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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.848 of 2012**

Dukhdev, son of Chamroo, aged about 52 years, working as Unskilled Labour at the Office of Assistant Director, Sericulture, Korba, District Korba, Chhattisgarh

----- **Petitioner****Versus**

- 1.State of Chhattisgarh, Through Secretary, Rural Industries, D.K.S. Bhawan, Raipur, Chhattisgarh
- 2.Director Rural Industries, Directorate of Rural Industries Chhattisgarh (Sericulture Sector), Sonakhan Bhawan, Ring Road, Raipur, Chhattisgarh
- 3.Assistant Director, Sericulture Sector, Korba, District Korba, Chhattisgarh
- 4.Central Officer, Sericulture Sector, Kartala, District Korba, Chhattisgarh

----- **Respondents**

For Petitioner	: Mr.C.J.K.Rao, Advocate
For Respondents	: Mr.Animesh Tiwari, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board (Through Video Conferencing)****3.9.2021**

- 1.The petitioner herein calls in question legality, validity and correctness of the order dated 17.10.2011 (Annexure P-1) by which the petitioner was sought to be retired w.e.f.31.5.2012 attaining the age of superannuation.
2. Mr.C.J.K. Rao, learned counsel for the petitioner, would submit that the petitioner was regularized on 1.10.2008 and thereafter date of birth of the petitioner has taken as 7.5.1950 and he has been retired during the pendency of this writ petition on 31.5.2012 taking his date of

birth as 7.5.1950, as such, the petitioner's date of birth be taken as 18.7.1959 as recorded in Annexure P-4 and consequential benefits be provided to him.

3. On the other hand, Mr. Animesh Tiwari, learned Deputy Advocate General for the respondents/State, would submit that the when notice of retirement was served to the petitioner indicating that he will be retired from service w.e.f 31.5.2012 only thereafter this writ petition was filed on 16.2.2012 and he has also given undertaking affidavit before the authorities at the time of regularization on 1.7.2008 that his date of birth is 7.5.1950 and as such, at the fag end of service and in view of judgment of the Supreme Court in the matter of **Bharat Coking Coal Limited and others v. Shyam Kishore Singh**¹, the writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. The petitioner was regularized on the post of unskilled labour w.e.f. 1.10.2008. At the time of his regularization, on being asked by the Department, he has submitted affidavit in which date of birth has been recorded as 7.5.1950, which has been filed as Annexure R-1. From the date of submission till the date of retirement/date of filing of this writ petition, the

1 (2020) 3 SCC 411

petitioner has never disputed his date of birth as recorded in affidavit (Annexure R-1) that his date of birth is not 7.5.1950. When notice dated 17.10.2011 (Annexure P-1) was served to him that he will be retired from service w.e.f. 31.5.2012, then only he filed this writ petition on 16.2.2012 claiming that his actual date of birth is 18.7.1959.

6. The Supreme Court in the matter of Bharat Coking Coal Limited (supra) has clearly held that date of birth cannot be corrected at the fag end of service career. It was observed as under:-

"9. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of *State of Maharashtra v. Gorakhnath Sitaram Kamble*² wherein a series of the earlier decisions of this Court were taken note and was held as hereunder: (SCC pp.428-29, paras 16-17 & 19)

"16. The learned counsel for the appellant has placed reliance on the judgment of this Court in *U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri*³. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in *State of Uttaranchal v. Pitamber Dutt Semwal*⁴ [(2005) 11 SCC 477] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision

2 (2010) 14 SCC 423

3 (2005) 11 SCC 465

4 (2005) 11 SCC 477

after almost three decades.

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in *Home Deptt.v. R. Kirubakaran*⁵ reads as under: (SCC pp. 158-59, para 7)

"7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book."

10. This Court in fact has also held that even if there is good evidence to establish that the

5 1994 Supp (1) SCC 155

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 Shrivastava*⁶ it is held as hereunder: (SCC pp. 667 & 669, paras 8 & 12)

"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*⁷).

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

6 (2011) 9 SCC 664

7 (1993) 2 SCC 162

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."

7. In view of aforesaid position that the petitioner has submitted affidavit on 1.7.2008 that his date of birth is 7.5.1950 and only he has challenged his date of birth at the fag end of service, which cannot be entertained in view of principle of law laid down by the Supreme Court in the matter of Bharat Coking Coal Limited (supra).
8. For the foregoing reasons, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-