

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

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CWP No.8632 of 2017

Date of Decision : 16.09.2019

Krishna Devi

....Petitioner

v/s

State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Jai Parkash Jagnu, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

B.S. Walia, J. (Oral).

[1] Prayer in the writ petition is for the issuance of a writ of Mandamus for directing the respondents to consider the age of the petitioner as per Annexure P/1, to quash (Annexure P-4) dated 03.04.2012 (wrongly mentioned as Annexure P-2, dated 06.02.1992), as per which, age of the petitioner on examination by a Medical Board was estimated between 50-55 years and to stay the retirement of the petitioner as on 30.04.2017.

[2] Learned Counsel contends that the petitioner was given appointment as Part Time Sweeper on the basis of interview on 06.02.1992 as per details forwarded by the Assistant Employment Officer vide Annexure P/1 in which her date of birth was mentioned as 05.11.1962, therefore said date only could be taken into account for determining the age of retirement of the petitioner but petitioner had been illegally retired w.e.f. 30.04.2017 despite representation Annexure P/10 dated 25.03.2017.

[3] Learned Senior Deputy Advocate General, Haryana, on the other hand states that as per details given by the petitioner on the basis of which Annexure P-1 dated 13.02.1989, was issued, date of birth of the petitioner is mentioned as 05.11.1962 whereas as per Annexure P-4, dated 03.04.2012, age of the petitioner as determined by the Medical Board mentions the same to be between 50 to 55 years, while in medical certificate of fitness of first entry into service dated 01.09.2014, date of birth of the petitioner is recorded as 03.04.1957.

[4] Learned Senior Deputy Advocate General, Haryana, states that in the light of the position as noted above, there is a serious dispute with regard to the correct date of birth of the petitioner, consequently, the writ court is not the appropriate forum and if so advised, the petitioner, may avail of remedy by invoking the jurisdiction of the Civil Court. Learned Deputy Advocate General however, states that the petitioner would be paid salary for the period she worked in the School beyond 30.04.2017.

[5] I have considered the submissions of learned counsel. Mere mention of date of birth is no proof of date of birth in the absence of birth certificate. However, in the absence of birth certificate, it would be open to the petitioner to invoke the jurisdiction of a civil court to establish her correct date of birth by leading evidence. However, the writ court is not the appropriate forum for adjudicating matters involving disputed questions of fact.

[6] In view of there being three different dates of birth of the petitioner in the official record, it is deemed appropriate to relegate the petitioner to avail of her remedy in accordance with law before the Civil Court qua her claim of date of birth, consequently of her entitlement to continue in

Senior Deputy Advocate General, Haryana, the petitioner shall be paid salary for the period the respondents took work from the petitioner beyond 30.04.2017, till such date that work was taken from the petitioner.

[7] Accordingly, the writ petition is ***disposed of*** as above.

(B.S. Walia)
Judge

September 16, 2019

'Rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No