.1958 in words and in figure both and there is no cutting and overwriting in that but, the petitioner has passed the Matriculation examination in the year 1980 and there the date of birth has been mentioned as 17.3.1960 which will not be of any assistance to the petitioner in view of the fact he has secured the matriculation qualification after entry in service. If the petitioner would have secured the qualification of Matriculation before his entry then the petitioner could have raised his grievance of wrong recording of the date of birth but, when the date of birth has already recorded in the service book, subsequent passing of the Matriculation cannot cut much ice and going on filing representation and coming after a long lapse of



time to this Court raising a grievance for correction of the date of birth cannot be entertained for redressal of his grievance.

Learned counsel for the State submits that if the petitioner is so sanguine about the incorrect date of birth and as per Rule 1041 (B) of the Bihar Police Manual, Rule 96 of Bihar Pension Rule itself stipulates no representation for correction of the date of birth shall be entertained after a period of ten years. So, in the present case, the writ application has been filed after much delay of about forty years and submits that the petitioner has filed objection is of no substance at all and placed reliance on the judgment passed by the Division Bench in LPA No. 562 of 2013 wherein the judgment of Hon'ble Apex Court in the case of State of Haryana Vs. Satish Kumar Mittal reported in (2010) 9 SCC 337 has been cited, 14, 15, 17 and 18 being relevant are being quoted herein below:-

“14. The import of such a provision has been clarified by this court from time to time. Thus, in paragraph 7 of the Secretary and Commissioner, Home Department vs. R.Kirubakaran [1994 (Suppl. 1) SCC 155] this Court held as follows:

"An application for correction of the date of birth should not be dealt with by the 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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 a 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. Before any such direction is issued, 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 filed within the time, which can be held to be reasonable."

The Court has, thereafter stated that burden in such cases lies on the applicant and noted that in many



of such cases, the employees approach the Court on the eve of retirement. The Courts and Tribunals must be slow in granting any interim relief in such cases. The same principle has been reiterated in State of UP vs. Gulaichi [2003 (6) SCC 483]; State of Punjab vs. S C Chadha [2004 (3) SCC 394]; and State of Gujarat vs. Vali Mohmed Dosabhai Sindhi [2006 (6) SCC 537].

15. 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.

17. In the circumstances in our view, the High Court as well as the courts below clearly erred in entertaining the claim of Respondent No.1 for correction in his date of birth at a belated stage. In such a matter, we are concerned with the correction in the date of birth for the purpose of service record and not for any other purpose. The observation of this Court in para 7 of the Union of India vs. Harnam Singh [1993 (2) SCC 162] in this behalf are quite apt.

"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 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 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."

18. This being so, the courts should not have entertained the claim of the first respondent belatedly and beyond the period provided in the rules. The rules, in the instant case, all throughout required such application to be made within two years. Therefore, the courts clearly erred in finding fault with the appellant for allegedly applying the Notification of 13.8.2001 retrospectively which was not the case over here."

In view of the aforesaid fact and circumstances, this Court does not find any merit in the present writ application and the same is, accordingly, dismissed.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2018
Transmission Date	

