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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3833 of 2019**

Fekuram Tandon S/o Late Shri Sriram Tandon, Aged About 51 Years,
Presently Posted And Working As Head Master, Government Middle
School, Risdi, Tahsil Korba, District Korba Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Education, Mahanadi Mantralaya, Naya Raipur, Atal Nagar, Post Office And Police Station Naya Raipur, Atal Nagar, District Raipur Chhattisgarh
2. Collector Janjgir-Champa, Chhattisgarh
3. District Education Officer, Janjgir-Champa, Chhattisgarh
4. Board Of Secondary Education Chhattisgarh, Through The Secretary, Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. B. D. Guru, Advocate
For State	:	Mr. Ashutosh Mishra, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.11.2019**

1. The relief sought in the present writ petition is for quashment of Annexure P-1 dated 18.09.2019 whereby the request to the respondent no.4 Board for correction of date of birth of the petitioner in his matriculation certificate has been rejected.
2. The facts of the case are that the petitioner is an employee of

Education Department who got appointment under the erstwhile state of Madhya Pradesh on 07.02.1994. While entering service, the date of birth entered in his service record is 08.02.1965. The date of birth in his service record was entered based on the Higher Secondary School Certificate produced by the petitioner at the time of his appointment. The petitioner continued to work with the respondents all along when for the first time in 2017 the petitioner made a request for correction of the date of birth before his employer.

3. The employer refused to entertain the same which led to the petitioner approaching the High Court by filing WPS No. 6385/2018. This Court disposed of the writ petition holding it to be not sustainable for the reason that unless the date of birth of the school certificate was not corrected, the request for correction of date of birth in his service record could not be accepted. It is only thereafter that the petitioner went to the respondent no.4 Board for correction of his date of birth from 08.02.1965 to 19.04.1968.
4. The whole basis of claim for correction of date of birth is a document which was obtained by the petitioner from the District Registrar wherein the details of the birth of the petitioner were available which reflect the date of birth to be 19.04.1968. The respondent no.4 Board vide Annexure P-1 has rejected his representation on the ground that it is being raised beyond the period of 3 years which is the permissible limit for entertaining a request for change of the date of birth.
5. This Court also on verification of record finds that except Annexure P-2 which is a document from the office of the Registrar, there does not

seem to be any cogent material available for the petitioner to seek correction of the date of birth in his Higher Secondary School Certificate. Another reason which forces this Court not to entertain this writ petition is that from 1994 till 2017 the petitioner was in employment accepting his date of birth to be 08.02.1965. The petitioner was appointed under the erstwhile state of Madhya Pradesh under which the petitioner worked for almost 6 years. The petitioner did not take any step for getting his date of birth corrected at that point of time. The petitioner also did not take any further step promptly after bifurcation of the State seeking correction of his date of birth. It is only after a period of more than 20 years in service that the petitioner for the first time sought for correction of the date of birth in his matriculation certificate.

6. So far as the Board of Higher Secondary Education is concerned, the guidelines governing the field permit that the request for change of the date of birth can only be made within a period of 3 years from the date of publication of results of the Higher Secondary School Examination. In the instant case, the Higher Secondary School Certificates were issued as early as in April, 1988 and 1989. In both these certificates, the date of birth has been mentioned as 08.02.1965. There is no material available on record to assume that the petitioner has come to know recently that his date of birth has in fact been wrongly reflected in his Higher Secondary School Certificate which otherwise has to be presumed that he was well aware that in the certificate his date of birth was 08.02.1965. In spite of that if the petitioner does not take prompt step for getting the date

of birth corrected at the first instance available in the two certificates which were issued in his favour in April, 1988 and April, 1989, it is only the petitioner who is to be blamed. The order passed by the authorities showing their inability in entertaining an application for correction of date of birth beyond a specific period cannot be said to be either arbitrary or bad particularly when the guidelines in this regard are very specific.

7. The Supreme Court in case of Govt. of Andhra Pradesh Vs. M.Hayagreev Sarma, 1990 (2) SCC 682, in a dispute pertaining to correction of date of birth has held as under:

“A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 was under consideration in this case by this Court. The date of birth of the employee was recorded in the service book on the basis of school certificate at the time of entry into service. The employee's application for alteration in the date of birth so recorded was finally rejected prior to coming into force of the rules. A subsequent claim was made by the employee for alteration after commencement of the rules. This Court held that the subsequent claim for alteration after the commencement of the rules even on the basis of the extracts of entry contained in births and deaths register maintained under Births, Deaths and Marriages Registration Act, 1886 was not open.”

8. It would be relevant at this juncture also to refer the judgment of Supreme Court in case of Union of India Vs. Harnam Singh, 1993 (2) SCC 162 wherein in similar sort of case, it has been held as under:

“.... 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....."

9. In case of Secretary & Commissioner, Home Department Vs. R. Kirubakaran, 1994 Supp.(1) SCC 155, in paragraphs 7 & 9 dealing with the issue of correction of date of birth after a considerable period of entering into service, the Supreme Court has held as under :

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the Court or the Tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the Court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service book.

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.. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the Tribunal concerned should be more cautious because of the

growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier.”

- 10.** In the case of State of UP and Another Vs. Shiv Narain Upadhyaya, 2005 (6) SCC 49 in paragraphs 6 and 9 the Supreme Court has held as under:

“....But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the date of birth recorded is correct or not.”

- 11.** The Supreme Court again in case of Registrar General, High Court of Madras Vs. M. Manickam and Others, 2011(9) SCC 255, dealing with the same issue has held as under:

“30. There must be strong, cogent and reliable evidence in support of the contention that the date of birth entered in the service records or in the S.S.L.C. certificate was wrongly entered by a mistake.”

- 12.** In the light of the aforesaid judicial pronouncements if we look into the facts of the present case it would clearly reveal that the petitioner in the instant case had passed Higher Secondary Board Examinations in April, 1988 and April, 1989. In both these mark sheets, the date of birth specifically reflected as 08.02.1965. The petitioner for well over 20 years period did not raise any objection before any authorities for change/correction of his date of birth either in the school certificate or in the service record.

- 13.** Before parting with the matter, it would be trite at this juncture to quote a relevant portion of judgment dated 29.01.2001 rendered by

Hon'ble Justice Shri Deepak Mishra, as he then was as a Judge of Madhya Pradesh High Court, in Writ Petition No.6293 of 2000, which reads as under :

“If man could have arrested 'Time', the greatest and invincible enemy of man, 'that old common arbitrator' and make it his slave the history of man-kind would have been different. It has been said even when almighty descends of earth in the shape of man, is governed by Rules of time. He who does not act within the framework of time loses not only the gifts of nature but also privileges bestowed by man made law. Delay and laches do always create impediment for obtaining the benefit ordinarily permissible in law because the law helps them who are vigilant to knock at the door of justice within time stipulated.”

14. Under the circumstances, this Court does not find any strong case made out by the petitioner for quashment of Annexure P-1 or for passing an appropriate order directing respondent no.1 for correction of the date of birth of the petitioner.
15. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**