IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 1990 of 2020

Decided on: 24.06.2020

Indra Devi ...Petitioner.

Versus

State of H.P. and others. ...Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting ?[1]

For the Petitioner : Mr. Surender K. Sharma,Advocate.

For the Respondents : Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr.Vikas Rathore and Mr. Desh Raj Thakur, Addl. Advocate Generals.

***Tarlok Singh Chauhan, Judge* (Oral)**

The instant petition has been filed by the petitioner for the grant of following substantive relief:

(i) That the respondents may very kindly be directed to carry the correction in the service record of the

[1] *Whether reporters of Local Papers may be allowed to see the Judgment ?*

applicant qua her date of birth as 09.06.1962 instead of wrongly recorded date of birth i.e. 06.06.1960 in terms of the copy of Parivar Register issued by the concerned Gram Panchayat, Identity Card issued by the Income Tax Department as well as Aadhar Card (Annexures A-3 to A-5).”

2. The petitioner was engaged as part time worker w.e.f. 08.01.1996. However, her date of birth was not mentioned in the engagement order. Thereafter, her services were converted into daily waged worker w.e.f. 06.08.2007 and subsequently regularised w.e.f. 27.08.2015.

3. The date of birth recorded in the service record was on the basis of the documents submitted by the petitioner herself. The date of birth of the petitioner was recorded as 06.06.1960 as has been mentioned in the Pariwar Register of Gram Panchayat, Bharmour where the petitioner was born and based on the certificate issued by the Headmaster, Govt. Girls Primary School, Bharmour where again her date of birth was mentioned as

06.06.1960. Even in the Employment Registration Card, the date of birth of the petitioner was recorded as 06.06.1960 and the same obviously was registered at the instance of the petitioner.

4. The sole basis of the claim of the petitioner that she was born on 09.06.1962 is based on the Pariwar Register Nakal issued by the Gram Panchayat, Sanchui, the Panchayat in which the petitioner marriage took place. Here, the date of birth of the petitioner has been mentioned as 09.06.1962. It has come on record that the Gram Panchayat, Sanchui was in fact bifurcated from Gram Panchayat, Bharmour. As observed above, the date of birth of the petitioner has been mentioned as 06.06.1960. Once that be so, then obviously a different date of birth could not have been recorded in the records of the Gram Panchayat, Sanchui, that too, after the marriage of the petitioner.

5. Apart from the above, it would be noticed that it was only on 3.3.2017 that the petitioner for the first time

filed a representation for correction of her date of birth in the service record at the fag end of her service.

6. The petitioner admittedly is a government servant, whose services are governed not only by FR-56, but also by Himachal Pradesh Financial Rules, 1971 and could have, therefore, made a request for correction of his/her date of birth within two or five years of his/her being inducted in service in terms of the aforesaid Rules.

7. It has consistently been held by the Hon'ble Supreme Court that request for change of date of birth in service records at the fag end of service is not sustainable.

8. The law on the question of alteration of the entry in the service register relating to the date of birth an individual is now fairly well settled and reference can conveniently be made to a coordinate Bench judgment of this Court in ***CWP No. 2168/2018, titled as Himachal Pradesh University vs. Hem Raj Sharma, dated 16.7.2019***, wherein it was observed as under:-

8. The law on the question of alteration of the entry in the service register relating to the date of birth of an individual, is now fairly well settled. It would be ideal to summarize the legal position as follows:

(i) In Government of Andhra Pradesh and another vs. M. Hayagreev Sarma {(1990) 2 SCC 682}, the Supreme Court made it clear that if the date of birth of an employee is recorded in his service register on the basis of the entry made in the school and college certificate, the same should be treated as correct. The Court pointed out that the entry so made would become final.

(ii) In Union of India vs. Harnam Singh {AIR 1993 SC 1367}, the Court pointed out that under Fundamental Rules 56, a request for correction of date of birth can be entertained only if it is made within five years of entry into service provided it is established that a genuine bona-fide mistake had occurred while recording the date of birth at the time of entry into service.

