

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

CWP No. 24651 of 2015

Date of decision : 06.08.2018

Santosh Devi

..Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. Kiran Pal Singh, A.A.G. Haryana

Mr. Jai Vir Yadav, Advocate
for respondent No. 4

RITU BAHRI, J.

In the present civil writ petition, the petitioner has sought quashing of impugned order dated 31.07.2015 (Annexure P-5) and further prayer is for issuance of direction to the respondents to reinstate the petitioner in service with all service benefits

Petitioner applied for the post of Peon, on the information given by the Employment Exchange, as the name of the petitioner has been entered in the Employment Exchange. She was selected as Peon in the school on 13.01.1992 (P-2). She has also submitted a medical evidence certificate from the C.M. Karnal before entry into service. On 07.02.1994 (P-3), the services of the petitioner was confirmed after completing the probation period of 02 years. However, the petitioner vide impugned order

dated 31.07.2015 (P-5) has been relieved from service after completion of

23 years and 06 months service as a Peon and this order is under challenge in the present writ petition.

On notice, a reply has been filed by respondent Nos. 2 and 3 admitting the fact that the petitioner was appointed as Peon on 13.01.1992 but since there was some alteration in the service book of the petitioner as the date of the birth was re-written as 05.10.1955 instead of 01.07.1959, the authorities of District Education Officer, Karnal made objection and wrote on service book either her birth certificate from the village Sarpanch or M.C is forth coming as a proof of the date of birth in the service book of the petitioner.

The petitioner was then medically examined by CMO, Karnal and stated petitioner's age appear to be 50 years as on 05.10.2005. Thereafter, a letter dated 15.05.2015 was written by R.D. Arya Girls High School, Holi Mohalla, Karnal to the District Education Officer Karnal mentioning that the retirement of the petitioner is forth coming and there is no proof of her date of birth and on the basis of medical certificate, the date of birth has been altered, as per Chapter VII of Punjab Financial Rules Volume-I (Haryana State).

In response to letter dated 15.05.2015, a letter dated 26/29.06.2015 (R-4) was written to the Director Secondary Education Haryana, Pk1 seeking the clarification regarding change of date of birth of the petitioner. An objection was raised by the Director Secondary Education, Haryana Panchkula, which was forwarded to School vide DEO, Karnal vide letter dated 15.09.2015, which was never removed by School. Thereafter, vide letter dated 31.07.2015, the petitioner was relieved from the service.

As per written statement filed by respondent No. 4, it has been stated that the date of birth of the petitioner in the record of employment exchange was 1956 but the petitioner failed to produce any authentic evidence of her date of birth either at the time of entry into service or thereafter. Accordingly, in view of the examination conducted by the Radiologist and Dental Surgeon Karnal, her age has been opined to be 50 years on 05.10.2005, which would relate her birth to be 05.10.1955. Copy of the medical report dated 05.10.2005 is Annexure R-4/1.

Learned counsel for the petitioner contends that the impugned order suffers from illegality, as the year of birth of the petitioner, as per registration card of the Employment Exchange Karnal is 1959. Similarly at the time of entry into service, her date of birth was mentioned as 01.07.1959 in the Service Book. Thus, the petitioner would complete 60 years of service in the year 2019.

On the other hand, learned counsel for the respondents has submitted that since there was some alteration in the service book of the petitioner, she was medically examined by the Radiologist and Dental Surgeon Karnal and her age has been opined to be 50 years on 05.10.2005 and thus, she has been rightly relieved from service, vide impugned order.

Heard learned counsel for the parties.

The question for consideration before this Court would be whether the department can change the year of birth of an employee on the basis of medical examination conducted after 13 years of the service of the petitioner despite the fact that in the service book as well as in the record of employment exchange, the year of birth of the petitioner has been

mentioned as 01.07.1959.

Reference at this stage can be made to Rule 7.3 of Punjab Financial Rules Vol-I (Haryana State), which reads as under:-

“1. In regard to the date of birth a declaration of age made at the time of, or for the purpose of, entry into Government service shall, as against the Government servant in question, be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government services. Government, however, reserves the right to make a correction in the recorded age of a Government servant at any time against the interests of that Government servant when it is satisfied that the age recorded in his service book or in the History of Services of an officer is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom. The orders in this Annexure have effect from 4th July, 1928.

3. When a Government servant, within the period, allowed, makes an application for the correction of his date of birth as recorded, a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as certified copies of entries in the municipal birth registers, university or school age certificates, janam partis or horoscopes. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such applications and no alteration should be allowed unless it has satisfactorily been proved that the date of birth as originally given by the applicant was a bona fide mistake and that he has derived no unfair advantage therefrom.

Thus, as per the above said Rule, once an employee has given

his/her date of birth to the employer on joining of his/her service that should be treated as final and once recorded, it cannot be altered except in the case of a clerical error, without the previous orders of Government.

Further the respondents are relying on the medical examination conducted by the Radiologist and Dental Surgeon Karnal, who opined the age of the petitioner to be 50 years on 05.10.2005, which is also unlawful as it is a settled law that the age may vary 02 years on either side.

It has further not been denied by the respondents that the year of birth of the petitioner has been mentioned as 01.07.1959 in the record of the employment exchange as well as in the service book record.

Keeping in view Rule 7.3 of of Punjab Financial Rules Vol-I (Haryana State) which regulates that once the date of birth has been recorded in the service book on an employee, it cannot be altered except in the case of a clerical error, without the previous orders of Government, the present writ petition deserves to be allowed by taking the year of birth of the petitioner as 01.07.1959.

The petition is allowed and order dated 31.07.2015 (Annexure P-5) is set aside. Petitioner is entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

06.08.2018

G Arora

Whether speaking/reasoned
Whether reportable

Yes
No