IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1871 of 2020
Decided on: 29.06.2020

Gian Bahadur ...Petitioner

Versus

State of H.P. & Ors. ...Respondents

Coram:
Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

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

Whether approved for reporting? [1]

For the Petitioner : Mr. I. D. Bali, Sr. Advocate with Mr. Virender Bali, Advocate.

For the Respondents : Mr. Ashok Sharma, A.G. with Mr. Vinod Thakur, Mr. Desh Raj Thakur and Mr. Vikas Rathor, Addl. A.G., for respondents-State.

(Through Video Conferencing)

Tarlok Singh Chauhan, Judge (Oral)

This indeed is a very strange petition wherein the petitioner has claimed the following substantive reliefs:-

> *(i) Direct the respondents to properly ascertain the record of date of birth of the petitioner on the basis of the authentic record of birth in the service record.*
> *(ii) Direct the respondents not to retire the petitioner on 30.06.2020 on the basis of incorrect entries made in the service record.*
> *(iii) Direct the respondents to correct the entries of date of birth in birth record on the basis of the authentic record to be produced by the petitioner.*

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

(iv) Direct the respondents not to superannuate the petitioner until the correction of the date of birth.

2. It is averred that the petitioner was born in Nepal and migrated to India about 40 years back and settled in village Sarkalti, Post Office Madhawani, Sub-Tehsil Kotgarh, District Shimla, H.P. He was engaged on daily wage basis by respondent No. 2 in May, 2000 and thereafter his services were regularized in the month of June, 2017. Since there is no record regarding the date of birth of the petitioner, therefore, he alongwith other similar situate persons was directed to sworn in an affidavit regarding his date of birth. The petitioner submitted his affidavit wherein he disclosed his date of birth to be 15.06.1961. The petitioner thereafter was medically examined and the age as disclosed by him in his affidavit, was taken to be correct.

3. Now, the grievance of the petitioner is that even though he is not possessed of any documents whatsoever, which may *prima facie* establish his date of birth, but the entry regarding the date of birth in the record of the respondent is not correct and therefore, he should be permitted to continue in service and afforded an opportunity to procure his birth certificate from Nepal.

4. We really wonder how the petition is maintainable.

5. It is more than settled that a writ of mandmus does not lie to create or establish a legal right but to enforce the legal

right i.e. already established. Writ being equitable in nature, its issuance is governed by equitable principle. The writ cannot be granted unless it is established that there is an existing legal right of the applicant or an existing duty of the respondent.

6. As observed above, the petitioner has not placed on record any document, much less contemporaneous official record regarding the date of birth and, therefore, has no right to continue in service, more particularly, when he himself has filed an affidavit disclosing therein his date of birth to be 15.06.1961. He has failed to place on record and assail the recommendations of the Medical Board viz. has concurred with the date of birth as disclosed in the affidavit filed by him. What the petitioner seeks in his fishing roving enquiry which is not permissible.

7. Consequently, we find no merit in this petition and the same is accordingly dismissed. Pending application(s), if any, also stands disposed of, leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

29th June, 2020.
(sanjeev)