

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.17075 of 2014 (O&M)

Date of decision: 12.09.2018

Surjit Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Aman Chaudhary, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks quashing of show cause notice dated 19.08.2012 (Annexure P-5), charge sheet dated 17.09.2012 (Annexure P-7), enquiry report dated 18.03.2013 (Annexure P-12), order passed by disciplinary authority dated 12.08.2013 (Annexure P-15) and order dated 22.01.2014 (Annexure P-18), passed by the Appellate Authority whereby the petitioner has been dismissed from service.

On behalf of the petitioner, it is asserted that the allegation in the charge sheet regarding change of her date of birth mentioned as 01.12.1949 is itself contrary to the service book and letter dated 27.01.1984 wherein, the date of birth of the petitioner has been shown to be recorded as 05.10.1937. The sole reliance of the department is on furnishing of an unattested affidavit dated 13.03.1973 by the petitioner

mentioning her date of birth as 01.12.1949 which is improbable because had that affidavit been submitted at the time of appointment in the year 1976, then the date of birth in the service book would not have been recorded as 05.10.1937. He further states that an unattested affidavit dated 13.03.1973 i.e. three years prior to appointment i.e. 20.12.1976 would not have been accepted by the authorities. The entire service record of the petitioner is in possession of the department, therefore, the petitioner could not have tampered with the same. The correction in the date of birth was carried out by the initiation of the department and the proof submitted by the petitioner regarding the date of her birth i.e. 9th class school leaving certificate and affidavit duly attested by the Executive Magistrate was neither alleged to be proved nor to be genuine and rather was accepted and relied upon. The affidavit dated 12.04.2013 by the Principal of the school in which the petitioner studied, authenticated the date of her birth as 09.10.1952 as per record of the school which was not taken into consideration by the enquiry officer. The respondent without taking into consideration the above aspect of the matter had dismissed the petitioner from service which is illegal and arbitrary in nature.

On the other hand, learned State counsel submits that the impugned orders have been passed after following the due process. The petitioner had been given proper opportunity of hearing during enquiry to nullify the allegations against her. It has been proved during enquiry that the petitioner at the time of appointment mentioned the date of her birth

as 01.12.1949, whereas, in her affidavit given to District Welfare Officer for correction of the date of her birth as 09.10.1952. Further, the petitioner had also submitted a trained certificate of nursing wherein her age was mentioned as 24 years as on 06.12.1973 which shows that the date of her birth is 01.12.1949.

I have heard learned counsel for the parties and perused the record.

The controversy involved in the instant case revolves upon the date of birth of the petitioner which as per the petitioner is 09.10.1952; in the service book, the same was mentioned as 09.10.1937, whereas in the affidavit, the same was mentioned as 01.12.1949. The petitioner was charge sheeted on account of tampering of the date of her birth from 01.12.1949 to 09.10.1952 in her service book. The Court has seen the original record wherein the cutting on the first page was attested by the official of the respondent department. As per Annexure P-4, a correspondence dated 25.02.1987 from the Director Welfare Officer to Director Welfare Department, Punjab it has been informed that on the basis of requisite document obtained from the petitioner, the date of her birth was rectified from 05.01.1937 to 09.10.1952 and the affidavit tendered by the petitioner had been pasted on her service book. However, at the time of receipt of service book with rectified date of birth, the respondent department has never raised any objection; now after 25 years of that rectification, the petitioner has been charge sheeted, vide charge sheet dated 17.09.2012 (Annexure P-7). In case of any tampering or

cutting in the service book, the department would have charge sheeted the petitioner when the service book of the petitioner was received from District Welfare Officer. A perusal of the record further reveals that in the identity card issued by District Welfare Officer, Kapurthala issued on 08.12.1998, the petitioner's birth date was mentioned as 09.10.1952. Further, as per affidavit (Annexure P-11) sworn by the Principal of the school where the petitioner studied, date of her birth is mentioned as 09.10.1952. The affidavit dated 13.03.1973 (Annexure R-1/1) which was given to the department as the time of appointment on 01.12.1949 on the basis of which the respondent department had alleged that the petitioner's birth date is 01.12.1949, whereas, the petitioner joined the respondent department on 12.12.1976 meaning thereby that the affidavit has no sanctity. It is not proved on record that as to how the petitioner could sworn the affidavit and file three years prior to her appointment. At the time of entering into service, the service record of the person was lying with the establishment of the department; the petitioner was never shown to be the custodian of the service book. The respondents have failed to prove that how the petitioner could have access to her service record whereby she tampered with date of birth. The petitioner had retired after completing 60 years of service and as per the date of birth as 09.10.1952 on 31.10.2012, vide Annexure P-9. Except the affidavit dated 13.03.1973 (Annexure R-1/1), there is nothing on record to justify that the petitioner's date of birth is 01.12.1949, rather, from the material available on record, it is proved that the petitioner's birth date is 09.10.1952.

As a sequel to the above, the present petition is allowed. Consequently, the show cause notice dated 19.08.2012 (Annexure P-5), charge sheet dated 17.09.2012 (Annexure P-7), enquiry report dated 18.03.2013 (Annexure P-12), order passed by disciplinary authority dated 12.08.2013 (Annexure P-15) and order dated 22.01.2014 (Annexure P-18) are hereby set aside. The respondents are directed to release the retiral benefits along with other consequential relief in favour of the petitioner within a period of three months from the date of receipt of a certified copy of this order.

12.09.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No