

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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LPA-520-2022 (O&M)

Decided on : 05.07.2022

Satbir Singh

... Appellant

Versus

State of Haryana & others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Vivek Goyal, Advocate, for the appellant.

Mr.P.K.Dwivedi, Advocate, for respondents No.2 & 3.

G.S. Sandhawalia, J. (Oral)

Challenge in the present appeal is to the order dated 27.05.2022 passed by the Learned Single Judge in CWP-11539-2022 wherein prayer had been made for change of date of birth and challenge had been raised to the rejection order dated 16.03.2022 (Annexure P-10) passed by the Managing Director of the respondent-Corporation.

The Learned Single Judge, while keeping in mind the contention raised that the date of birth was alleged to be 20.04.1971 as given at the time of entry in service but the same had been changed to 14.06.1962, had perused the record produced by the respondent-Corporation. The file noting and the fact that the certificate of passing the 5th class whereby the date of birth was recorded as 14.06.1962 (sic. 04.06.1962), had been noticed to dismiss the writ petition.

We have also perused the said record and prima facie are of the opinion that the Learned Single Judge was justified to dismiss the writ petition. However, counsel for the appellant submits that since valuable rights of the appellant are involved and since he had joined on 22.10.1999 as a Chowkidar, it would be a matter of evidence as to whether the certificate given was furnished by him or not. Therefore, the

Learned Single Judge should have relegated him to the remedy before the Civil Court rather than dismissing the case on merits. It is pointed out by Mr.Dwivedi that the appellant already stands retired on 30.06.2022. It is also pointed out that the necessary change has been made in the service book to the extent that the date of birth has been changed to 04.06.1962.

It is the claim of the appellant that when he joined in the year 1999, he submitted an affidavit dated 22.10.1999 (Annexure P-3) that his date of birth is 20.04.1971 and there was no documentary proof in support of the date of birth. He has relied upon various other documents which are in the form of Employees Provident Fund Account Number, Income Tax Returns, salary statement and Identity Card, wherein it has been mentioned that his date of birth is 20.04.1971. It is his case that the school leaving certificate dated 05.09.1990 (Annexure P-7) which has been relied upon was not issued by the Principal, Government Senior Secondary School, as per the communication dated 31.03.2022 (Annexure P-8).

On the other hand, a perusal of the original record produced by Mr.Dwivedi would go on to show that way-back on 09.10.1999, an application had been submitted by the appellant himself wherein he had submitted the 5th class pass certificate which had been duly attested by the concerned officer. It has also been pointed out that the vernacular of Annexure P-7 has also been signed by the appellant and copy of the same is also in the personal file which shows his date of birth as 04.06.1962.

While processing the case of the appellant regarding the outstanding dues on account of his date of retirement which was stated to

be 30.06.2022, since the necessary 'No Dues Certificate' had to be issued, the communication dated 19.01.2022 (Annexure P-17) had been issued. Apparently, at that point of time, he had served legal notice wherein he had claimed that he was being retired on the basis of a false, forged and fabricated certificate wherein his date of birth had been mentioned as 14.06.1962 and it was stated that the same was not part of the record. Resultantly, he had approached this Court by filing CWP-3661-2022 wherein directions had been issued on 24.02.2022 (Annexure P-9) to decide his legal notice. In such circumstances, vide order dated 16.03.2022 (Annexure P-10), the Managing Director of the Corporation had rejected the claim on the ground that the date of birth cannot be changed at the fag end of his service.

We are thus of the considered opinion that the said issue cannot be resolved on the basis of affidavits and it would be a matter of evidence. It is settled principle that disputed questions cannot be decided by the Writ Court and it would necessarily have to go before the Civil Court since it is the case of the appellant that his date of birth has been changed at the last moment. Reliance can be placed upon the judgment of the Apex Court in **State of U.P. & another Vs. Shiv Narain Upadhyaya, (2005) 6 SCC 49**, that granting of interim relief in such cases should be exceptional as the employee can always be compensated and unless there is clinching and conclusive material then only interim relief is to be granted. Reliance can also be placed upon the judgment of the Apex Court in **State of M.P. & others Vs. Premlal Shrivastava, (2011) 9 SCC 664** and **Bharat Cooking Coal Ltd. & others Vs. Shyam Kishore**

Singh, (2020) Online SC 126, that the benefit of change should not be granted at the fag end of service.

It is in such circumstances, we are of the considered opinion that the Learned Single Judge should have given adequate opportunity to the appellant for proving his case, in accordance with law rather than dismissing the writ petition. Admittedly, the date of birth has been changed in the record of the Corporation, to the detriment of the appellant. Keeping in view the controversy which pertains as to whether the certificate which was submitted in the year 1999 under signatures of the appellant which also is signed by the appellant, it would be appropriate if the matter is examined by the Civil Court.

Accordingly, the present appeal is partly allowed, to the extent that liberty is granted to the appellant to avail his remedy before the Civil Court. Needless to say that any observation made herein are only for the purpose of giving liberty to the appellant and it would not be binding and conclusive upon the Civil Court as this Court has not commented upon the merits of the case. The Civil Court would be free to decide on the veracity of the documents on the basis of the claim made by the appellant and the evidence adduced before it.

(G.S. SANDHAWALIA)
JUDGE

July 5, 2022
sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No