

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 10894 of 2019

1. Ramaswami Naidu S/o Shri Krishna Swami Naidu Aged About 60 Years Presently Posted And Working As Superintendent Engineer, Department Of Water Resources, Water Recourses Division, Bilaspur, District Bilaspur, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through- The Secretary, Department of Water Resources, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District Raipur, Chhattisgarh.
2. Engineer In Chief Water Resources Department, Sihawa Bhawan, Raipur, District Raipur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Shantam Awasthy, Advocate.
For State	:	Ms. Abhyunnati Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28.09.2021

1. The correction of date of birth is what is the relief sought for by the petitioner in the instant writ petition.
2. The brief facts relevant for disposal of the present writ petition is that the petitioner was appointed as an Assistant Engineer under the respondents Water Resources Department in the year 1982. The petitioner at the time of filing of the writ petition was discharging the duties that of a Superintendent Engineer. The petitioner claims to have come to know about his actual date of birth to be 16.11.1960 on the basis of Annexure P/3, birth certificate that was issued from the office of Registrar Birth and Death. The certificate is dated 06.08.1992.
3. From the perusal of records and there is an admission by the counsel for the petitioner himself that the entire educational records of the petitioner reflects the date of birth of the petitioner to be 30.12.1959 which includes the higher secondary certificate issued in favour of the petitioner from the

competent Board of Secondary Education. There has been no efforts made by the petitioner for getting the date of birth in the school records corrected at any point of time. The school certificates still reflect the date of birth as 30.12.1959.

4. The issue of date of birth has now been finalized and laid to rest by catena of decisions laid down by the Supreme Court whereby it has been time and again reiterated that the school records for all practical purposes particularly the certificate issued from the Board of Secondary Education or for that matter Higher Secondary School Certificate has to be accepted as most authentic document. In the instant case also the school records admittedly reflect the date of birth of the petitioner to be 30.12.1959.
5. From the documents also it reflects that for the first time the petitioner had approached the employer for necessary correction of his date of birth in the service records on 12.11.2002. This again is after about 20 years of coming in service, which otherwise means that during these 20 years time the petitioner did not have any grievance as regards the date of birth reflected in his service records.
6. Another fact which needs consideration is that the document on the basis of which the petitioner seeks correction of his date of birth is Annexure P/3. The said certificate was issued somewhere in the year, 1992 even then the petitioner did not take any steps for getting the date of birth in his educational records to be corrected or rectified and by efflux of time the date of birth as is reflected in his educational records have attained finality.
7. In view of the same, the claim of the petitioner for correction of date of birth as this far end of his service career would not otherwise be permissible, nor has the petitioner made out any strong case with clinching

materials to hold that the date of birth in the service records as also in the educational records to be incorrect or bad in law.

8. The Supreme Court very recently in Civil Appeal No.5720 of 2021, decided on 21.09.2021 in case of Karnataka Rural Infrastructure Development Ltd. Vs. T.P. Nataraja & Others, discussing the law on the issue of date of birth elaborately in paragraphs 9.1 to 10 has held as under:

9.1 In the case of Home Department Vs. R. Kirubakaran (Supra), it is observed and held as under:

"7. An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. 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 the promotion for ever..."

9.2 In the case of State of M.P. v. Premlal Shrivastava, (Supra) in paragraph 8 and 12, it is observed and held as under:

" 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."

9.3 In the case of Life Insurance Corporation of India & Others v. R. Basavaraju (Supra), it is observed as under:

" 5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement"

9.4 In the case of Bharat Coking Coal Limited and Ors. v. Shyam Kishore Singh (Supra) of which one of us (Justice A.S. Bopanna) was a party to the bench has observed and held in paragraph 9 & 10 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 and Anr. v. Gorakhnath Sitaram Kamble (2010)14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:

"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 [(2005) 11 SCC465: 2006 SCC (L&S) 96]. 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 [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] 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 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 [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] 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 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, (Supra) it is held as hereunder:

"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 sleepover 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. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under:

- (i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;
- (ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;
- (iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation."

9. Applying the aforesaid legal proposition of law to the facts of the present case, this court is of the opinion that no strong case is made out by the petitioner for correction of date of birth. The writ petition therefore being devoid of merit deserves to be and is hereby rejected.

Sd/-
(P. Sam Koshy)
Judge