

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 2677 of 2012**

Premlata Tiwari, Aged about 55 years, D/o. Late Shri Lakhan Lal Tiwari, R/o. LIG-1, Dr. R.P. Nagar, Kosabadi (Phase-1), Korba, District Korba Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Its Secretary, Urban Administration and Development Department Raipur, District Raipur Chhattisgarh.
2. Municipal Corporation, Korba, through the Municipal Commissioner Saket Bhawan, Korba, District Korba Chhattisgarh

----Respondents

For Petitioner	:	Mr. Neeraj Pradhan, Advocate
For State	:	Ms. Sunita Jain, Panel Lawyer
For Respondent No.2	:	Mr. B.D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/08/2018**

1. The present is a date of birth dispute. The petitioner was working with the respondents as LDC, who was initially appointed with SADA Chirmiri in the year 1983 and was subsequently transferred to SADA Korba in the year 1984, which later on got merged with the Municipal Corporation, Korba.
2. As per the service records, the date of birth of the petitioner entered was 01.02.1954. The petitioner accepting the said date of birth continued to remain in employment all along till 2012 when he has for the first time raised a dispute that his date of birth has been erroneously entered in the service records and prayed for correcting the same as 03.07.1956 instead of 01.02.1954. The documents, which the petitioner is relying upon in support of his claim is the document exhibit P/3, which is a birth certificate and also exhibit P/10, which is a decision taken by the Government of India, Ministry

of Home Affairs dated 07.03.2007, wherein the Government of India at the fag end of the service carrier of a police officer had permitted correction of the date of birth.

3. Both these grounds, which the petitioner has raised or has relied upon may not have sufficient force for the simple reason that the birth certificate, which the petitioner is relying upon was itself a document which was obtained for the first time in the year 2011.
4. So far as, exhibit P/10 on which parity has been claimed by the petitioner may not come to the rescue of the petitioner for the reason that the case of the petitioner therein in Annexure P/10 was under entirely different factual matrix. There in the service records of the said person or the officer, documents and certificates were which he had prior to his coming into the employment itself depicting a particular date of birth, which he was claiming and also the Biodata which he has filled also had the same date of birth, whereas in the instant case the petitioner has not been able to show any such strong evidence or proof in his possession so far as correction of date of birth is concerned.
5. In the instant case, even the Board of Secondary Education certificate also so far as the petitioner is concerned, reflects the date of birth as 01.02.1954. There has been no effort made by the petitioner to get the date of birth in the Board's certificate corrected. The said certificate was issued as early as in 1977. 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.”

6. In view of all the aforesaid legal positions as has been laid down by the Hon'ble Supreme Court, this Court is of the firm view that the petitioner has not been able to make out a strong case calling for an interference with the date of birth which has been entered into in the service records of the respondents and the writ petition accordingly *being devoid of merits deserves to be and is accordingly dismissed.*

Sd/-
(P. Sam Koshy)
Judge