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

CWP-3299-2024

Date of Decision: 05.03.2024

JAI BHAGWAN**...Petitioner****Vs.****STATE OF HARYANA AND OTHERS****...Respondents****CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. S.K. Birla, Advocate for the petitioner.

Mr. Harish Nain, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the challenge is to the order of the Chief Secretary to Government of Haryana, Excise and Taxation Department dated 01.08.2017 (Annexure P-6) vide which the claim of the petitioner for the change of the date of birth in the official record has been rejected.

2. Learned counsel for the petitioner argues that the petitioner joined the service in the year 1989 as a Peon and at the time of recruitment, the petitioner declared his date of birth as 22.06.1966 but after completion of 13 years of service he filed a civil suit No. 436 of 2002 dated 10.06.2006 (Annexure P-4) for correction of his date of birth as 22.06.1967 instead of 22.06.1966. On the basis of the said decree, the petitioner claimed the benefit of change of date of birth in his official record so as to continue in service according to his date of birth 22.06.1967 instead of 22.06.1966. The said prayer was rejected by the Department on 01.08.2017 which order is under challenge in the present petition.

3. Learned counsel for the petitioner argues that though, under the rules governing the service, the date of birth as recorded in the official record can be change within a period of two years after entering into service but once there was no fraud played at the time of entering into service, the respondents should have corrected the date of birth after the passing of the decree by the Civil Court. The further prayer of the petitioner is that he should be allowed to continue in service keeping in view his valid date of birth i.e. 22.06.1967. Hence, the respondents are liable to be directed to allow the petitioner to continue in service by taking into account his date of birth as 22.06.1967.

4. Keeping in view the advance copy given, learned State counsel appeared and has raised the objection that the impugned order was passed more than 6 ½ years ago (Annexure P-6) whereas the same has now been challenged in the year 2024. Learned State counsel further submits that once under the rules, only the date of birth can be changed within a period of 02 years of entry into service, even if, there is no fraud played, the date of birth cannot be changed at the fag end of the career of an employee.

5. I have heard counsel for the parties and have gone through the record with their able assistance.

6. It is a conceded position that under the rules governing the service, the date of birth as entered in the official record, is to be accepted as a valid date of birth unless and until the said incorrect date of birth is altered within a period of 02 years of the joining of the service. In the present case, the petitioner joined the service in the year 1989 and got his date of birth corrected through a civil suit, decree of which was passed in

the year 2006 (Annexure P-4). The said decree only describes the correct date of birth i.e. 22.06.1967 but whether, the respondents are bound to accept the said date of birth ignoring the rules governing the service is the question posed.

7. The decree which has been passed in favour of the petitioner is only qua the correct date of birth i.e. 22.06.1967 instead of 22.06.1966. The said decree does not entitle the petitioner to get his date of birth changed in the official record and that too contrary to the provision of the rules governing the service. Once as per the rules governing the service, the benefit of change of date of birth and that too where a mistake was bona fide and no undue benefit has been taken by a candidate is satisfied, the date of birth can only be changed within the time frame prescribed i.e. within 02 years of entry into service. Once the period of two years is over, the date of birth cannot be changed.

8. The view which is being taken by this Court, is being supported by the judgment of Hon'ble Supreme Court of India in **Civil Appeal No. 1009 of 2020 titled as Bharat Coking Coal Ltd. and others Vs. Shyam Kishore Singh decided on 05.02.2020** wherein it has been held that even if there is a good evidence to establish that the recorded date of birth is erroneous, still the correction cannot be claimed as a matter of right.

The relevant paragraphs are reproduced as under:

7. In the above background it is to be noticed as to whether the consideration as made by the High Court is justified. The learned counsel for the respondent with specific reference to para 10 in the order of the learned Single Judge referred to the aspect wherein the learned Single Judge has taken note of the representation made by the respondent in the year 2009 and the verification that was secured by the appellants from the Bihar School

Examination Board. Though such reference is made, in our opinion, the same was not appropriate in the present facts when three decades had elapsed from the date of employment. The position is well established that if a particular date of birth is entered in the service register, a change sought cannot be entertained at the fag end of service after accepting the same to be correct during entire service. In the instant facts the position is that the respondent entered service on 01.03.1982. The date of birth entered as 04.03.1950 has remained on record from the said date. The requirement to submit the nomination form indicating the particulars of the family and the nominee was complied and it was submitted by the respondent on 25.05.1998. In the said Nomination Form the date of birth of the employee was required to be mentioned, wherein the respondent in his own handwriting has indicated the date of birth as 04.03.1950. Apart from that fact, the learned Additional Solicitor General would also point out that since there was a change in the method of maintaining the service register, all the employees were provided an opportunity to verify and seek for change in the service record in the year 1987. At that stage also the respondent did not seek for any change. Therefore, in that circumstance, when the opportunity available at the first instance in 1987 had not been availed and thereafter on 25.05.1998 when the respondent himself in the Provident Fund Nomination Form had indicated the date of birth as 04.03.1950 which corresponds to the date of birth entered in the service register as on the date of commencement of the employment, merely because a verification was made from the Bihar School Examination Board and even if it was confirmed that the date of birth was 20.01.1955 such change at that stage was not permissible.

“8. 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 *State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & Ors.* (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.”

9. 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. vs. Premlal Shrivastava, (2011) 9 SCC 664** 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 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 time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

9. Keeping in view the facts mentioned herein above, no ground is made out for any interference by this Court. The present petition is dismissed.

(HARSIMRAN SINGH SETHI)
(JUDGE)

05.03.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No