

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 18062 of 2019
DATE OF DECISION: 08.07.2019**

Davinder Kumar Sidhu @ D.K. Sidhu

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Malkiat Singh, Advocate
for petitioner

ARUN MONGA, J.

1. Petitioner herein, *inter alia*, seeks quashing of retirement order dated 31.08.2018 (Annexure P-15) on the ground that he has been retired prior to his actual date of superannuation.

2. The factual matrix of the case is that the petitioner was appointed as Deputy Superintendant Jail, Grade-II in the year 1990, by way of direct recruitment, conducted by Punjab Public Service Commission. At time of appointment, his date of birth was recorded as 07.08.1960. The petitioner states that as per matriculation certificate his date of birth was shown as 07.08.1960 whereas in the Municipal Corporation, Ludhiana records it was shown as 10.09.1961.

3. Vide government notification dated 18.01.1994 (Annexure P-2), the government had issued policy for change in date of birth for Punjab Government employees which was later modified vide letter dated 10.05.1995 (Annexure P-3). According to the revised policy, the grievances of change in date of birth of government employees was to be looked into by the Commissioner of the place where the applicant was born. Petitioner, vide representation dated 31.05.1995 (Annexure P-4) applied for change in his date of birth from 07.08.1960 to 10.09.1961. Before the representation could be decided, the instructions dated 18.01.1994 were withdrawn vide letter dated 13.12.1995 (Annexure P-7).

4. However the Punjab Government vide communication dated 07.10.1996 (Annexure P-9) decided to consider the cases received between 21.06.1994 to 05.10.1995 on merit, as per policy dated 10.05.1995 (Annexure P-3). On 30.04.1997 vide Annexure P-11, the application of the petitioner was rejected. After having been cleared by the National Commission for Scheduled Caste, Chandigarh vide order dated 02.08.2018 (Annexure P-12), the petitioner again submitted representation dated 06.08.2018 (Annexure P-13) for grant of all service benefits and also sought correction of his date of birth in the service records.

5. Not receiving any response regarding his representation, the petitioner submitted an application dated

23.08.2018 under Right to Information Act, 2005, seeking status of his representation. Vide letter dated 06.09.2018, the Public Information Officer informed the petitioner that his application for correction in change of date of birth in service record had been rejected on 30.04.1997. Decision of the government was communicated to the petitioner vide letter dated 16.10.2018 (Annexure P-17).

6. Being aggrieved, the petitioner submitted representation dated 24.01.2019 (Annexure P-18) to consider his case in light of the decision taken in case one Sh. Randhir Singh Uppal, however the same was rejected vide letter dated 13.03.2019 (Annexure P-19). Hence the present writ petition.

7. Having heard the learned counsel for the petitioner and having perused the paper-book, I find that no ground is made out to interfere with the impugned retirement order (Annexure P-15), for the reasons stated hereinafter.

8. Keeping in view the perennial problem of employees at large working in the State of Punjab, vide notification dated 21.06.1994 amended Rule 2.5 of Punjab Civil Services Rules, Volume-I, Part-I (for short "the Rules") following amendment was inserted in Annexure 'A' to Chapter II in respect of alterations in the date of birth :

"1. In regard to the date of birth, a declaration of age made at the time of or for the purpose of entry into Government service shall, as against the

Government employee in question, be deemed to be conclusive. The employees already in the service of the Government of Punjab on the date of coming into force of the Punjab Civil Services (First Amendment) Rules, Volume-I, Part-I, 1994, may apply for the change of date of birth within a period of two years from the coming into force of these Rules on the basis of confirmatory documentary evidence such as Matriculation Certificate or Municipal Birth Certificate etc. No request for the change of date of birth shall be entertained after the expiry of the said period of two years. Government, however, reserves the right to make a correction in the recorded age of a Government employee at any time against the interests of the government employees when it is satisfied that the age recorded in his service book or in the History of Service of a Gazetted Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage therefrom (emphasis supplied)."

9. A perusal of above would show that an employee was given the option to apply for change of birth within two years from the date of coming into force of these Rules, on the basis of confirmatory documentary evidence viz. Matriculation Certificate or Municipal Birth Certificate. The petitioner contends that he had applied for change of date of birth vide his application dated 31.05.1995 (Annexure P-4) to the Inspector General, Department of Jails, requesting that based on the birth certificate

issued by Municipal Corporation, Ludhiana, the correction be carried out in respect of date of birth in his service record. The entire emphasis of the petitioner to seek correction in his date of birth is on the notification dated 21.06.1994, *ibid*. I am of the opinion that the said emphasis of the petitioner is completely misplaced as prior to his date of application i.e 31.05.1995, vide later circular dated 18.01.1995 (Annexure P-2), the Government of Punjab clarified that ever since the issuance of notification dated 21.06.1994 (Annexure P-1), cases were referred to the Department of Finance on the basis thereof seeking change of date of birth. It was stated that intention of the 1994 notification (*supra*) was that affected employees who had not approached the government earlier for change of date of birth, should be provided an opportunity and ample time to get the same corrected. It has, however, been clearly clarified therein that date of birth of any government employee should not be changed without holding of a special inquiry as provided in administrative instructions contained in Annexure A of Chapter II of Punjab Civil Services Rules Volume-I, Part-I. Subsequently, vide another circular dated 10.05.1995 (Annexure P-3), in supersession of the earlier circular dated 18.01.1995 (Annexure P-2), it was clarified as below :

"2. It may, however, be clarified that the date of birth or any Government Employee should not be changed without the holding of a special inquiry, as provided in the administrative instructions contained

in Annexure (A) to Chapter II of Punjab Civil Services Rules Volume-I Part-I and for holding such special inquiries, it has now been decided to designate the Deputy Commissioners concerned employee falls, as Inquiry Officer. You are accordingly, requested that finding of the above said newly designated inquiry officer instead of Commissioner for Inquiries must be obtained before arriving at a decision regarding change of the date of birth. Further, the provision of Rule 2.5 of Punjab C.S.R Volume I, Part I and the administrative instructions contained in Annexure (A) to Chapter II may be adhered to strictly.”

10. A perusal of the circulars dated 18.01.1995 and 10.05.1995 (Annexures P-2 and P-3 respectively), leaves no manner of doubt that the petitioner was not entitled to seek any correction on the basis of Birth Certificate issued by Municipal Corporation alone. In any case, Note 1 and 3 of Rule 2.5 of the Rules clearly envisages that the date of birth can only be corrected in very exceptional circumstances viz. clerical error and date of birth given by an employee in his application form at the time of seeking employment shall be treated as final and no change in it shall be allowed after entering into the government service. The relevant Notes 1 and 3 of Rule 2.5 of Punjab Services Rules is reproduced herein below :

“Note 1 :- Every person newly appointed to a service or a post under Government should at the time of appointment, be asked to produced birth certificate issued by the Registrar, Birth and Deaths and in the absence of such a certificate, he should furnish either

an attested copy of Matriculation Certificate or an affidavit in proof of correctness of the date of birth. The actual date or the assumed date determined under Note 2 below should be recorded in the History of Service, Service Book, or any other record that may be kept in respect of the Government Employee's service under Government and once recorded, it cannot be altered except in the case of clerical error, without the previous orders of Government (see also Annexure 'A' to this Chapter);

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Note 3 :- *The date of birth given by an employee, in his application form, submitted to a recruiting agency viz., the Punjab Public Service Commission or the Punjab Subordinate Services Selection Board or the Departmental Selection Committee as the case may be, shall be treated as final and no change in it shall be allowed after entry into Government service.*

For administrative instructions in respect of alterations in the date of birth, see Annexure 'A' to this Chapter."

11. In this background, I do not find any infirmity in the impugned order 31.08.2018 (Annexure P-15), whereby Department of Home Affairs has rightly rejected the request of petitioner for change in his date of birth stating therein that the instructions dated 10.05.1995 relied upon by the petitioner, are no more in existence and as per Note 3 of Rule 2.5 of the Rules, the date of birth once recorded after joining the employment shall be treated as final.

12. In view of my aforesaid discussion and the reasons contained therein, the writ petition is dismissed. No order as to costs.

(ARUN MONGA)
JUDGE

JULY 08, 2019
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Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No