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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 588 of 2018**

(Arising out of order dated 29.06.2018 passed by learned Single Judge in Writ Petition (S) No. 1712 of 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 (C.G.)

---- Appellant**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 Appellant	:	Shri Ashish Shrivastava, Advocate.
For Respondent No.1/State	:	Shri U.N.S. Deo, Government Advocate.
For Respondent Nos.2 to 4	:	Shri Anumeh Shrivastava, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Prashant Kumar Mishra****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****25.07.2018**

1. Heard counsel for the parties.
2. The writ appeal is preferred against the order dated 29.06.2018 passed by the learned Single Judge who refused to interfere with the decision of the Respondent-State authorities to retire the Appellant from service w.e.f. 31.03.2018, whereas the claim of the Appellant was that his date of birth could be treated as 17.03.1957 and, therefore, his retirement cannot be thrust upon him before 31.03.2019.
3. To cut short the long story, the Appellant was appointed as an Assistant

Engineer in the undivided State of Madhya Pradesh sometime in the year 1982. In the service book, his date of birth was mentioned as 17.03.1957 however, at a later stage, it is alleged that the Respondent corrected the service record and changed it to 17.03.1956 because of unilateral decision and thereafter the orders contained in Annexure P/1 and P/2 to the writ application were issued given him intimation as to the date of superannuation.

4. Shorn of all other arguments, the learned Single Judge took note of the basic fact that the date of birth reflected in the matriculation certificate did not tally with the date of birth which was initially recorded in the service book. Further the date of birth given in the matriculation certificate was the date of birth used in the other records of the Appellant which included his seniority in the gradation list published from time to time. It was for this reason that the authorities decided to correct the date of birth, bring it in consonance with the matriculation certificate and merely because some date of birth was initially recorded or reflected for whatever reason in the service book, the same cannot be treated to be authentic and become the basis for continuance in service.
5. The learned Single Judge concluded in the following paragraphs the submissions of the parties which reads as under:

“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 Vs. Dr. (Miss) Binapani Dei and others, (1981) 3 SCC 544 (Sarjoo Prasad Vs. General Manager and another), (2000) 10 SCC 284 (Hari Singh Vs. State of Bihar and others and (2005) 4 MPLJ 414 (Ishaque Ali Vs. 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 backdrop 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 instead 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.”

6. The rationale and reasoning which have been provided by the learned Single Judge based on judicial precedents cannot be said to be erroneous in any manner. By no stretch of arguments can the Appellant be permitted to derive any benefit of extended period of service contrary to date of birth recorded in his matriculation certificate.
7. The writ appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Prashant Kumar Mishra)
Judge