(iii) In Executive Engineer, Bhadrak (R&B) Division, Orissa and others vs. Rangadhar Malik {1993 Supp (1) SCC 763}, the Supreme Court rejected a claim on the basis of Rule 65 of the Orissa General Financial Rules which stipulated that representations for correction of entry relating to date of birth cannot be admitted at the fag end of the career.

iv) In the Secretary & Commissioner Home Department and others vs. R. Kirubakaran {AIR 1993 SC 2647}, the Court made it clear that the object of a rule prescribing a

period of limitation for making a claim regarding correction of the entry relating to the date of birth was to disable the Government servants from making claims on the eve of superannuation.

(v) In the State of Punjab and Ors. vs. S.C. Chadha {(2004) 3 SCC 394}, the aforesaid principles were reiterated.

(vi) In State of T. N. vs. T.V. Venugopalan {(1994) 6 SCC 302}, the Court frowned upon the practice adopted by some Government servants to approach the Tribunals towards the end of their career and get interim orders to enable them to continue in service. The Court reiterated that inordinate delay in making an application for alteration of date of birth was a ground for rejecting the application.

(vii) In Burn Standard Co Ltd. and others vs. Dinabandhu Majumdar and another {(1995) 4 SCC 172}, the Supreme Court cautioned the High Courts against entertaining the applications of Government servants for alteration of date of birth towards the fag end of their service. The Court reasoned that the entertainment of such claims would mar the chances of promotion of the juniors of the concerned individual and also prove to be an encouragement to other employees to come up with similar claims.

(viii) In Union of India vs. Ram Suia Sharma {(1996) 7 SCC 421}, the Supreme Court found fault with the

Tribunal for entertaining a claim after 25 years of joining service.

(ix) In State of Orissa and others vs. Ramanath Patnaik {AIR 1997 SCC 2452}, the Supreme Court held that any amount of evidence produced at the fag end of service would be of no avail.

(x) In Hindustan Lever Ltd. Vs. S.M. Jadhav and another {AIR 2001 SC 1666}, the Supreme Court reiterated that towards the fag end of the career, a party cannot be allowed to raise a dispute regarding his date of birth.

(xi) Even as late as in 2006, the Supreme Court came down heavily upon public servants seeking alteration of date of birth towards the last lap of their career. This was in State of Gujarat and others vs. Vali Mohmed Dosabhai Sindhi {AIR 2006 SC 2735}.

9. Even though, we need not multiply judgments on the subject in view of the decision of this Court in ***Hem Raj Sharma's*** case (supra), but we still feel that discussion on the subject would be incomplete in case reference is not made to a recent judgment of the Hon'ble Supreme Court in ***Bharat Coking Coal Ltd. vs. Shyam Kishore Singh, AIR 2020 SC 940***, wherein it was categorically held that no court or the

tribunal can come to the aid of those, who sleep over their rights and relevant paras thereof read thus:

> *9. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in State of M.P. vs. Premlal Shrivas, (2011) 9 SCC 664 it is held as hereunder:*
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> > *"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 v. Harnam Singh [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."

10. The learned Additional Solicitor General has also relied upon the decision of this Court in the case of

Factory Manager Kirloskar Brothers Ltd. vs. Laxman in SLP (C) Nos.25922593/2018 dated 25.04.2019 wherein the belated claim was not entertained. Further reliance is also placed on the decision of this Court in the case of M/s Eastern Coalfields Ltd. & Ors. vs. Ram Samugh Yadav & Ors. in C.A.No.7724 of 2011 dated 27.05.2019 wherein this Court has held as hereunder:

> *"Nothing is on record that in the year 1987 when the opportunity was given to Respondent No.1, to raise any issue/dispute regarding the service record more particularly his date of birth in the service record, no such issue/dispute was raised. Only one year prior to his superannuation, Respondent No.1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge as well as the employer was justified in refusing to accept such an issue.*
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> *The Division Bench of the High Court has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent No.1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier."*

10. Similar reiteration of law can be found in a very recent judgment rendered by this Court in CWP No. 682 of

2020 titled ***Kala Singh vs. State of H.P. and others***, decided on 02.06.2020.

11. In view of the aforesaid discussion and for the reasons stated above, we find no merit in this petition and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

24th June, 2020 **(Jyotsna Rewal Dua)**
(GR) **Judge**