

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.2272 OF 2013**

D.P. Tripathi, S/o late Onkar Prasad Tripathi, aged 72 years, R/o Bangali Para Gali No.4, Sarkanda, PS Sarkanda, Tah. And District Bilaspur (CG).

...Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Health and Family Welfare Department, Mantralaya, Bhawan, New Raipur, PS Rakhi, Raipur (CG).
2. Director, Health Services Department, Mahanadi Bhawan, New Raipur, PS Rakhi, District Raipur (CG).
3. Joint Director, Health Services Bilaspur Division, PS Civil Line, Tahsil and District Bilaspur (CG).

... Respondent(s)

For Petitioner	:	Shri Raj Kumar Gupta, Advocate.
For Respondent-State	:	Shri SP Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23.10.2018

1. Challenge in this petition is to the three orders dated 08.07.2013 (Annexure P/1), dated 10.07.1994 (Annexure P/2) and order dated 28.09.1994 (Annexure P/3).
2. The facts of the case is that, the petitioner was initially appointed as Lower Division Clerk (in short, LDC) under the respondents way back on 14.07.1961. In due course of time, he got promoted to the post of Senior Accountant on 24.02.1988. As per service records, his date of birth reflected was 01.01.1941 and on the basis of which he would have retired on 31.12.1998 accepting the age of retirement to be 58 years as it then was.
3. The petitioner meanwhile was issued with charge sheet on 13.12.1989 alleging that the petitioner has unauthorizedly obtained the service records and have tampered the date of birth in the

service book and have corrected the date of birth of 01.01.1941 to be 01.01.1943 and as such he tried to get extension of two years more in service. Departmental Enquiry was also conducted and the disciplinary authority vide order dated 10.07.1994 (Annexure P/2) dismissed the petitioner from service. Subsequently, a corrigendum was issued on 28.09.1994 whereby it was clarified that dismissal shall be read as 10.08.1994 instead of 10.07.1994.

4. The petitioner had challenged the said order of dismissal before the State Administrative Tribunal (SAT) vide Original Application No.2318 of 1994. Subsequent to abolition of SAT, the said application stood transferred to the High Court and was registered as WPS No.985 of 2005. During the course of hearing, it was revealed that the petitioner's appeal against the order of punishment was already pending consideration before the appellate authority, therefore, the High Court disposed of the writ petition on 04.02.2013 directing the appellate authority to decide the appeal of the petitioner in accordance to its merit. Thereafter, the appellate authority has vide order dated 08.07.2013 (Annexure P/1) decided the appeal and has rejected the same affirming the order of the disciplinary authority.
5. The contention of the petitioner challenging the impugned order is that the charges which have been levelled against the petitioner is reflected from Annexure P/8 dated 13.12.1989 whereby the allegation is that the petitioner has tampered with the service book and had by way of overwriting corrected his date of birth from 01.01.1941 to 01.01.1943. Further charges was that, to substantiate

the correction of date of birth the petitioner has produced fraud and fraudulent fake document to prove his date of birth. Further contention of the petitioner is that so far as establishing the said charge against the petitioner is concerned, there has been no evidence whatsoever was led by the department before the inquiry officer to prove the charges against the petitioner that of tampering the records. He had only produced transfer certificate which was in his possession to establish his date of birth where his date of birth is reflected as 01.01.1943. Since the department has miserably failed to prove the charge No.1 of tampering part, the petitioner could not have been inflicted with the capital punishment of dismissal from service.

6. So far as charge No.2 is concerned, the enquiry which has been conducted by the respondents was in respect of a different Roll number in as much as his actual Roll number was 22587 as would be evident from Annexures P/6 and P/7 which are the certificates issued from the Board of Secondary Education, Madhya Pradesh in respect of the High School Examination passed by the petitioner. On the contrary, the respondents have got Roll number 2587 examined from the board of Secondary Education. The document relied upon by the respondents in punishing the petitioner Annexure P/5, dated 22.07.1988 itself would reflect that Roll Number which has been examined or inquired by the respondents was 2587 and it also reflected that the enquiry was conducted in respect of the examination which was conducted in the year, 1961. According to the petitioner, he had passed out High School Examination in the

year, 1960 and not in the year 1961. Therefore, Annexure P/5 dated 22.07.1988 cannot be said to be a reliable piece of evidence for imposition of capital punishment or dismissal from service. Thus, for all the aforesaid reasons the petitioner submits that the order of dismissal is not sustainable and the same deserves to be quashed/set aside and the petitioner be given consequential benefits.

