

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2538 of 2009**

Shiv Shankar Jha, S/o. Late J.L. Jha, Aged about 59 years, Field Assistant PWD, Survey Sub-Division, Raipur Chhattisgarh

---- Petitioner**Versus**

1. Engineer-in-Chief, PWD Shirpur Bhawan, Raipur, Chhattisgarh
2. Chief Engineer, PWD, Shirpur Bhawan Campus, Raipur Chhattisgarh
3. Superintendent Engineer, PWD, Shirpur Campus, Raipur Chhattisgarh
4. Executive Engineer, PWD Division 1, Raipur Chhattisgarh

----Respondents

For Petitioner	:	Mr. Soumya Rai, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/10/2018**

1. The challenge in the present writ petition is to the order Annexure P/1 dated 21.04.2009, wherein his claim for correction of date of birth has been rejected by the department.
2. The facts of the case is that the petitioner was appointed under the respondents as a Timekeeper on 05.11.1973. At the time of appointment, the petitioner had furnished his educational certificates, which depicted his date of birth to be 10.07.1949. On the basis of the said entry of date of birth in his service book, the petitioner stood retired on 31.07.2009.
3. Before his retirement, the petitioner had raised a claim for change of his date of birth on the basis of the information that he had collected from his schoolmates and friends and thereafter he obtained a birth certificate from the office of the Registrar (births and deaths), wherein his date of birth is depicted as 11.09.1950 i.e. Annexure P/4. It is based

on this that the petitioner had approached the authorities for correction of his date of birth, which has been rejected.

4. Perusal of the record would show that while obtaining employment with the respondents, the petitioner had produced the certificate issued by the Board of Secondary Education, Madhya Pradesh, wherein his date of birth has been specifically mentioned as 10.07.1949. It is the same date of birth which has also been reflected in the service book.
5. Another aspect which cannot be lost sight of is that the petitioner all these periods right from the time of his passing out from the school in the year 1968 up till the year 2009, never got any information nor did he try to verify whether the date of birth was actually 10.07.1949 or some other date. Even after obtaining the information so far as the date of birth being 11.09.1950, the petitioner does not seem to have made any efforts for getting the date of birth in the Higher Secondary certificate corrected.
6. It is settled position of law that so far as the authenticity of the date of birth is concerned, it would always be the Higher Secondary certificate which would be considered to be most authentic than any other documents. In the present case the date of birth mentioned in the Higher Secondary certificate as also in the service book is the same and the date of retirement also has been based accepting the same date of birth.
7. Moreover the present writ petition has been filed at the fag end of his career. Never before has the petitioner raised any grievance before any authorities, nor has he made attempt for getting the date of birth rectified before any authorities. This Court is of the opinion that no

substantial material has been brought on record calling for an interference with the decision of the State Government in rejecting the representation of the petitioner vide Annexure P/1 dated 21.04.2009.

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. Premlal 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. In view of the aforesaid legal position as it stands and also from the factual matrix which has been referred to in the preceding paragraphs, this Court is of the opinion that no strong case has been made out by the petitioner for issuance of any writ. The writ petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved