

(Heard through Video Conferencing)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-35742 of 2019 (O&M)
DATE OF DECISION: 12.04.2021

Balam Singh

...Petitioner

Versus

State of Punjab & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Argued by: Mr. Akshay Bansal, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

Mr. Tarun Vir Singh Lehal, Advocate
for respondent-PSPCL.

ARUN MONGA, J.

The *lis* herein is qua the date of birth of the petitioner. The petitioner claims, on the basis of birth certificate (Annexure P-2) purportedly issued by Chowkidaar of the village, that his date of birth is 02.04.1968 and he has been wrongly retired from service vide impugned order dated 26.09.2018(Annexure P-1) taking his date of birth as 02.04.1960.

2. The grievance of the petitioner is that the respondent authorities have wrongly taken his date of birth as 02.04.1960. As per birth certificate (Annexure P-2), the correct date of his birth is 02.04.1968. He has been wrongly retired from 30.04.2018 though he had about 8 years more to continue in service.

3. Some of the facts first, which are not in dispute. The petitioner joined service in erstwhile Punjab State Electricity Board(PSEB), now Punjab State Power Corporation Limited (PSPCL)in April 1986, as a daily wager. His services were regularized as Work Charge T Mate on 13.07.1993. Thereafter, he was promoted as Assistant Lineman on 05.06.2008.

4. The real, in fact the only, dispute herein is about the date of the petitioner's birth claimed by him, on the basis of a birth certificate (Annexure P-2), to be 02.04.1968.

5. The respondent authorities dispute the veracity of the said certificate. They assert that on information provided by the petitioner himself, his date of birth had been originally recorded as 02.04.1960 in the service record. Later on, he submitted a birth certificate dated 27.03.1989 (Annexure P-2), purportedly issued by Sadhu Singh Chowkidar village Lahal Kalan, Tehsil Sunam and claimed on its basis that his date of birth was 03.04.1968. On that claim, the petitioner's date of birth was changed in his on-line HR service record from 02.04.1960 to 02.04.1968 in the Sub-Division office at Moonak. Clarification was also sought from the Joint Secretary (Personnel), PSPCL, Patiala. In this connection, the Assistant District Registrar, Births and Deaths, issued an 'Unavailability Certificate' dated 11.04.2018 (Annexure R-7)certifying that the birth registration record of year 1968 of village Lahal Kalan, PS Moonak had been searched and that it did not contain any entry of the birth of Balam Singh son of Gurbachan Singh and Gurdev Kaur (mother) of the said village. Vide letter dated 25.09.2018 (Annexure R-6), the Joint Secretary (Personnel), PSPCL wrote to the Additional Superintending Engineer, Lehragagga that the petitioner's

date of birth had been wrongly changed from 02.04.1960 to 02.04.1968 by the office of DS, Sub-Division, Moonak in the on-line HR service record and that the change could not be accepted. Thus, on the basis of date of birth 02.04.1960 as originally furnished by the petitioner and on his attaining the age of superannuation, he was rightly retired from service from 30.04.2018.

6. Qua retiral benefits, it is averred that the pension case of the petitioner had already been sent to the higher authorities for sanction and the same will be released as soon as necessary approval is granted. Preliminary objection was taken, inter alia, that the factual dispute about the petitioner's date of birth cannot be decided in the writ petition and for this, the petitioner should have filed a civil suit.

7. In the replication, the petitioner controverted the stand taken by respondents and reiterated the averments made in the writ petition.

8. I have heard learned counsel for the parties and with their able assistance have gone through the paper-book.

9. Impugned order (Annexure P-1) for the petitioner's retirement from 30.04.2018 was passed and communicated to him on 26.09.2018. In the given situation, at the relevant time, when the petitioner stood retired and was wholly out of job, the matter involved urgency. The instant writ petition challenging the same was filed on 06.12.2019. It seems that the filing of writ petition suffers not only from delay but also the vice of laches and on that short ground alone is liable to be dismissed.

10. However, even otherwise, I am of the opinion that, given the disputed factual matrix, writ jurisdiction is not the appropriate remedy and instant petition deserves dismissal for the reasons stated hereinafter.

11. Petitioner relies upon birth certificate (Annexure P-2) dated 27.03.1989 showing that his parents were blessed with a male child on 02.04.1968, about which the entry in the register was made on 04.05.1968. Let us see whether this document can be accepted as valid proof of date of his birth.

11.1. Before adumbrating further, first the relevant Sections 16 and 17 of the Registration of Births & Deaths Act, 1969, which are as under:

“16. Registrars to keep registers in the prescribed form (1) Every Registrar shall keep in the prescribed form a register of births and deaths for the registration area or any part thereof in relation to which he exercises jurisdiction.

(2) The Chief Registrar shall cause to be printed and supplied a sufficient number of register books for making entries of births and deaths according to such forms and instructions as may, from time to time, be prescribed; and a copy of such forms in the local language shall be posted in some conspicuous place on or near the outer door of the office of every Registrar.

17. Search of births and deaths register(1) Subject to any rules made in this behalf by the State Government, including rules relating to the payment of fees and postal charges, any person may--

(a) cause a search to be made by the Registrar for any entry in a register of births and deaths ;and

(b) obtain an extract from such register relating to any birth or death :

Provided that no extract relating to any death, issued to any person, shall disclose the particulars regarding the cause of death as entered in the register.

(2) All extracts given under this section shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872), and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.”

There were analogous provisions in the Births, Deaths & Marriages Registration Act, 1886, which was repealed by the 1969 Act *ibid*.

11.2. Birth certificate (Annexure P-2) relied on by the petitioner was purportedly signed and issued on 27.03.1989 by one Sadhu Singh chowkidar of village Lahal Kalan, Tehsil Sunam, District Sangrur. He was not competent or authorised under the Registration of Births &

Deaths Act, 1969 to issue any such certificate. Strangely, the certificate is on a printed form and also bears the emblem of the Punjab Government. Ex-facie, the genuineness and authenticity of this certificate are quite suspicious.

11.3. As noted above, the Assistant District Registrar, Births and Deaths, issued 'Unavailability certificate' dated 11.04.2018 (Annexure R-7) certifying that the birth registration record of year 1968 of village Lahal Kalan, PS Moonak had been searched and that it did not contain any entry of the birth of Balam Singh son of Gurbachan Singh and Gurdev Kaur (mother) of the said village. This 'Unavailability Certificate' issued by the competent authority far out-weighs and almost negates the Birth Certificate (Annexure P-2) purportedly signed and issued on 27.03.1989 by one Sadhu Singh chowkidar without any lawful authority.

11.4. In this view of the matter, it is difficult to accept the petitioner's claim, on the basis of birth certificate (Annexure P-2) purportedly signed and issued on 27.03.1989 by Sadhu Singh chowkidar that his date of birth is 02.04.1968 and not 02.04.1960 as initially provided by him to the respondents.

12. In any case, a civil suit is the proper re-course, if advised to do so, wherein the parties would have opportunity to produce all oral and documentary evidence, necessary for adjudicating the serious factual controversy herein about the petitioner's date of birth. The same cannot be decided in the extra ordinary jurisdiction vested under Article 226 of the constitution of India.

13. As a result, instant petition is dismissed with liberty to seek civil remedy, as aforesaid. Any observations made herein above qua the date of birth of petitioner are merely tentative and preliminary and left open to be decided by competent court, if approached, without being influenced therefrom.

14. Pending applications, if any, stand disposed of.

(ARUN MONGA)
JUDGE

12.04.2021
Jiten

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No