

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1712 of 2018****Reserved on 11/05/2018****Delivered on 29/06/2018**

M. K. Agrawal S/o Lt. Shri Ram Murti Agrawal, aged about 61 years, presently working as Executive Engineer, Division 2, Chhattisgarh State Industrial Development Corporation Limited, Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Department of Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The General Manager, Chhattisgarh State Industrial Development Corporation Limited, Raipur, Chhattisgarh
3. The Managing Director, Chhattisgarh State Industrial Development Corporation Limited, Raipur, Chhattisgarh
4. The Executive Director, Chhattisgarh State Industrial Development Corporation Limited, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate
For Respondents 2 to 4	:	Shri Anumeh Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV ORDER**

The challenge in this writ petition is to the order dated 01.12.2017 Annexure P-1 whereby the petitioner has been intimated of his retirement to be 31.03.2018 and also to the order dated 09.01.2018 Annexure P-2 whereby the petitioner has been called upon to produce original certificate of Higher Secondary Education with which the actual date of birth of the

petitioner could be determined as there appears to be discrepancy in the date of birth entered in the service book and the date of birth which is reflected in the photocopy of the mark sheet which he had submitted.

2. The facts of the case are that the petitioner was initially appointed as an Assistant Engineer in the erstwhile Madhya Pradesh Industrial Center Development Corporation in 1982. At the time of appointment, in the service record of the petitioner, his date of birth was mentioned as 17.03.1957 and the said date of birth continued to remain in the service record. However, at a later stage, it is alleged that the respondents corrected the service record and changed it to 17.03.1956 on the basis of which Annexure P-1 has been passed intimating the petitioner of his retirement from service w.e.f. 31.03.2018. Subsequently, a notice Annexure P-2 was also issued to the petitioner intimating that since there appears some discrepancy in his date of birth made in the service book when compared to the photocopy of higher secondary education certificate available with the respondents, he was directed to produce the original higher secondary education certificate to determine the age.

3. It is these two orders i.e. Annexures P-1 & P-2 which are under challenge in the present writ petition.

4. Contention of the counsel for the petitioner is that the two impugned orders issued by the respondents are bad in law, arbitrary and are not sustainable. According to the petitioner, it is an admitted fact that in the service record, his date of birth has been reflected as 17.03.1957 on the basis of which he would retire from service only on 31.03.2019 whereas the respondents have unilaterally of their own corrected his date of birth on assumption and presumption treating it to be 17.03.1956 and have issued the orders which is impermissible under service jurisprudence. According to

the counsel for the petitioner, before the alleged correction in service book, no opportunity of hearing was granted to the petitioner neither was he called upon to give an explanation and if at all if there is an enquiry, that has been conducted at the back of the petitioner. Thus, for all these reasons, the correction of the date of birth of the petitioner is not sustainable and the same deserves to be set aside and the petitioner may be permitted to continue in service as per the original entry made in his service record.

5. Counsel for the petitioner referred to the periodical gradation list that was prepared and maintained in the office of the respondents wherein also the date of birth of the petitioner was maintained as 17.03.1957. Counsel for the petitioner referred to the two impugned orders and challenged the same holding it to be not sustainable for the reason that Annexure P-1 is a document whereby the respondents have already issued an order intimating the petitioner to retire from service w.e.f. 31.03.2018 and Annexure P-2 is a document which seems to be a subsequent enquiry which has been proposed by the respondents to determine the actual date of birth of the petitioner. According to him, this issuance of Annexure P-2 after issuance of Annexure P-1 itself is a sufficient indication of the fact that the respondents themselves were not sure what was the actual date of birth of the petitioner and therefore, on this ground also the petitioner was entitled to serve the respondents till 31.03.2019 as per the date of birth which was originally maintained in the service records of the petitioner. Counsel for the petitioner further submits that the issuance of Annexure P-2 dated 09.01.2018 is nothing but an empty formality which the respondents intend to complete in the garb of complying with the requirement under Rule 84-85 of Part-I of the CG finance Code. For all these reasons, counsel for petitioner prayed for quashment of Annexures P1 & P-2.

6. Per contra, counsel for the respondent Corporation i.e. the employer of the petitioner opposing the writ petition submitted that it is a case where there is an apparent discrepancy in the entry that has been made in the service record and therefore, the petitioner had been called upon to produce the original documents to prove his date of birth that was the original higher secondary education certificate which would have been an authentic document to determine the date of birth. According to the respondents, the petitioner in spite of proper service of notice has failed to provide relevant authentic document with which the date of birth could be confirmed and ascertained. Each time the petitioner has only responded by submitting his certificate Annexure P-5 wherein his date of birth is reflected as 17.03.1956 which according to the petitioner is a mistake/clerical error on the part of the Board of Secondary Education, Madhya Pradesh, Bhopal while issuing the higher secondary education certificate. According to the respondents, the petitioner for the first time as early as on 07.04.1998 was issued with a notice by the erstwhile MP Industrial Center Development Corporation (Raipur) to produce the original records of his higher secondary education and diploma which were not the part of his service record. A reminder to this was again issued on 28.04.1998. Again on 03.08.1998 and on 17.09.1998 similar letters were issued by the Management to the petitioner and all of which went unanswered. Counsel for the respondents contended that on 04.08.1999 in respect of a gradation list which was prepared by the Department showing the seniority as on 01.04.1999, objections were called upon from the persons whose name reflected in the gradation list. In the said gradation list also, the date of birth of the petitioner was reflected as 17.03.1956 yet the petitioner at that point of time did not produce any authentic document nor produce any original certificate in respect of any

discrepancy so far as his date of birth is concerned. It was further contended by the counsel for the respondents that even after Annexure P-2 dated 09.01.2018 which was issued to the petitioner, he has not produced any original document to substantiate his correct date of birth. On the contrary, the petitioner has given a reply to the said letter intimating the Department that the Almirah in which his original records are kept including the higher secondary education certificate is locked and the key is with his son who has gone out of station and that he would produce the original certificate on 23rd of January, 2018. Counsel for the respondents contended that when the petitioner was not cooperating with the process for determining his actual date of birth, the Department sent a letter to the Principal, S. S. Kalibadi Higher Secondary School, Raipur with request to ascertain whether in the photocopy of the certificate which the petitioner had submitted with the Department his date of birth has been mentioned as 17.03.1957 is correct or not. They have received a letter in reply from the Principal on 16.02.2018 wherein the principal has intimated that as per the School record maintained at S. S. Kalibadi Higher Secondary School, Raipur, the date of birth of the petitioner both in figure as well as in words has been reflected as 17.03.1956. Thus, the actual date of birth of the petitioner stands established and proved conclusively to be 17.03.1956 and therefore, notice of retirement to the petitioner by the respondents cannot be found fault with and the petition on this ground also deserves to be rejected.

7. Having heard the contentions put forth on either side and on perusal of the record what is primarily to be considered is whether the petitioner in his possession has got any authentic document with which he could establish that his date of birth is 17.03.1957 and not 17.03.1956. In this regard when we consider the document which the petitioner had submitted at the time of

his employment i.e. higher secondary education certificate which the petitioner has also filed along with this writ petition as Annexure P-5, the certificate reflects his date of birth as 17.03.1956. This according to the petitioner was a clerical error on the part of the Board of Secondary Education, Madhya Pradesh, Bhopal so far as his date of birth is concerned.

8. The petitioner has not been able to give a convincing justification or an explanation as to the steps that he had taken immediately when he realized that his date of birth in the Higher Secondary Education Certificate has been wrongly mentioned. From the additional return which has been filed by the respondents it reflects that the petitioner had submitted his personal details for issuance of UAN card necessary for the PF employee wherein also his date of birth is reflected as 17.03.1956. Likewise, the Aadhaar card which the petitioner had produced before the Department also reflected his year of birth as 1956 and it is only recently that the petitioner has got his date of birth corrected in the Aadhaar Card and has now produced a card showing his date of Birth to be 17.03.1957. Moreover, till date the petitioner has not got his higher secondary education certificate corrected so far as his date of birth is concerned and it still reflects the date of birth as 17.03.1956.

