

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7232 of 2019 (O&M)

Date of Decision: 16.07.2020

Shilla Devi

... Petitioner

VS.

UOI & Ors.

... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE GIRISH AGNIHOTRI**

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Aman, Advocate for the petitioner

Mr. Arvind Moudgil, Advocate for respondents No.1 to 4

GIRISH AGNIHOTRI, J.

(1) The present writ petition has been filed by the petitioner, namely, Shilla Devi stated to be aged 58 ½ years *inter alia* seeking a writ in the nature of *certiorari* for quashing the impugned judgment/order dated 05.02.2019 (P1) whereby the Central Administrative Tribunal, Chandigarh Bench, Chandigarh has dismissed the OA No.060/1305 of 2017. It is, *inter alia*, further prayed that the retirement order dated 30.08.2017 (P5) and the order of rejection of representation dated 23.10.2017 (A/13), be also set aside. It is pertinent to mention here that in the writ petition the petitioner has wrongly made the prayer to quash Annexure P6 which, in fact, is the representation dated 18.09.2017 (P6). In fact, the order of rejection of his representation is Annexure A/13 attached with the Original Application (P2) with the present writ petition.

(2) Records of the case show that on 30.10.2017 (P2), the petitioner had filed the Original Application (OA) before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, 'the Tribunal')

challenging the order dated 30.08.2017 ordering the retirement of the petitioner w.e.f. 31.08.2017 on attaining the age of superannuation of 60 yrs.

(3) The Tribunal vide its judgment pronounced on 05.02.2019 (P1) while rejecting the OA of the petitioner has observed, at the outset, that the petitioner-applicant who had started her service on 26.04.1983, as a Family Welfare Officer in the PGIMER, Chandigarh has filed the OA before the Tribunal. It is then noticed that the claim of the petitioner-applicant is that her date of birth should be treated as “03.08.1960” (as given by her in the affidavit) and should not be treated as “03.08.1957” (as mentioned in the Matriculation certificate).

(4) Before the Tribunal, written statement was filed by Sh. Sandeep Sethi, Administrative Officer, Establishment Br-II, PGIMER, Chandigarh. In para 3 of the written statement, an objection was also taken that the cause of action had arisen to the petitioner-applicant on 09.07.1974 when her date of birth in the Matriculation examination was recorded as 03.08.1957 and again in 1983 when in her service record, the date of birth had been recorded as 03.08.1957 on the basis of Matriculation certificate and other documents submitted by her. Thus an objection that the OA filed by the petitioner-applicant is time barred, was specifically taken.

(5) In para 4(5) of the written statement, reference was made to the General Financial Rule 79 Clause (I) which read as under:-

“Every person newly appointed to a service or a post under Government shall, at the time of the appointment, declare the date of birth by the Christian era with as far as possible confirmatory documentary evidence such as a Matriculation Certificate, Municipal Birth Certificate and so on. If the exact date is not known, approximate date shall be given.”

(6) Based on the same, the respondents had taken a stand that the petitioner-applicant had submitted/attached the Matriculation certificate at the time of appointment to the Institute, which recorded her date of birth as 03.08.1957. Accordingly, the same had been entered in her service record.

(7) The Tribunal vide its impugned judgment has, after noticing the above Rule, given its reasoning in para 6 of the judgment which is reproduced hereunder:-

“The applicant, at the time of joining, had submitted an attestation form duly filled in by her on 20.05.1983 under her own signature wherein she had herself mentioned her date of birth as 03.08.1957. She submits that she has made no efforts to correct her date of birth in the matriculation certificate. The respondent in the affidavit placed on record, submit that no affidavit of the applicant to the effect that her actual date of birth was 03.08.1960 has been submitted nor is the same available on record. The only documentary proof the respondents have is the matriculation certificate submitted by the applicant herself at the time of appointment, the attestation forms and the service book whose entries are corroborated with the other two documents cited and produced at the time of appointment. Since the date of birth in the matriculation certificate is stated as 03.08.1957, the same is the date of birth on record in the office.”

(8) This Court also is inclined to refer to para 12 of the judgment of the Tribunal which is reproduced as under:-

“We note that the applicant has also in the attestation form submitted in the year 1983, recorded her date of birth in column 7(a) as 03.08.1957. In column 7(b) she has recorded her age as 25 years and in column 7(c) the age at matriculation is 16 years. Further in column 10 of the same form, applicant indicates date of passing matriculation as March, 1974 i.e. at the age of 16 years if date of birth is taken as 03.08.1957. In

case the applicant's date of birth was 03.08.1960, then she would be of 13 years of age at the time of passing matriculation which would not come to the aid of the applicant or support her claim, as she would have been under-aged to appear in matriculation exam."

(9) From what has been noticed above, this Court is of the considered view that there is no infirmity in the judgment passed by the Tribunal dated 05.02.2019. The judgment is accordingly liable to be upheld. So ordered.

(10) It is evident from various facts which are part of the pleadings and also from what has been observed above that the petitioner after her retirement has now challenged her retirement alleging that wrong date of birth was recorded. Therefore her claim through the present petition and the OA suffers from delay and laches and is accordingly time barred.

(11) In this regard, reliance can be placed on **Union of India v Kantilal Hematram Pandya [1995] 3 SCC, 17**, wherein Hon'ble the Supreme Court held that where there is unexplained and inordinate delay in seeking correction in the date of birth, the judicial interference should be made sparingly and with circumspection. The Apex Court in **Chief Medical Officer v Khadeer Khadri [1995] 2 SCC, 82** had held that where an employee seeks correction in date of birth beyond the statutory time limit prescribed under the Rules, his application is liable to be rejected.

(12) Secondly, in view of the General Financial Rules, the employer has to rely on the date of birth entry as recorded in the Matriculation certificate and other documents mentioned in the Rules. It is not disputed by the petitioner that the date of birth even till today so recorded in the Matriculation certificate is 03.08.1957. She has also not placed on record

fact in the other certificates, her date of birth is mentioned as “03.08.1960” and not “03.08.1957”.

(13) Thirdly, even from her own conduct as noticed in para 12 of the judgment of the Tribunal, reproduced above, it is axiomatic that when in the year 1983, the petitioner submitted the attestation form in column 7(a), she had mentioned the date of birth as “03.08.1957”. The petitioner had even further in column 7(b) recorded that her age is “25 years”. She further goes on to record in column 7(c) that her age at the Matriculation is 16 years. Still further, in column 10 of the same form, the petitioner-applicant indicated her date of passing Matriculation as March 1974 i.e. at the age of 16 years, if the date of birth is taken as 03.08.1957. It needs to be noticed that in case the petitioner-applicant’s date of birth as claimed by her now would have been 03.08.1960, she would have made different entries in the aforementioned four columns of the attestation form.

(14) This Court finds support from the judgment of the Hon’ble Supreme Court in **State of T.N. V T.V.Venugopalan [1994] 6 SCC, 302**, in holding that once the date of birth has been recorded while entering into service and is duly counter-signed by the Government servant, ordinarily such entry should not be permitted to be changed. Reference can also be made to **Burn Standard Co. Ltd. V Dinabandhu Majumdar [1995] 4 SCC, 172**, where the Hon’ble Supreme Court held that where an employee of the Government or its instrumentality voluntarily makes a declaration of his date of birth at the time of entry into service and when such date of birth is duly authenticated by him, the High Court should not ordinarily, in exercise of its discretionary writ jurisdiction, entertain a writ petition filed by such an employee seeking correction of his date of birth.

(15) In view of the foregoing reasons, this writ petition does not deserve to succeed on merits and is thus dismissed.

16.07.2020 <i>vvishal</i>	(Jaswant Singh) Judge	(Girish Agnihotri) Judge
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| <i>1. Whether speaking/reasoned?</i> | Yes/No |
| <i>2. Whether reportable?</i> | Yes/No |