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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3010 of 2011**

Shanker Lal Banjare, age 58 years, S/o Jagat Banjare, R/o Gram
Post Jarod, Tahsil Simga, District Raipur, CG

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Public Works Department, DKS Bhawan, Raipur, Chhattisgarh
2. Executive Engineer, Public Works Department, Baloda Bazar Division, Raipur, Chhattisgarh
5. Sub Divisional Officer, Public Works Department, Sub Division Bhatapara, District Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Shri J. K. Gupta, Advocate
For Respondent/State	: Shri S. P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12.07.2018**

Challenge in the present writ petition is to the date of birth of the petitioner which has been maintained by the respondents by virtue of which the petitioner has been superannuated from service w.e.f. 31.03.2011.

2. According to the petitioner, his actual date of birth is 01.10.1953. If 01.10.53 is accepted as his date of birth, the petitioner would stand retired from service in the year 2015. Counsel for the petitioner relies upon Annexure P-2, a transfer certificate wherein the date of birth of the petitioner is reflected as 01.10.1953 based upon which he is seeking for

further continuation in service. The petitioner is also claiming for the monetary benefit for the period that has lapsed which he otherwise would have been entitled if his date of birth was accepted as 01.10.1953.

3. Perusal of the record would show that the petitioner at no point of time seems to have raised a dispute before the employer so far as his date of birth is concerned while in service neither has he produced the school leaving certificate before the employer at the time of appointment. The document which he had produced at the time of appointment is a certificate issued from the Sarpanch of Grampanchayat Jarod District Simga Raipur (at present under District Baloda Bazar). As per the certificate issued by the Sarpanch of the Gram Panchayat, the date of birth of the petitioner has been reflected as 24.03.1949 based upon which Annexure P-1 has been issued intimating the petitioner that he would stand retired w.e.f. 31.03.2011.

4. So far as the issue pertaining to the correction of date of birth is concerned, the law is by now well settled by a catena of decisions by the Supreme Court as well as by the High Court. Few prominent decisions of the Supreme Court in this regard are discussed hereinunder:

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. Entertainment by High Courts of 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 entertainment 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 16.03.2011 has not challenged his date of birth at any

point of time while in service. The petitioner filed the present writ petition after he was placed under superannuation w.e.f. 31.03.2011.

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 that was entered in the service book. The petition thus being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**