

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-31596-2019

Reserved on 28.07.2023

Decided on 08.11.2023

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Bati Devi

... Petitioner

VS.

Haryana State Pollution Control Board & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. R.Kartikeya, Advocate for the petitioner

Mr. Vishal Garg, Advocate for the respondents

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**Sandeep Moudgil, J.**

(1). The petitioners have filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing the action of the respondents in changing the date of birth of the petitioner in the service records from 05.01.1967 to 01.01.1964 unilaterally and after 20 years of her service.

(2). Learned counsel for the petitioner submitted that she was given *ex gratia* appointment as Peon on 03.06.1994 after the death of her father on 31.05.1994. She submitted her date of birth certificate (Annexure P1) as per which her date of birth was 01.01.1964. Subsequently, on the request of the petitioner to Chief Medical Officer, she was issued birth certificate declaring her date of birth to be 05.01.1967 (Annexure P5) which she submitted to the respondents vide letter dated 08.12.1997 (Annexure P6).

(3). It is further submitted that the initial declaration by the petitioner of her date of birth as 01.01.1964 was merely on assumption and as such the respondents called upon her to submit the proof from the Chief Medical Officer, which she did and got herself presented before the CMO

who issued birth certificate declaring her date of birth to be 05.01.1967. The said entry was also made in the service book but somehow the date of birth of the petitioner was interpolated and changed to 01.01.1964 from 05.01.1967.

(4). Learned counsel further contended that the entries in the service book or other record in respect of the Govt. employees, once entered, cannot be unilaterally altered or interpolated except in case of clerical error and with previous order of the Government.

(5). Notice of motion was issued on 10.12.2019 and pursuant thereto, the respondents have filed their reply dated 26.11.2020 through Dr. Rajesh Garhia, Senior Scientist on behalf of respondents No.1 to 3.

(6). It has been averred that since there was no record of date of birth of the petitioner available in the office, the petitioner was advised to submit the proof of her date of birth. The petitioner submitted her proof of Date of birth through the Lab Incharge, Gurgaon vide letter No.HSPCB/GR/96/ LAB/1388 dated 17.07.1996 obtained/issued from by Sarpanch of village Dam Dama, District Gurgaon in original for record. As per certificate given by the Sarpanch Gram Panchyat, Dam Dama District Gurgaon verified the date of birth of the petitioner as 01.01.1964 (Annexure R-3) which was duly attested by Oath Commissioner (Annexure R4).

(7). Learned counsel for the respondents further submitted that Again Superintendent Establishment vide letter NO.EStt./96/9624 dated 17.12.1996(Annexure P-3) wrote a letter to the petitioner to submit the proof of the date of birth from C.M.O. or any other recognised institutions. The father of the petitioner Sh. Charan Singh resident of Village Nai-Naghla, District Faridabad gave an application on 24.02.1997 to the Chief Medical

Officer, Faridabad regarding date of birth of her daughter Kishan Bati @ Bati Devi (Copy of Application is annexed as Annexure R-5). The Civil Surgeon Faridabad vide letter No.573 dated 22.09.1997 (Annexure R-6) issued a date of birth certificate forwarded to the petitioner and the same was forwarded to the respondent-Board by Lab incharge, Haryana State Pollution Control Board, Gurgaon. The copy of certificate was sent to Senior Accounts Officer, in Haryana State Pollution Control Board, vide letter No. Estt/98/4645 dated 12.01.1998 for records.

(8). It is further submitted that necessary entry in the service book of concerned official was made as 05.01.1967 in place of earlier one i.e. 01.01.1964, which has been admitted by Sh. Rattan Singh, Accountant now Superintendent (Rtd.) in his written statement of Enquiry Report dated 18.03.2020 which was approved by the then Section Officer and Sr. Accounts Officer (Annexure P-7) wherein it has been observed that the corrections/cuttings observed in the service Book of Smt. Batti Devi, Peon was made by Sh. Rattan Singh, Accountant now Superintendent (retd.) and Sh. Jai Parkash, the then Section Officer under the knowledge of Sh. S.K. Mittal, the then holding the charge of Senior Accounts Officer without the approval of competent authority and verification. Thus the date of birth was to be taken as 01.01.1964. He further submitted that as per nomination for GPF, CPF and GIS submitted by the petitioner wherein she has declared her date of birth as 01.01.1964 (Annexure R-8). Later on, the petitioner filed an application dated 19.06.2018 requesting for the change of date of birth from 01.01.1964 to 05.01.1967 but her request was declined in view of the fact that the date of birth of the petitioner i.e. 01.01.1964 is correct as rule and

documents given by the Gram Panchayat Sarpanch and Medical Fitness Certificate issued by the District Medical Officer, Gurgaon, at the time of appointment, and the date of birth issued by the Civil Surgeon Faridabad, cannot be accepted due to the reason that the name of Bati Devi has been mentioned as Bala @ Bati Devi and there is cutting in the certificate and the said certificate has been issued to some other person, namely, Khajan Singh instead of the father of the petitioner, namely, Charan Singh.

(9). Learned counsel further informed that an enquiry was conducted regarding lapses/irregularities/tempering in the service book and the Civil Surgeon, Faridabad was requested to verify and intimate the actual Date of birth of petitioner and in response thereto, the Additional District Registrar (Birth & Death) informed the respondent-Board that record of date of birth of petitioner was not found in the year of 1964 and 1966-1968 vide letters No. SA/US/2020/745 dated 7.4.2020 and SA/US/2020/890 dated 10.06.2020 (Annexures R10 & R11, respectively).

(10). Further, it is argued that as per Rule 7.3 and Note 3 appended thereto of Chapter-VII of the Punjab Financial Rules, Volume-I (as applicable to the Haryana State) it is stipulated that that the declaration of the date of birth made at the time of, or for the purpose of entry into Government Service, shall be deemed to be conclusive unless she applied for Correction of her age as recorded, within two years from the date of her entry into Government service and that no application submitted beyond the stipulated period of two years for change in date of birth will be entertained. As such, it is averred that the first entry was acceptable in service book as 01.01.1964 instead of 05.01.1967.

(11). Having heard learned counsel for the parties and after going through the record, this Court is of the considered view that the action of the respondents in unilaterally changing or interpolating the date of birth of the petitioner is not in accordance with law. If there was a valid and justifiable reason for the respondents to believe that the date of birth of the petitioner was 01.01.1964 and not 05.01.1967, the respondents could not have straightway declined by taking into consideration the documents given by Gram Panchayat and Medical Fitness Certificate issued by the District Medical Officer, Gurgaon.

(12). Besides, the respondents have failed to show as to why the date of birth certificate issued by the Civil Surgeon, Faridabad showing the date of birth of the petitioner to be 05.01.1967, was not considered a valid document and albeit the certificate issued by the Gram Panchayat of the concerned village and the certified issued by the District Medical Officer, Gurgaon which is only a medical fitness certificate was given preference for the purpose of consideration of date of birth of the petitioner.

(13). A public servant must be given an opportunity to prove his true date of birth before he is superannuated, and any order passed without such opportunity is illegal. In **State of Orissa v. Dr. (Miss) Binapani Dei and Others ( [1967] S.C.R. 625)**, the service record of a public servant, April 10, 1910 was entered as the date of birth of the concerned public servant. An enquiry was held and the public servant was required to show cause why her date of birth should not be accepted as April 1907. Thereafter the Government of Orissa determined her of birth as April 16, 1907, and declared that she should deemed to have been superannuated on April 16, 1962. The

order was challenged by the public servant in a petition to High Court of Orissa. The High Court held that the order of the State Government amounted to compulsory retirement before she attained the age of superannuation and was contrary to the rules governing her service conditions and amounted to removal within the meaning of Art. 311 of the Constitution, and since she was not given a reasonable opportunity of showing cause against the action proposed to be taken in regard to her, the order was invalid. The Apex Court confirmed the order passed by the High Court of Orissa. It was observed by that even an administrative order which involved civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case of the State and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. The public servant, according to the service record, could not be superannuated before April 10, 1965. But by an enquiry which was not held in a manner consistent with the rules of natural justice an order was made altering the date of birth as entered in the service record, and declaring that she was born in 1907. That was plainly an order passed to the prejudice of the public servant without giving an opportunity to meet the case of the State.

(14). Accordingly, this writ petition is allowed and order dated 25.03.2019 (Annexure P-9) is quashed and the action of the respondent-Board in changing the date of birth of the petitioner from 05.01.1967 to 01.01.1964 is set at naught. However, respondent-Board will be at liberty to decide afresh after holding a regular enquiry as per procedure and on following due process of law as there is no justification by the respondent-

Board why the proposal dated 12.12.2018 to get verified the facts from CMO, Faridabad was dropped and without affording any opportunity, the date of birth of the petitioner was altered.

(15). Ordered accordingly.

08.11.2023  
*V.Vishal*

**(Sandeep Moudgil)**  
**Judge**

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No  
Yes/No