

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 6209 of 2011**

Kawalsai, S/o. Ramawatar, Aged about 58 years, Occupation Line Mistri, Grade-C, Katkona Colliery R/o. Qrt. No. 69, Katkona, Police Station Patna, District Korea Chhattisgarh

---- Petitioner**Versus**

1. Chief Manager Director S.E.C.L. Seepat Road, Bilaspur Chhattisgarh
2. Manager, Katkona Colliery, District Korea Chhattisgarh
3. Personal Officer, S.E.C.L. Katkona, District Korea Chhattisgarh

----Respondents

For Petitioner	:	Mr. Shakti Raj Sinha, Advocate
For Respondents	:	Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/09/2018**

1. The claim of the petitioner in the present writ petition is for a direction to the respondents to correct the date of birth of the petitioner to 30.12.1952 instead of 25.10.1951.
2. The fact of the case is that the petitioner was initially engaged by the respondents as a Line Mistri Grade-C way back in the year 1974. While the appointment was issued, the age of the petitioner was aged around 23 years.
3. The age of the petitioner was again subsequently verified by medical examination and it was found to be 35 years as on 25.10.1986. This again was reflected in the record maintained by the respondents. Accordingly, the petitioner was issued with a notice of retirement dated 29.06.2011 (Annexure P/2) intimating the petitioner that his services would stand retired w.e.f. 31.10.2011.

4. The present writ petition has been filed just a couple of weeks before the retirement i.e. on 14.10.2011 seeking for correction of the date of birth. According to the petitioner, his actual date of birth is 30.12.1952, for which he has along with the writ petition produced documents, like the transfer certificate from the school, the certificate from the Headmaster of the school verifying the Dakhil Kharij register and also subsequently, now in the year 2011 produced a copy of Dakhil Kharij register, wherein his date of birth has been mentioned to be 30.12.1952. What is relevant at this juncture to take note of the fact is that these documents which have been obtained by the petitioner i.e. the transfer certificate as also the school certificate so far as Dakhil Kharij register is concerned, were taken immediately before filing of the present writ petition i.e. on 03.10.2011, whereas the copy of the original Dakhil Kharij register has been obtained by the petitioner only on 18.07.2018. All these by itself reflects that the petitioner by himself did not have any cogent document available with the petitioner, by which the petitioner could conclusively establish his actual date of birth. If there is no actual document to establish the date of birth, the entries made in the service record maintained by the respondents would have to be accepted as the authentic date of birth. Moreover the date of birth has in between got verified by the medical expert and who has also affirmed the date of birth of the petitioner to be around 35 years in the year 1986. All these are as per the prevailing practice under the respondents.
5. What is also striking the mind of this Court is that though the petitioner was appointed in the year 1974 and he was retired from service on 31.10.2011 that means the petitioner had putting around more than 37

long years of service, the petitioner has not ever raised a dispute so far as his date of birth is concerned. It is only just a few days before the actual date of retirement as per the company's record that the present writ petition has been filed.

6. The law in this regard is by now well settled, where the Hon'ble Supreme Court as also by this Court in a series of decisions have categorically held that the dispute pertaining to date of birth should be raised immediately on coming into the employment or within a reasonable time from the date of coming into the service.
7. Perusal of the record shows that there are certain records available with the management, which based the date of birth of the petitioner to be 25.10.1951 and which has been accepted by the petitioner without any objection and having affixed his signature on these documents would establish the fact that the petitioner had the knowledge of the date of birth that was entered into the service record. In spite of having knowledge the petitioner never tried to take appropriate steps for correction of his date of birth till the notice of retirement was first issued to him.
8. So far as the law regarding the correction of date of birth is concerned, it has been by now decided in a catena of decisions. One of the relevant decisions in this regard is ***"State of Madhya Pradesh & Ors. v. Premal Shrivastava"* 2011 (9) SCC 664** dealing with an employee governed by similar service rules wherein in paragraphs No. 13 & 14 the Hon'ble Supreme Court has held as under:

"13. Rule 84 of the M.P. Financial Code, heavily relied upon by the respondent reads as under :

"Rule 84. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under Rule 85 should be recorded in the history of service; Service book or any other record that may be kept in respect of the Government servant's service under Government. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever."

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction.

Onus is on the employee concerned to prove such negligence.”

9. Given the aforesaid factual matrix of the case, as also the decisions of the Hon'ble Supreme Court quoted herein above, this Court does not find any strong case made out by the petitioner calling for a correction of his date of birth as has been maintained by the respondents.
10. The writ petition thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved