

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1979 of 2008

Mohit Ram S/o Shri Asha Ram (Since Dead) through L.R's.

1A. Smt. Tejmati Bai W/o Late Shri Mohit Ram, aged about 53 years.

1B. Laxmikant Dhruv S/o Late Shri Mohit Ram, aged about 35 years.

1C. Sunendra Dhruv S/o Late Shri Mohit Ram, aged about 32 years.

1D. Kishan Lal Dhruv S/o Late Mohit Ram, aged about 24 years.

All R/o Gram Binnauri, Tehsil Takhatpur, District Bilaspur (C.G.).

---Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Public Works Department, DKS Bhawan, Raipur, District Raipur (C.G.).
2. Executive Engineer, Bilaspur Division, Public Works Department, District Bilaspur (C.G.).
3. Shri Manoj Thorrat S/o Shri A.B.Thorrat, aged about 44 years, Sub Divisional Officer, Public Works Department, Bilaspur, Sub Division No.2, District Bilaspur (C.G.).

---Respondents

For petitioner	:	Shri Kashif Shakeel, Advocate.
For resp.No.3	:	Shri Akhilesh Kumar, Advocate.
For State	:	Shri Jitendra Pali, Dy.AG.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/01/2019

1. The Writ Petition was originally filed by Mohit Ram (hereinafter referred as "the deceased employee") who was aggrieved of his being retired from service 10 years ahead on account of some tampering/interpolation of his date of birth in the service book.
2. During the pendency of the Writ Petition, the deceased employee expired on 08/03/2015 subsequent to which the present petitioners have

been substituted as his legal heirs to pursue further with the Writ Petition.

3. The brief facts relevant for adjudication of the instant Writ Petition is that, the husband of the petitioner No. 1-A and the father of the petitioners No. 1-B to 1-D was appointed as a permanent labour (Gangman) at the Sub Division No.2 of the Public Works Department, Bilaspur Division, Bilaspur. The initial appointment was of the year 1976. At the time of appointment when the service book was prepared, the year of birth of the deceased employee was recorded as 1957. He continuously worked with the department accepting his date of birth as 1957. Accepting 1957 as the year of birth, the deceased employee would have otherwise retired from service only in the year 2019 i.e. he would have still been in employment had he not been expired and had he not been pre-maturely retired by the department.
4. Abruptly, without any pre-intimation, the deceased employee was served with a notice Annexure-P/1 dated 11/12/2007 intimating him that he would stand retired from service on attaining the age of 60 with effect from 31/12/2007.
5. Meanwhile, the State Government had enhanced the age of retirement of the permanent gangman from 60 to 62. The deceased employee immediately filed a Writ Petition (S) No. 717/2008 for retiring him at the age of 60 whereas the age of superannuation has been enhanced from 60 to 62. The respondents took back the deceased employee in service

and continued him in the service till 30/06/2009 and thereafter declared him of having superannuated on attaining the age of 62 vide their letter dated 15/06/2009 – Annexure-P/10. Meanwhile, the deceased employee had also filed the present Writ Petition challenging his retirement contrary to the date of birth that was entered in the service book.

6. The fact undisputed is that in the service book, the year of birth of the petitioner is reflected as 1957. However, without there being any order on the official side or there being any proceedings drawn by the department, neither there being any material available with the respondents, there seems to have been a correction made in the year of birth of the deceased employee. That on perusal of service book it clearly reflect that the year of birth originally mentioned as 1957 has an overwriting entering 4 over 5 in the year of birth reflecting his year of birth to be 1947. There does not seem to be any initials put at the place where correction had been made, neither is there any entries made in the service book in respect of the correction of date of birth made. Moreover, there also does not appear to be any correspondence made at any point of time in respect of the date of birth of the deceased employee. Yet there seems to be a clear overwriting made on the year of birth entered in the service book.

7. The State counsel however opposing the petition submits that, it is a case where in the official register maintained in the department, the year of birth of the deceased employee has been reflected as 1947 and

the seniority lists which were published from time to time also reflects his date of birth as 1947 based upon which the notice of retirement has been issued. He further submits that, subsequently, the deceased employee was also granted two years of further extension as the age of retirement got enhanced from 60 to 62. As such, the deceased employee has been rightly retired from service on his attaining the age of 62 and there does not seem to be any merits on part of the deceased employee seeking for a correction of his date of birth from 1947 to 1957 and thus prayed for rejection of the Writ Petition.

8. Having heard the contentions put forth on either side and on perusal of record, particularly the service book, the factual matrix are not in dispute so far as the date of initial engagement of the deceased employee to be 1976. The date of birth as mentioned in the original service book initially being 1957. During the course of hearing, the counsel for the petitioners had brought along with him a copy of the original service book that was maintained by the department and which matches with the original service book that the respondent/State has brought before the Court. In the service book which was available with the petitioner, the year of birth is reflected as 1957 and in the service book which was maintained in the department, the date of birth seems to have been corrected and there was a clear overwriting visible over the figure 5 reflecting the year of birth as 1947. The State counsel has not been able to provide any satisfactory explanation or material in the form of any document which shows that, the correction on his year of birth has been made by the

department. Thus, if the correction of the year of birth of the deceased employee in his service book has been made without the knowledge and consent of the State Government, then the same undoubtedly is bad in law and also is illegal. If the department would have intended to correct his year of birth in his service book, there ought to have been a proceeding drawn or at least an order passed in the absence of which accepting his year of birth to be 1947 would be erroneous and also is detrimental to the interest of the deceased employee. Thus the action on part of the respondents in retiring the deceased employee on the basis of a tampered document or an interpolated year of birth is unsustainable.

9. At this juncture, it would be relevant to take note of the proceedings drawn by this Court on 26/11/2013. This Court vide the said order had asked the District Medical Board, Bilaspur to medically examine the deceased employee to ascertain his age and to submit the report.

10. As per the direction of this Court dated 26/11/2013, the deceased employee appeared before the District Medical Board, Bilaspur who medically examined the deceased employee and gave a report on 03/12/2013 and in their report, the District Medical Board consisting of five Doctors based on Radiological and Physical evidences held that, the deceased employee as on 03/12/2013 was aged somewhere between 50-60 years. When in December-2013 if the District Medical Board finds the age of the deceased employee to be 50-60 years, this by itself clearly reflects that the year of birth of the deceased employee

originally mentioned at the time of his appointment i.e. 1957 to be his real year of birth and not 1947. This Medical report has been subsequently brought on record as Annexure-P/11 by the petitioner himself.

11. So far as the documents which are being relied upon by the State counsel, the same are not authentic documents and those documents are all one which are prepared based on the tampered date of birth in the service book where the year of birth appears to have been tampered/over written. Without the knowledge of either the department or the deceased employee, any correction of year of birth could not have been done, without the knowledge and notice of the deceased employee particularly when by virtue of the alleged correction made, the deceased employee is being put to a loss of 10 years of service.

12. For the said reason also, the tampering of the year of birth is not proper, legal and justified. As a result, the action on part of the State Government in retiring the deceased employee in the year 2007 and later in 2009 both being bad in law.

13. As a consequence, the notice of retirement dated 11/12/2007 - Annexure-P/1 and the notice of retirement dated 15/06/2009 - Annexure-P/10 both are set-aside/quashed.

14. Accordingly, the petition stands allowed and as a consequence the deceased employee shall be treated to be in employment up till the date of his death i.e. 08/03/2015.

15. It is directed that the department shall calculate the monetary benefits that the deceased employee would have got had he not been retired in the year 2009 up till the date of his death and the same shall be released to the family members in accordance with the rules. The family members would also be entitled for all the other consequential benefits.

16. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit