

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 4651 of 2007**

Motilal S/o Shri Jagannath, aged about 52 years, resident of Quarter No. 235, Khongapani, Ekta Nagar, District Koriya, PS Manendragarh (CG)

---- Petitioner**Versus**

1. South Eastern Coalfields Limited, through the Chairman cum Managing Director, Seepat Road, Bilaspur (CG)
3. Sub Area Manager, Jhagrakhand Sub Area, Hasdeo Area, PO West Jhagrakhan Colliery, District Koriya (CG)

---- Respondents

For Petitioner : Ms. Sharmila Singhai, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****18/07/2018**

The present writ petition has been filed challenging the order dated 21.04.2006 Annexure P-1 whereby a notice of retirement has been issued to the petitioner intimating him that he would stand superannuated from service of the respondents w.e.f. 30.06.2006.

2. Counsel for the petitioner refers to document Annexure P-2 which is the service excerpt prepared by the respondents in the year 1987 wherein the date of birth of the petitioner has been reflected as 01.06.1955. Counsel for the petitioner submits that since the service excerpt of 1987 shows the date of birth of the petitioner as 01.06.1955, he ought to have

continued in service till 31.05.2015 and therefore the impugned order is bad in law.

3. However, on perusal of the record it appears that except for the said document Annexure P-2, there does not appear to be any other document in record or in possession of the petitioner by which it could be established that the actual date of birth of the petitioner was 01.06.1955. The petitioner does not have either any school certificate or any other document issued from the local body or from the Registrar to substantiate this aspect. On the contrary, perusal of the documents which have been enclosed along with the return filed by the respondents it reflects that in the entire service record of the petitioner, the actual date of birth of the petitioner has been recorded as 01.07.1946 and all these documents have been duly signed and attested by the petitioner at regular intervals and at no point of time did the petitioner complain or raise an objection as regards his date of birth not being 01.07.1946 but is 01.06.1955. Moreover, the petitioner has filed the present writ petition on 01.08.2007 and as per Annexure P-1, the services of the petitioner stood superannuated on 30.06.2006. This itself shows that the writ petition has been filed after more than one year from the date of retirement of the petitioner which again raises a doubt as to why, if the petitioner was convinced that his date of birth has been erroneously entered in the record as 01.07.1946, he did not promptly challenge the notice of retirement or raised a dispute immediately.

4. So far as the law relating to the date of birth is concerned, the same is no longer res integra as it has been repeatedly held by the Supreme Court that the matter pertaining to the date of birth should not be entertained as a matter of routine particularly when the same is raised at

the fag end of service career or after retirement of an employee. The view of this Court stands fortified by the following decisions of the Hon'ble Supreme Court:

5. The Supreme Court in the case of Union of India Vs. Harnam Singh, (1993) 2 SCC 162, in paragraph-7 & 15 held as under:

“7.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 the 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 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.

15. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches

on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him.”

6. In the case of *Burn Standard Co. Ltd. and others Vs. Dinabandhu Majumdar and another*, (1995) 4 SCC 172, the Supreme Court in paragraph-10 held as under:

“10. Entertaining writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertaining of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under [Article 226](#) of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court.”

7. The Supreme Court in the case of *Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another* reported in (2010) 6 SCC 482, in paragraph-20 held as under:

“20. By applying the ratio of the abovenoted judgments, we hold that the suit filed by Respondent 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 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.”

8. In the case of State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others, (2010) 14 SCC 423, in paragraph-12 it has been held as under:

“12. Apart from the notification and the said instruction this Court in a series of cases has categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty-eight years.”

9. The Supreme Court again in the case of State of Madhya Pradesh & others Vs. Premlal Shrivastava, (2011) 9 SCC 664, in paragraph-7 & 8 held as under:

“7. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he 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. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh).”

10. Given the aforesaid authoritative principles of law laid down by the Hon'ble Supreme Court if we compare with the facts of the present case, it would reflect that the petitioner right from his appointment till Annexure P-1 was issued to him on 21.04.2006 has not challenged his date of birth at any point of time while in service. The petitioner filed the present writ petition also after more than one year from the date of his superannuation.

11. In the light of the aforesaid decisions of the Hon'ble Supreme Court, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned notice of retirement nor has he made a strong case for correction of his date of birth what was entered in the service record. The petition thus being devoid of merit deserves to be and is accordingly dismissed.

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