9. What is also pertinent to take note of the fact is that the petitioner in response to Annexure P-2 has written a letter to the respondents that he has his original certificate and it is in the Almirah of the petitioner's residence and which he shall produce to the Department on 23rd of January as the Almirah was locked and the key was with his son. It appears that while the service records were being entered, without verifying the documents the entry 17.03.1957 was entered as the date of birth of the petitioner. However, since there was a mismatch between the entry and the photocopy of higher secondary education certificate, the respondents have been requesting the

petitioner since 1998 for producing original certificate with which the date of birth could be ascertained which the petitioner has been reluctant to produce for whatsoever reason. Moreover, what is also pertinent is that all the documents which are being relied upon by the petitioner for justifying his date of birth to be 17.03.1957 have been obtained recently like the birth certificate which the petitioner has obtained has been issued in November, 2017. The primary school certificate relied upon by the petitioner again is a duplicate certificate of no bearing of the date on which it was issued. The petitioner even during the course of the hearing before this Court also has not been able produce the original certificate of Higher Secondary Education to determine the date of birth. What is all the more important is the fact that even on a query being made from the school where the petitioner undertook his education, a report i.e. Annexure R-2/8 has been received from the Principal wherein the principle has certified that the date of birth of the petitioner was 17.03.1956. Further the gradation list of the petitioner as it stood on 01.04.1999 and again as on 01.04.2012 reflected his date of birth to be 17.03.1956. Though objections were called, the petitioner never tried to make correction of his date of birth in gradation list.

10. So far as the judgments which have been relied upon by the counsel for the petitioner i.e. AIR 1967 SC 1269 (State of Orissa v. Dr. (Miss) Binapani Dei and others, (1981) 3 SCC 544 (Sarjoo Prasad v. General Manager and another), (2000) 10 SCC 284 (Hari Singh v. State of Bihar and others and (2005) 4 MPLJ 414 (Ishaque Ali v. Sub Area Manager, WCL and others) in respect of his contention of the opportunity of hearing being not granted and correction being made at the back of the petitioner are concerned, the said judgments have been decided under entirely different factual back drop and factual matrix and the principle of law laid down in the

aforesaid referred judgments cannot be applied in the instant case for the reason that the record shows that the petitioner has been right since 1998 asked to produce original higher secondary education certificate which the petitioner has till date not produced. Further it is not a case where the petitioner was not called upon or given an opportunity to explain rather he has been intimated time and again in respect of the discrepancy in his date of birth. It was also informed to him that his higher secondary education certificate reveals that his date of birth is 17.03.1956 and not 17.03.1957 as is reflected in the service record. Moreover, the periodical gradation list also showed that his date of birth to be 17.03.1956 to which the petitioner has not objected at any point of time whereas objections were invited when the provisional list was published. So far as Rule 84 of the Finance Code is concerned, the basis for the date of birth to be recorded in service record should be matriculation certificate which in the instant case reflects the date of birth of the petitioner as 17.03.1956.

11. It is a well settled position of law by now that any correction to the date of birth or for that matter the determination of date of birth, it is primarily the date of birth which is entered in the higher secondary education certificate which is considered to be the most authentic document and as per the higher secondary education certificate of the petitioner, his date of birth is 17.03.1956.

12. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioner for treating his date of birth to be 17.03.1957 in stead of 17.03.1956. The writ petition being devoid of merits deserves to be and is accordingly dismissed. The petitioner stands retired from service w.e.f. 31.03.2018 and all his retiral dues and other benefits would be calculated taking his date of retirement to be 31.03.2018. However,

whatever monetary benefits he has obtained by virtue of the interim order passed by this Court, the same would not be recovered from the petitioner.

**Sd/-
(P. Sam Koshy)
JUDGE**

Bhola