7. On the contrary, opposing the petition the State counsel submits that the petitioner has misconducted to the extent of unauthorizedly obtaining service records particularly the service book and thereafter tampered the date of birth in as much as he had made an overwriting in his date of birth from 01.01.1941 to 01.01.1943. The authorities concerned had given sufficient opportunity before issuance of charge sheet, subsequently in the enquiry proceeding and later on before the appellate authority for producing sufficient records to establish that his date of birth was 01.01.1943 and not 01.01.1941. That, since the petitioner failed to lead cogent evidence, therefore the decision of the dismissal cannot be said to be bad and it also establishes that it was the petitioner who had tampered the service records. Therefore, the respondents prayed for rejection of the writ petition. He further submits that the petitioner himself has submitted Annexures P/6 & P/7, the mark sheet so far as High School and in the said certificate itself the date of birth of the petitioner is reflected as 01.01.1941 which would establish that the petitioner had malafidely with fraudulent intention got the date of birth in the service book tampered and for this reason also the

petitioner does not deserve any relief and the writ petition may be dismissed.

8. Having heard the contentions put forth on either side and on perusal of records, so far as petitioners' getting employment as LDC in the year 1961 is not in dispute. Likewise, it is also not in dispute that the petitioner had in due course of time got promotion to the post of Senior Accountant. The only issue now left to be considered is whether there were sufficient evidence collected by the respondents in proving the charges which were levelled against the petitioner.
9. Charge No.1 was in respect of the petitioner unauthorizedly obtaining service book and making necessary overwriting in the service book so far as his date of birth is concerned and in the process the petitioner had tampered the same from 01.01.1941 to 01.01.1943.
10. So far as this charge is concerned, the State counsel or its reply is totally silent in respect of evidence which they have collected in establishing the charge of the petitioner in firstly obtaining the service book from the department and secondly tampering with the records so far as entries of date of birth is concerned.
11. There is no witness examined on behalf of the department who could have established the fact that it was the petitioner who was instrumental in first obtaining the service book and later tampering his date of birth in the said service book. Once when the charges are levelled against the delinquent employee then it is settled position of law that it is the management or the employer who has to led cogent evidence to substantiate the charges or adduce appropriate strong

evidence in this regard. The respondents State has not been able to show any evidence collected in the course of enquiry with which it could be established that it was the petitioner who had got the service book illegally from the department and further had tampered with date of birth. Thus, the charge No.1 levelled against the petitioner stands totally disproved.

- 12.** As regards the charge No.2 i.e. in respect of the petitioner producing fake and fraudulent document is concerned, the document which has been relied upon by the respondents to prove this charge is Annexure P/5 which is a report received from the Board of Secondary Education. The report would show that the same is in respect of the petitioner's not having participated in the High School Examination in the year, 1961. It also reflects that the Roll number of the petitioner was shown as 2587. The document i.e. High School certificate of the petitioner would show that the petitioner had done his High School in the year, 1960 and his Roll number was 22587.
- 13.** Thus, prima facie it appears that the enquiry done from the office of the Board of Secondary Education also was not in respect of the actual Roll number of the petitioner and also was not in respect of the year 1960 when he had cleared High School Examination. Thus, the said evidence collected by the respondents also is not sufficient enough to establish that the petitioner has used fake and fraudulent document.
- 14.** For both these reasons, the impugned orders of punishment and the rejection of appeal by the appellate authority becomes unsustainable. The same deserves to be and are hereby set aside.

- 15.** Another aspect which shall be borne in mind is the proportionality of the punishment which has been inflicted by the respondents. The dispute appears to be that the petitioner has allegedly tampered with date of birth in his service book and have corrected his date of birth from 01.01.1941 to 01.01.1943. It is not a case of the respondents that the petitioner had made use of this corrected date of birth at the time of obtaining employment. It is also not a case where the petitioner has been able to get any benefits by way of correction of date of birth made in the service book. If at all, if the respondents found that there was no sufficient evidence to firstly establish the fact that the petitioner was instrumental in tampering of the service book and secondly there was no evidence which has been collected by the respondents also to show that the petitioner has got his employment on the basis of the fake date of birth certificate, the action at best which the respondents could have taken at that point of time was to retire the petitioner accepting his actual date of birth to be 01.01.1941 which was originally entered in his service book instead of dismissing the services of the petitioner which is a capital punishment.
- 16.** For the aforesaid reason also the impugned order of dismissal finding it too harsh and disproportionate is liable to be interfered with and the same is set aside/quashed.
- 17.** Since the petitioner was to retire as per his actual date of birth to be 01.01.1941 in the year 31.12.1998, applying the principles of No Work No Pay, this court is of the opinion that the petitioner would not

be entitled for the wages and other allowances for the period between date of dismissal and the date of retirement.

18. However, as a consequence of setting aside of the orders of dismissal as well as order of appellate authority, the petitioner would be treated as in service till the date of retirement and he would however be entitled for all the monetary benefits that he would have actually got on his retirement on 31.12.1998.
19. The respondents are directed to ensure that the petitioner is paid his retiral dues including pension and arrears of pension and other dues admissible to him treating the petitioner as if order of dismissal did not exist at all. Let this exercise be concluded within a period of four months from the date of receipt of certified copy of this order.
20. The writ petition accordingly stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge