

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 380 of 2017

Jayanti Lal Gajendra S/o Pankuram Gajendra, Aged About 60 Years R/o
Village Aroud, Post Office Kotela, Tahsil Charama, District Kanker,
Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health,
Mahanadi Bhavan, Mantralaya, New Raipur, District Raipur, Chhattisgarh,
Chhattisgarh
2. Executive Engineer, Public Health And Engineering, Sub Division, Kanker,
District Kanker, Chhattisgarh, District : Kanker, Chhattisgarh
3. Assistant Engineer, Public Health And Engineering Sub Division, Kanker,
District Kanker, Chhattisgarh, District : Kanker, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. H.B. Agrawal, Senior Advocate along with Ms. Prabha Sharma, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

30/08/2019

1. The present writ petition has been filed assailing the Annexure P-8
dated 20.09.2016. Though in the relief sought, it has not been
specifically sought for. Vide the said order dated 20.09.2016 the
respondents have rejected the representation of the petitioner so far
as the correction of his date of birth in the service record is
concerned and his claim for grant of consequential benefit.
2. Facts of the case in brief is that the petitioner was appointed as a
Peon under the respondents vide order dated 04.02.1986 and
pursuant to which the petitioner joined his service on 20.02.1986. At

the time of appointment the petitioner had produced Class- 8th and Class-10th certificate. Where his date of birth is reflected as 24.08.1953. Based upon the records the date of birth that was reflected in the certificates the petitioner had attained the age of 62 i.e. on 31.08.2015 was retired by the department. The petitioner meanwhile had moved a representation to the department claiming for correction in his date of birth from 24.08.1953 to 24.08.1957.

3. According to the petitioner there was an inadvertent error crept while recording the date of birth in the service book, therefore it needs correction. In between the petitioner had filed WPS 3821/2015 for the same relief and writ petition got disposed off at the behest of the petitioner who had prayed for disposal of the writ petition permitting the petitioner to make a representation to the department and department in turn was directed to decide the said representation on merits vide order dated 09.12.2015.
4. In terms of the directions given by this Court on 09.12.2015, the respondent authorities considered the representation of the petitioner and have passed an order dated 20.09.2016 rejecting the same holding that there was no strong case made out by the petitioner calling for an interference with the date of birth on the basis of which the petitioner stood retired.
5. Contention of the petitioner is that he has obtained a document from the Primary School, wherein his date of birth is reflected as 24.08.1957. He has also obtained copy of the Dakhil Khariz Register in the year 2015 wherein also his date of birth has been reflected as 24.08.1957 and submitted that there appears to be some error which has been crept in recording the date of birth in the service book and

therefore he can be permitted to continue to serve till he attains the age of 60 years i.e. on 31.08.2015 and he also be granted all consequential benefits.

6. State counsel on the contrary opposing the petition submits that order dated 20.09.2016 Annexure P-8 by itself is a self explanatory and gives entire picture of the petitioner's claim and therefore there is no scope of any interference at this juncture. State counsel referring to the said Annexure P-8 submits that in addition to the school certificate that the petitioner himself had produced at the time of appointment of Class-8th and Class-10th are concerned, the Department also got it verified from the Principal of the Government High School, Jepra to certify the date of birth of the petitioner. Principal in turn has certified that as per the records the date of birth of the petitioner in the school Register is entered as 24.08.1953 and the name of the petitioner in the Dakhil Kharij Register is reflected as Serial No. 242 and thus there is no discrepancy so far as the date of date of birth available in the official records are concerned and prayed for rejection of the writ petition.
7. It would be relevant at this juncture to refer to the judgment of the Supreme Court in the case of **Union of India Vs. Harnam Singh reported in (1993) 2 SCC 162** where in paragraph-7 & 15 it has been held as under:

“7.A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no

application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age.

15. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him.”

8. In the case of **Burn Standard Co. Ltd. and others Vs. Dinabandhu**

Majumdar and another, (1995) 4 SCC 172, the Supreme Court in

paragraph-10 held as under:

“10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under [Article 226](#) of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to

his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court."

9. The Supreme Court in the case of **Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another** reported in **(2010) 6 SCC 482** in paragraph-20 held as under:

"20. By applying the ratio of the above noted judgments, we hold that the suit filed by Respondent 1 for correction of the date of birth recorded in his service book after twelve years of his joining the service was clearly misconceived and the trial court committed a serious error by passing a decree in favour of Respondent 1 and the lower appellate court and the High Court repeated the same error by refusing to set aside the decree passed by the trial Court."

10. In the case of **State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others**, **(2010) 14 SCC 423**, in paragraph-12 it has been held as under:

"12. Apart from the notification and the said instruction this Court in a series of cases has categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty-eight years."

11. The Supreme Court again in the case of **State of Madhya Pradesh & others Vs. Premal Shrivastava**, **(2011) 9 SCC 664**, in paragraphs – 7 & 8 held as under:

"7. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of

a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh)."

12. Having gone through the contentions put forth on either side and on perusal of record when we look into the records undoubtedly the petitioner came in service on 04.02.1985. While entering into the service the petitioner had relied upon the educational qualification so far as the Class-8th and Class-10th is concerned. Both these certificates had the date of birth of the petitioner reflected as 24.08.1953. Based upon which the petitioner's date of birth has been entered into the service records. The petitioner by through his entire service career had not opposed to the said entry of date of birth in his service book. He preferred a writ petition only in the year 2015 i.e. at the time of his retirement or after his retirement i.e. WPS 3821/2015.
13. Moreover, after the disposal of the said writ petition authorities concerned had scrutinize the claim of the petitioner and have also got date of birth verified from the School Certificate which the petitioner had produced that is from the Principal of Government High School, Jepra. Principal also has issued a certificate saying that as per the Dakhil Kharij Register as also the records maintained in the School the date of birth of the petitioner was 24.08.1953.
14. Given the aforesaid verification of the facts by the department, this Court is of the opinion that no strong case as such has been made out by the petitioner calling for a correction of date of birth in the service book of the petitioner with the respondents. Neither is he entitled for any consequential benefits. The two records which the petitioner has subsequently relied upon may not be a cogent and

irrefutable to documents which can be taken note of for disbelieving the certificates so far as the Class-8th & Class-10th is concerned and also to disbelieve the verification got done from the Principal, High School, Jepra.

15. For the aforesaid reasons, the writ petition being devoid of merits deserves to be and is accordingly stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit