

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 2nd July, 2018*

+ LPA 209/2017

GAYA DEVI Appellant
Through Mr. A.K. Bhakt, Advocate.

versus

DELHI TRANSCO LTD Respondents
Through Ms. Neha Tanwar, proxy counsel for
Mr. Prashant Mehta, Advocate with
Mr. Gaurav Gupta, Legal Manager.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM APPL 2273/2018

1. This is an application seeking restoration of the appeal, which was dismissed for non-appearance on 18.12.2017.
2. Notice. Counsel for the respondents accepts notice.
3. Heard.
4. For the reasons stated in the application, the same is allowed. The appeal is restored to its original number.
5. The application stands disposed of.

LPA 209/2017

6. The present appeal is directed against the order dated 20.12.2016

passed by the learned Single Judge by which the order dated 16.11.2016 passed by respondent no.2 has been upheld and the writ petition has been dismissed.

7. The necessary facts to be noticed for disposal of this LPA are that the husband of the appellant died in harness on 03.02.1993 after rendering 17 years and 5 months of continuous service. Pursuant to the death of husband of the appellant, the appellant made a representation seeking compassionate appointment on 12.03.1993. By a communication dated 25.05.1995, the appellant was granted an offer of appointment for the post of Assistant Line Man Grade-II in the pay-scale of 950-1500. The appellant joined her duty as Assistant Line Man, Grade-II on 12.06.1995.
8. It is the case of the appellant that it came to her knowledge that her date of birth had wrongly been mentioned in her service record as 06.06.1955 instead of 28.06.1958. Accordingly, the appellant made a representation on 29.08.2014 seeking correction of her date of birth in her service record. By a letter dated 30.09.2014, the appellant was asked to submit concrete evidence to correct her date of birth. Upon which, she submitted her educational certificate of primary school i.e. school leaving certificate of class two. The respondents sought an opinion from the legal advisor. As per which, the appellant should be allowed to correct her date of birth. However, the respondents decided not to follow the legal opinion and accordingly, the appellant retired on 30.06.2015.
9. Being aggrieved by the action of the respondents led to the filing of a writ petition being W.P. (C) 7595/2016. The learned Single Judge

disposed of the writ petition with a direction to treat the writ petition as a representation of the appellant. By an order dated 29.08.2016, the respondents were further directed to pass a reasoned order within four weeks and convey the same to the appellant. Respondent no.2 in compliance with the order of the learned Single Judge considered the representation of the appellant, but rejected the representation by a detailed order dated 16.11.2016, which was assailed by filing another writ petition being W.P. (C) 11938/2016. It may be noted that none had appeared on behalf of the parties when the matter was heard by the learned Single Judge on 20.12.2016.

10. Learned counsel for the appellant submits that the action of the respondents is illegal, unjust, arbitrary, *malafide* and discriminatory and in violation of Articles 14 & 16 of the Constitution of India. It is also contended that the respondents as also the learned Single Judge have failed to appreciate that the appellant had been granted appointment on compassionate ground upon death of her husband and had submitted an affidavit regarding her date of birth. Counsel further submits that the appellant is an uneducated person and thus, she could not disclose her correct date of birth at the time of her joining. He further submits that as per the legal opinion sought by the respondents, the correction should have been carried out in her service record. Counsel also contends that once the school leaving certificate was held to be a genuine document, the respondents should have relied upon the same and made the necessary corrections.
11. Counsel for the respondents submits that there is no infirmity in the order dated 16.11.2016 passed by respondent no.2 and also the order

dated 20.12.2016 passed by the learned Single Judge. Counsel contends that firstly there is no explanation for the delay in making the representation for change of date of birth. Counsel also contends that as per the relevant rules, an employee, who seeks correction of date of birth, must file an application within five years of his/her entry into the service. However, there is no explanation as to why such an application was not made and thus the present appeal merits dismissal.

12. We have heard learned counsels for the parties.
13. In this case, the appellant was granted compassionate appointment on the demise of her husband on 12.03.1993. The appellant joined her duty as an Assistant Line Man Grade-II on 12.06.1995. At the time of her joining, no birth certificate or school leaving certificate was submitted. The appellant made a representation seeking correction in her date of birth which was rejected. The appellant had approached this Court by filing W.P. (C) 7595/2016, which was disposed of with a direction to the respondents to treat the writ petition as a representation. The respondents considered the representation of the appellant and by a detailed order dated 16.11.2016, respondent no.2 rejected the representation of the appellant. We deem it appropriate to reproduce the following paragraphs of order dated 16.11.2016 passed by respondent no.2 :

“S. No.1 & 2 :- The date of birth of Ms. Gaya Devi is mentioned as 06.06.1995 and 28.06.1958 in different places/forms. As per her service book, she is an illiterate lady and the same was also informed/accepted by her vide affidavit dated 19.03.1993 submitted for compassionate appointment that she had not studied in any school. It is also evident from the copy of medical prescription card of her husband issued by the erstwhile DESU in the year 1988 that her date of birth is 06.06.1955, as her age was 33

years at that time. It is wrong to state that she had submitted school leaving certificate during seeking her appointment on compensate grounds. As per the records available she had not submitted any such school leaving certificate it was at very belated stage in the year, 2014 that on demand of the HR officials she submitted the said certificate. Therefore, the contention of the petitioner has no merits.

S. No. 3 :- Further the salaries of each and every employee of DESU/DVB now DTL was disbursed either by cash (earlier period) or by cheque (in middle period) or by ECS (at present) and before the salary, salary slip was generated and handed over to each and every individual. The salary slips apart from containing the details of salary necessarily finds mentioned the date of birth of said individual. Therefore, it is wrong to state that she came to know about her date of birth at belated stage when her retirement date approached. It is apparent that the contention of the petitioner is merely an afterthought. Therefore, the contention of the petitioner is not tenable.

S. No.4 :- At such a belated stage when the clearance for the purpose of her retirement where being made by the HR Deptt. she submitted a school leaving certificate of class two duly forwarded by the reportedly Head Master dated 15.04.2015. Further it has also been observed that on the service book where thumb impression of the said Ms. Gaya Devi were obtained, one such thumb impression is just in front of her date of birth. If it is presumed/assumed that she is class two educated even then she can very well identify the last digit of the year i.e. 5 in place of 8. Therefore, the contention of the petitioner is not tenable.

S. No.5 :- It is for the management to decide as to whether accept the advice of any counsel or otherwise therefore, the opinion of Shri Rai was not accepted by the DTL which do not contain any merit to rely upon as the counsel himself also mentioned that his opinion is not binding upon the company. Therefore, contention of the petitioner is not tenable.

S. No.6 :- As per rules Smt. Gaya Devi did not make any request within the 05 years of her entry into the service and the posting of the date of birth in the service record is not a mistake but the date has been relied upon the medical which was conducted during her appointment in the service and the same was duly

acknowledged by the said Smt. Gaya Devi. Further Smt. Gaya Devi in support of her contention with regard to change of date of birth submitted school leaving certificate inter-alia stating that she left the school after second class in the year 1966. This document is contrary to her initial submissions wherein she sworn in that she had never studied in any school. Thus from the present document i.e. school leaving certificate the initial affidavit so submitted by the said Smt. Gaya Devi becomes void.

In the light of above observations I do not find any merit in the submission of Ms. Gaya Devi to change her date of birth at this belated stage and undersigned is of the considered opinion that the representation of said Ms. Gaya Devi in form of petition is rejected being devoid of merit.”

14. A careful reading of the order dated 16.11.2016 would show that at the time of her appointment, the appellant had not submitted her school leaving certificate. The order also notices the fact that in the service book of the appellant whereon thumb impression was obtained and same has been affixed in front of her date of birth, in case, there was any discrepancy, she would have pointed out the same. It has further been observed that the salary slip of each and every employee is generated, which apart from containing details of salary, also mentions the date of birth of the person concerned. It may be noted that the appellant was granted employment in June, 1995 and sought change of date of birth only on 30.09.2014, even during the course of hearing, there was no explanation with regard to delay. As per order dated 16.11.2016, an employee can seek change of her date of birth within five years of his/her entry into service. In our view, there is no infirmity, illegality in the order dated 16.11.2016 passed by respondent no.2. We also find no infirmity in the order dated 20.12.2016 passed by learned Single Judge, which would require

interference. We find the present appeal to be without any merit.

15. The same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 02, 2018/ck

