

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

CWP-13020-2020

Date of Decision:30th Oct. 2020

MULTAN SINGH MEHLA

....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Balwinder Singh Sudan, Advocate for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana.

Mr. Pawan Kumar Mutneja, Advocate for respondent No.2.

SANT PARKASH J.

*(The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court)*

This civil writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the notice of retirement dated 30.07.2020 (P-10) and order dated 30.07.2020 (P-9) passed by respondent No.2, whereby after ordering correction of date of birth of the petitioner in the service record, the petitioner is sought to be retired on the basis of incorrect date of birth by misinterpreting the civil court decree dated 01.04.2014 (P-5); with further prayer to continue the petitioner in service till attaining the age of superannuation.

The petitioner was initially appointed as Time Keeper at the Kaithal Cooperative Sugar Mills Ltd.. While working on deputation basis, his service was permanently absorbed on the same post. He was promoted as Head Time Keeper on 24.05.2015. After getting corrected

his date of birth in his matriculation certificate on the basis of judgment and decree (P-5), the petitioner submitted the representation to respondent No.2 for correction of his date of birth in the service record. Since, no action has been taken, petitioner filed CWP No.7763 of 2020, whereby direction was issued to respondent No.2 to pass a speaking order on the representation of the petitioner. Resultantly, respondent No.2 ordered to incorporate the correct date of birth of the petitioner i.e. 01.12.1961 in the service record, but held that the petitioner has attained the age of retirement of 60 years as on 06.08.2020 by misconstruing the judgment and decree and issued the notice of retirement.

Learned counsel for the petitioner submits that despite the fact that date of birth of the petitioner has been changed to 01.12.1961 instead of 07.08.1960 as per judgment and decree dated 01.04.2014 (P-5) passed by competent Court of law, respondent No.2 passed order dated 30.07.2020 (P-9), holding that the petitioner has attained the age of retirement of 60 years on 06.08.2020 and in terms of order at Annexure P-9, the notice of retirement has also been issued.

Written statement on behalf of respondent No.2 has been filed. The relevant part of which is reproduced as under:-

"The petitioner had an issue about his date of birth. He approached the Id. Civil Court at Kaithal and vide judgment at Annexure P-5 his date of birth was ordered to be corrected in the records. It was however, made clear in the judgment at Annexure P-5 that the petitioner cannot take retiral benefits of the decree in any job. His date of birth was corrected vide Annexure P-7. However, for retiral purposes, the answering respondent in accordance with the judgment at Annexure P-5 has gone as per his original date

of birth matriculation certificate as 07.08.1960. The correct date of birth which is of 01.12.1961, which was corrected in Annexure P-7, in pursuance to the judgment. However, for retiral purposes cannot be given effect to by the answering respondent in view of the judgment at Annexure P-5. It needs to be submitted here that the answering respondent was not a party in the civil suit at Annexure P-5, as it was instituted before the petitioner joined the answering respondent. In view of the civil suit, the answering respondent is accosted with a hobsons' choice wherein the date of birth of the petitioner is of 01.12.1961 as per his amended matriculation certificate. On the other hand, for the purposes of retirement, his age would be construed as 07.08.1960. Thus, if the answering respondent goes by his date of birth, which wrongly recorded, the petitioner would retire on 31.08.2020 having attained the age of 60. As per the amended certificate, the petitioner would retire only on 31.12.2021. The answering respondent accordingly gave notice to the petitioner to seek this clarification."

Heard. Submissions of both the parties considered.

From the averments of the parties as reproduced above, the factual matrix is almost admitted. The solitary question to be adjudicated upon by this Court is as to whether the corrected date of birth of the petitioner should be considered for the purpose of his retirement. There is no denial of the fact that vide judgment dated 01.04.2014 (Annexure P-5) of the Civil Court, which was an ex parte judgment, the date of birth of the petitioner was corrected from 07.08.1960 to 01.12.1961. In order to appreciate the rival contentions of both the parties, the relevant portion of the judgment (Annexure P-5) deserves to be reproduced :-

"Keeping in view the birth certificate Ex.PA, it is held that actual date of birth of plaintiff is 01.12.1961 has been incorrectly mentioned in Ex.PB Matriculation Examination Certificate issued by defendant-board and therefore, necessary correction is liable to be made and the present suit, thus, deserves to be decreed as prayed for.

In the light of discussion above, present suit for declaration is hereby ex-parte decreed as prayed for with no order as to costs. Defendant board is directed to make necessary corrections in its record. However, it is made clear that plaintiff cannot take retirement benefit of this decree in any job."

If glanced through and interpreted properly, the judgment, Annexure P-5, would certainly come in the way of granting the extension in the retirement period of the petitioner, which according to his previous date of birth, is 7.8.1960. The judgment, Annexure P-5, has made it explicitly clear that the petitioner would not be entitled to any retirement benefit in any job. The natural corollary would be that the petitioner would not be entitled to any benefit in connection with his retirement. It does not lie in the mouth of the petitioner to urge that this judgment pertains only to the retiral benefits but not qua his retirement age. The crux of the judgment, in my view, would be that he cannot be allowed to continue in service merely on the basis of the corrected date of birth. Judgment, Annexure P-5, is absolutely clear and there is no ambiguity about that.

Secondly, the respondents were not party in the said civil court decree and despite the fact that date of birth has been corrected in the records of the respondents, no extension would be permissible in view of the specific directions contained in Annexure P-5.

During the course of arguments, learned counsel for the respondents have submitted that the petitioner is very hard working and efficient worker, and if the Court so permits, he can be allowed to continue in service. In this regard, it would be suffice to say that it is for the respondents to see whether to allow him to continue on the basis of his corrected date of birth or not but legally and as per the directions in the judgment (Annexure P-5) and as per the opinion of this Court as well, no such benefit can be extended to him.

Disposed of accordingly.

October 30th, 2020

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**(SANT PARKASH)
JUDGE**

whether speaking/reasoned: Yes/No

whether reportable: Yes/No