

10 **12.04.
2022**
Ct. No. 04

Ab

M.A.T. 257 of 2022
with
IA No. CAN 1 of 2022
Sri Amal Kumar Bera
Vs.
The State of West Bengal & Ors.

Mr. Subrata Ghosh.
... for the appellant.

Mr. Supriyo Chattopadhyay,
Mr. Sabyasachi Mondal.
... for the State.

Ms. Koyeli Bhattacharya.
... for the WBBSE.

An application for correction of date of birth filed in the year 2016 after a gap of nearly eleven years from the date of joining has been kept in suspended animation, as the authority did not take any decision thereupon. Such inaction prompted the appellant to move before this Court under Article 226 of the Constitution of India with a substantive prayer for correction of date of birth. The Single Bench dismissed the said application as such belated application should not be allowed as it would encourage the correction even at the fag end of the service career.

Initially, we were of the view that since the date of superannuation is far away, the prayer for correction of the date of birth should not be dismissed, but our attention is drawn by the learned Advocate appearing on behalf the West Bengal Board of Secondary Education to a memorandum being no. 707-F(P) dated 24th January

2012 issued by the Joint Secretary to the Government of West Bengal, Finance Department, wherein after noticing the various judgments of the Supreme Court, the Hon'ble Governor has been pleased to approve the proposal that the prayer for correction of the date of birth in respect of Government employees or Government undertakings or statutory bodies or autonomous bodies or PR bodies should not be entertained if made after five years from the date of joining in service.

However, the appellant relies upon a letter of the Sub-Inspector of Schools, Mugaberia Circle, Purba Medinipur issued on 17th November 2016 that the said authority recommended the rectification of the date of birth of the appellant and, therefore, the authority ought to have taken a decision thereupon instead of keeping the same in abeyance.

Such argument at the threshold impresses us to interfere with the impugned order but after noticing such memorandum dated 24th January 2012 reserving a timeline within which such application is to be made, we do not think that any recommendation, which runs contrary to the said memorandum, shall create any special right into the appellant nor any right shall be presumed to have accrued in him. The action of the authority in contravention to the document having a statutory flavour is not sustainable in the eye of law nor

any right can be founded thereupon.

Admittedly, the application was made nearly eleven years after the date of joining in service; therefore, in view of the said memorandum dated 24th January 2012, such application cannot be entertained. However, if there is a mistake committed by the department on the basis of the available document at the time of preparation of the service book, it is open to the said department to take appropriate steps as the mistake cannot be allowed to be perpetrated for all time to come.

With these observations, the appeal is disposed of.

In view of the disposal of the appeal itself, the connected application has become infructuous and the same is also disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)