

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 16.07.2018****CWP No.6517 of 2018**

Tej Singh

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Satyaveer Singh, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

A query was put on 16.03.2018 to counsel, when the matter came up for hearing for the first time, to explain how the writ is maintainable. Hearing was deferred and the case is presently taken up for final hearing today. The petitioner has approached for direction to get his date of birth changed in his service record.

The respondents have refused to change the date of birth of the petitioner, who is working as Associate Professor (Chemistry), in his service record maintained by them. He claims that his date of birth was wrongly recorded in the matriculation certificate. He filed a civil suit bearing CS No.704 of 1991 before the Sub Judge, Ist Class, Bhiwani, but made the fatal mistake of not impleading the State of Haryana through his department bringing the suit against the Board of School Education, Haryana for correction of the date of birth in the school record. The petitioner claims that his actual date of birth is 11.01.1965, whereas in the result card issued by the

Board of School Education, Haryana, the date of birth is recorded as 12.05.1962. The suit was decreed on 14.08.1992. The Board did not contest the case. The decree was complied with and the Board of School Education ordering correction of the matriculation certificate in terms of the decree. He made a representation on 22.10.1992 for correcting his date of birth in the service record as per the decree and corrected matriculation certificate. The petitioner claims that the request for correction of date of birth was made within two years of entry into service as required by the service rules. The petitioner's request was turned down by order dated 18.03.1994 with Government deciding not to change the date of birth of the petitioner in the service record.

Feeling aggrieved by the order dated 18.03.1994, the petitioner filed the civil suit for declaration and mandatory injunction before the Civil Judge (Senior Division), Jind, which was dismissed on 09.03.1999. The petitioner submits that his suit for declaration and mandatory injunction was not decided on merits, but was dismissed on technical grounds. He did not agitate the matter any further.

Today, nearing retirement, the petitioner relies on Clauses 7.17 and 7.19 of the Punjab Financial Rules, Volume – I (Haryana State) (Chapter - VII) to bring him relief. Other than this, he relies on notification dated 20.12.2000 issued by the Haryana Government, Finance Department, which provides that the declaration of age made at the time of entry into Government service shall be deemed to be conclusive unless he applied for correction of his age as recorded within two years from the date of his entry into Government service. If that was done in time, the same would be considered by the Government of Haryana. The petitioner also refers to the

Punjab Civil Services Rules, as applicable to Haryana, Volume I, Part I, Chapter II drawing attention to Rule 2.5, which deals with date of birth.

I have heard learned counsel for the petitioner and perused the record carefully.

A perusal of the decree shows that the suit, to repeat, was not contested by the Board of School Education. The pleas taken by the plaintiff in his plaint went un-rebutted. The decree followed suit. The only evidence adduced by the petitioner in his support of pleadings was the oral statement of his father, who deposed that he was illiterate and school authorities might have recorded wrong date of birth at the time of admission of his son, the petitioner.

The petitioner impugns the order dated 14.10.2016 passed by the Director, Higher Education, Haryana rejecting the claim of the petitioner for change of date of birth for the reason that earlier an identical request was declined on 16.02.1994 and the decision was conveyed to the petitioner on 18.03.1994.

I find no ground to interfere in this matter. Firstly, because the petitioner did not challenge the order dated 16.02.1994 declining his request for change of date of birth and the claim suffers from delay and laches from the date of final adverse order and the cause of action. The second reason which impels me to disregard the decree as not binding on the State is that the State of Haryana was not a party to the suit. The Board of School Education, the sole defendant, did not contest the suit. Hence, the decree may be good for the world in character, but is irrelevant for change of date of birth or for this Court to issue a mandamus to the respondent – State to alter the date of birth as sought by the petitioner.

The reliance of the petitioner on judgments of the Supreme Court as well as of High Courts in Dimpy Sharma Vs. State of Punjab, 2006 (3) SCT 345; Gurbax Singh Vs. State of Punjab & others, 1989(2) Cur.L.J. (CCR) 347; Nirmal Pal Singh Vs. State of Punjab & others, 2012 (4) SCT 309; State of Punjab & another Vs. Megh Raj Garg, 2003 (1) SCT 292; Sheodan Singh Vs. Daryao Kunwar, AIR 1966 SC 1332; Salo Vs. Munshi Ram & others, AIR 1985 HP 85; Abdul Gofur Mondal Vs. State of Assam & others, 2015 (23) SCT 613; Chittaranjan Kar Vs. The State of West Bengal & others, 2013 (14) SCT 826; Sudhir Chandra Das Vs. State of West Bengal & others, 2016 (2) Cal. HCN 196 and Natubhai Ukabhai Vs. Naran Lala Metal Works Ltd., 1997 (1) Guj. LH 422, is misplaced as these cases are distinguishable on facts. Any detailed reference to the facts of those cases is not necessary as it would only lengthen the judgment and order when the case can be decided on two short points which counsel is unable to wriggle out of. The rules cited are of no help.

For the foregoing reasons, I do not find any merit in the instant petition. The same is accordingly ordered to stand dismissed.

16.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>