

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 867 of 2012**

Rajkumar Yadav S/o late Shri J. P. Yadav, aged about 58 years, R/o near Mission Hospital, Kedarpur, District Ambikapur (CG)

---- Petitioner**Versus**

1. The State of Chhattisgarh, through the Secretary, Forest Department, DKS Bhawan, Raipur (CG)
2. Principal, Chief Conservator of Forest, Government of Chhattisgarh, Raipur (CG)
3. Conservator of Forest, Forest Circle Jagdalpur, District Bastar (CG)
4. Divisional Forest Officer, Forest Division, Dantewada, District Dantewada (CG)

---- Respondents

For Petitioner	:	Shri Prateek Sharma, Advocate
For State	:	Ms. Astha Shukla, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06.09.2018**

The present petition is a dispute pertaining to the date of birth. The petitioner was appointed as Forester under the respondents on 08.07.1977. In due course of time, the petitioner got promoted from time to time and finally reached the post of Ranger vide order dated 30.12.2011. While entering service, the date of birth of the petitioner was recorded as 05.02.1952. According to the petitioner, much after having worked with the respondents he came to know that his date of birth has been wrongly

entered in the service record as 05.02.1952 whereas it ought to have been 02.03.1954 in stead. According to the petitioner, when he came to know about this discrepancy in his service record, he immediately on 30.12.2011 and again on 04.01.2012 made representations with the respondents for correction of his date of birth which was not acted upon and accepted by the respondents. That the petitioner was forced to retire from service w.e.f. 28.02.2012 whereas he ought to have been retired on 31.03.2014. As such the petitioner has been deprived of the benefit of two years of service and the consequences attached to that.

2. In support of his contention seeking for correction of date of birth, the petitioner has relied upon the School Admission Register (Dakhila Kharij Register) where the date of birth has been mentioned as 02.03.1954. Moreover, the petitioner relied upon the document of the respondents dated 03.02.2012 which is an order passed on the issue pertaining to the date of birth. In the said order the authorities found that so far as the school admission register and the primary school is concerned, the date of birth or the documents produced by the petitioner bore the date of birth to be 02.03.1954 whereas in the High School certificate so also the certificate issued by the Board of Secondary Education, MP and the Service Book maintained by the respondents all bear the date of birth to be 5.02.1952. According to the petitioner, since there is some material available in his possession to show that his date of birth was 02.03.1954 and these documents were of the period prior to the documents which bore the date of birth to be 05.02.1952, the former should have been relied upon by the respondents for the purpose of determining the date of superannuation. Thus, counsel for the petitioner prayed for an appropriate order directing the

respondents.

3. From the contents of the writ petition what clearly reflects is the fact that the most important document which is considered for correction of date of birth is the certificate issued by the Board of Secondary Education. In the instant case, the said certificate issued in favour of the petitioner reflects the date of birth as 05.02.1952. The High School Register also bore the same date of birth which is reflected in the certificate issued by the Board of Secondary Education. Record shows that the said certificate issued by the Board of Secondary Education was somewhere in the year 1973. From 1973 to 1977 i.e. the time the petitioner was appointed, the petitioner never took any step for correction of his date of birth in the School Register or the certificate issued by the Board of Secondary Education. Further it reveals that right from the date of initial appointment in July, 1977 till December 2011 i.e. for a period of 34 years, the petitioner never had any grievance so far as the date of birth is concerned. The petitioner was to retire, as per the service record, on 28.02.2012 and barely two months before the date of retirement the petitioner makes a representation or raises a dispute so far as his date of birth is concerned. Moreover, even at this stage, the petitioner has not raised nor has he made any effort seeking for correction of his date of birth in his certificate issued by the Board of Secondary Education.

4. Given the said facts, it clearly amounts to be a case where the dispute of date of birth raised by the petitioner for the first time at the fag end of his career. This issue is one which has been not once but repeatedly deprecated by the Supreme Court as also by the High Courts. The view of this Court stands fortified from the decisions of the Supreme

Court, few of which are referred to hereinunder:

The Supreme Court in the case of Union of India Vs. Harnam Singh reported in (1993) 2 SCC 162 in paragraph-7 & 15 has 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.”

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.”

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.”

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.”

The Supreme Court again in the case of State of Madhya Pradesh & others Vs. Prem Lal Shrivastava, (2011) 9 SCC 664, in paragraphs – 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).”

5. In view of the aforesaid legal position and the factual matrix narrated in the preceding paragraphs, the writ petition being totally devoid of merits deserves to be and is accordingly dismissed.

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