

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-19725-2019 (O&M)
Date of Decision: 22.07.2019

Om Gopal

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. M.S. Bajwa, Advocate for the petitioner.

TEJINDER SINGH DHINDSA.J (Oral)

Petitioner was appointed as Sanitary Jamadar under the Municipal Corporation, Patiala in the year 1987. Date of birth recorded in the service book of the petitioner is 15.7.1959. As per entry made in the service book, petitioner is to superannuate from service on 31.7.2019.

On the verge of his retirement, the instant petition has been filed seeking a Mandamus for directing the respondents to carry out a correction in his service book and his date of birth to read as 1.12.1966 instead of 15.7.1959.

Counsel would argue that on account of some mistake on the part of the respondent department at the stage of initial entry into service, the date of birth was wrongly recorded as 15.7.1959 in the service book. Even though, dates have not been mentioned, yet, counsel submits that repeated representations were made but no positive response has been forthcoming. In support of the correction sought, reliance is placed upon a 7th Standard Certificate issued by the Govt. High School, Gandhi Nagar, Patiala as also an Identity Card that was issued by the department to the petitioner.

It is further contended that if the prayer of the petitioner is not accepted serious prejudice would be caused as the petitioner, who otherwise was to retire six years hence would now stand retired w.e.f. 31.7.2019.

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

On a specific query having been put, counsel concedes that the provisions of the Punjab Civil Services Rules would apply even to the petitioner being an employee of the Municipal Corporation.

Claim of the petitioner as regards correction of his date of birth would be governed in terms of Note 3 appended to Rule 2.5 of the Punjab Civil Services Rules, Volume I, Part-I and Rule 7.3 of the Punjab Financial Services Rules, Volume I. The aforementioned Note 3 appended to Rule 2.5 of the Punjab Civil Services Rules, Volume I, Part-I (as given in Annexure 'A') reads as under:-

“ANNEXURE (A)

(Referred to in Rule 2.5 and note 3 thereunder)

1. In regard to the date of birth a declaration of age made at the time or for the purpose of entry into Government service shall, as against the Government employee in question, be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of a Government employee at any time against the interest of the Government employee 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.

2. When a Government employee, within the period allowed, makes an application for the correction of his date of birth as recorded a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as Certified Copies of entries in the municipal birth register, University or School age certificate, Janam Patris or horoscopes. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such application and no alteration should be allowed unless it has satisfactorily been proved that the date of birth as originally given by the applicant was a bona fide mistake and that he has derived no unfair advantage therefrom.

3. The result of every such enquiry should, in the case of gazetted, non-gazetted Government employees be briefly stated in their service cards, service books and if a correction is sanctioned, the fact should be reported to the Accountant General.”

Similar is the position envisaged by Rule 7.3 of the Punjab Financial Rules Volume I. In fact, Rule 7.3 permits correction of clerical error that too if it is made expeditiously. The said rule reads as under:-

“7.3. Every person newly appointed to a service or a post under Government should at the time of appointment declare the date of his birth by the Christian era with confirmatory evidence as far as possible, confirmatory documentary evidence such as Matriculation Certificate, Municipal birth certificate and so on. If the exact date is not known an approximate date may be given. The actual date or the assumed date, determined under note 1 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 a clerical error, without

the previous orders of Government.”

There is no dispute as regards the fact that the petitioner had gained entry in service in the year 1987. The representation seeking correction in the date of birth was also admittedly made first at point of time in the year 2018. The Hon'ble Supreme Court has considered such aspect of an application seeking correction of date of birth having been filed beyond the stipulated period as envisaged under the relevant rules/instructions in the case of ***Union of India v. Harnam Singh, 1993 (3) SCT 120 (SC)*** and held in the following terms:-

“It could not be the intention of the rule-making authority to give unlimited time to seek correction of date of birth, after 1979, to those government servants who had joined the service prior to 1979 but restrict it to the five year period for those who enter service after 1979. Indeed, if a government servant, already in service for a long time, had applied for correction of date of birth before 1979, it would not be permissible to non-suit him on the ground that he had not applied for correction within five years of his entry into service, but correction of date of birth only after 1979 stands on a different footing. It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service after 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979, but in any event later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule-making authority.”

In view of the dictum laid down by the Hon'ble Apex Court in ***Harnam Singh's*** case (supra) the prayer made in the instant petition cannot be accepted.

No merit, petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

22.07.2019

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No