

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3737 of 2021

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Gopal Mishra S/o Late Shivnarayan Mishra R/o- ward no. 09 near ring bandh
mirchaipatti, P.S.- Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary Department of Home, Government of Bihar.
3. The Director General Bihar Homeguard Police, Government of Bihar, Patna.
4. The District Magistrate Sitamarhi.
5. The Office of District Commandant Bihar Homeguard, Sitamarhi.
6. Awadesh Kumar Mehta S/o- Late Jyoti Narayan Mehta R/o- Ward No.-5,
Dumra, Dumra Court, P.S.- Dumra, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nivedita Nirvikar, Sr. Advocate
For the Respondent/s : Mr. Ajay Kumar

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 31-01-2022

The matter is heard *via* video conferencing due to
circumstances prevailing on account of the COVID-19 pandemic.

2. In the instant petition, petitioner has prayed for
following reliefs:

“1. That by way of this writ
application, the petitioner seeks indulgence
of this Hon’ble Court for the issuance of
writ in the nature of Mandamus for the
following:-

i) Directing respondent
authorities to enquire the list published
dated 26-12-2018 vide District order no.-
38/2018 having memo no.- 1467/ 2018,
issued by the office of District
Commandant, Bihar State Homeguard,
Sitamarhi, whereby and where under
several employees have been made to
superannuate excluding respondent no.-6.



ii) For that the action of the respondents in excluding the name of respondent no.-6 is arbitrary although the petitioner and respondent no.-6 date of birth and joining is of the almost same date, month and year.

iii) For any other order/ orders or relief/ reliefs.”

3. Petitioner's grievance is for rectification of date of birth entered in the service record from 01.01.1959 to 20.05.1960.

4. The contention of learned senior counsel for the petitioner is that identical persons whose service records were similarly situated were allowed to continue and allowed to rectify their date of birth whereas petitioner has submitted number of representation, like Annexure-8. However, the same has not been considered by the concerned respondent in rectifying/correcting the date of birth in the service record. In fact, she has pointed out that in the school certificate date of birth of petitioner is entered as 20th May, 1960. Therefore, invariably school certificate is required to be given order of preference while taking date of birth so as to enter into the service record.

5. Heard learned senior counsel for the petitioner.

6. Petitioner had occasion to ascertain the date of birth entered in the service record from the date of joining service for a reasonable period of three years. Apex Court time and again held that in respect of correction of date of birth of an employee cannot be entertained by the judicial forum, if it is at the fag end of his/her



service. In the present case, petitioner's age as on the date of presentation of the present petition is shown as 60 years. Therefore, petitioner is not entitled to get correction of his date of birth from 01.01.1959 to 20th May, 1960. The contention of the petitioner that similarly situated persons have been extended benefit of correction of date of birth in their service records. If an illegal act stated to have been committed by the respondent, the same benefit cannot be extended to the petitioner. In other words, illegality cannot be perpetuated as held by the Apex Court in the case of ***R. Muthukumar & Others Vs. Chairman and Managing Director TANGEDCO & Others*** reported in 2022 SCC Online SC 151, decided on 07.02.2022. In the case of ***Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja & Others*** reported in ***2021 SCC Online SC 767***, para 17 to 22 held as under:

“17. Even otherwise and assuming that the reasoning given by the High Court for the sake of convenience is accepted in that case also even respondent No.1 – employee was not entitled to any relief or change of date of birth on the ground of delay and laches as the request for change of date of birth was made after lapse of 24 years since he joined the service. At this stage, few decisions of this court on the issue of correction of the date of birth are required to be referred to.

18. In the case of Home Deptt. v. 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...”

19. 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 timelimit within which an application is to be filed, the appellants were dutybound to correct the clerical error in recording of his date of birth in the service book.”

20. In the case of *Life Insurance Corporation of India 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”

21. In the case of *Bharat Coking Coal Limited 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 (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 SCC 465; 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. V. Premal 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 dutybound to correct the clerical error in recording of his date of birth in the service book.”

22. 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.”

7. In the light of these facts and circumstances, petitioner has not made out a case on the ground of delay and laches. Accordingly, the instant petition stands dismissed.

(P. B. Bajanthri, J)

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