

CWP-14578-2015

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

**229-1**

**CWP-14578-2015**

**Decided on : 08.01.2024**

Samikan through Special Power of Attorney Selvarj

... Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal  
and Labour Court, UT Chandigarh and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

**PRESENT:** Mr. K.K. Saini, Advocate  
for the petitioner(s).

Mr. Rakesh Sobti, Advocate  
for respondents No.2 & 3.

Mr. Suman Jain, Advocate and  
Mr. Rishabh Jain, Advocate  
for respondent No.4.

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**SANJAY VASHISTH, J. (Oral)**

1. Present writ petition has been filed by the petitioner – workman, for issuance of a writ in the nature of *Certiorari*, to quash the award dated 25.10.2013 (Annexure P-1), passed by the learned Industrial Tribunal-cum-Labour Court (for brevity, ‘Ld. Tribunal’), whereby, reference forwarded by the Ministry of Labour and Employment, vide notification No. S-11025/21/2003-IR(PL), dated 28<sup>th</sup> July, 2004, has been answered in negative against the workman, and thus, order of terminating the workman from the service has been held as good as per law.

2. Petitioner – Samikan (workman) had served a demand notice dated 16<sup>th</sup> March 2005, upon Chandigarh Administration, through Secretary, PWD (B&R), Union Territory, Chandigarh and others (in short ‘Management’), under the Industrial Disputes Act, 1947 (in short ‘ID Act’).

Brief facts of the case are that, workman was appointed as 'Baildar' on 01<sup>st</sup> February 1979, in PWD (B&R) Branch, Union Territory, Chandigarh, and since then, he was in service without any break/interruption. On asking of the Management, workman submitted an affidavit regarding his date of birth, as 29.05.1947. workman was engaged on daily wage basis and no formal appointment letter was ever issued to him. In the year 1996, workman was transferred to the Municipal Corporation, Chandigarh, wherein, he was working in PWD (B&R) Branch.

On 10<sup>th</sup> May 2003, Management No.3 did not allow the workman to work and told him that his services were not required. On enquiry, it was told to the workman that he has attained the age of superannuation of Baildar (Class-IV). It is the claim of the workman that he is only 56 years old, whereas, retirement age of Baildar (Class-IV) is 60 years. In support of his stand, workman submitted his affidavit saying therein that he has not attained the age of superannuation. Thus, calling his termination to be illegal, arbitrary, unjust, unfair and against the principle of natural justice, the claim statement was filed.

3. It is a specific stand of Management No.1 & 2 in their written statement that as per seniority list maintained, the date of birth of the workman is 05.08.1930, and date of appointment of the workman is 01.11.1985. As per the said entries in the record, workman was transferred to the Municipal Corporation, Chandigarh.

4. In the written statement filed by Management No.3 & 4, it has been pleaded that workman is claiming regularization of services with back wages, whereas, his services were discontinued on reaching to the age of superannuation, as per official record. It is also pleaded that workman was never appointed by the answering Management. Therefore, no affidavit in

regard to the disputed fact of date of birth and his appointment was submitted to the answering Management.

Transfer of the workman to the Municipal Corporation, Chandigarh, has been made by the Chandigarh Administration vide Gazette notification dated 20.05.1996, wherein, the entries of date of birth and joining of service is mentioned.

5. Thereafter, following issues were framed by the Ld. Tribunal:-

- “(1) Whether the services of the workman were terminated illegally by the management; if so, to what effect and to what relief he is entitled to, if any ? OPW*
- (2) Whether the reference is not maintainable? OPM*
- (3) Relief.”*

6. After leading of the evidence by both the sides, Ld. Tribunal recorded its findings that it is not the case of termination because, in fact, the workman had attained the age of superannuation, and therefore, he was discontinued from the service. Ld. Tribunal also recorded that workman himself failed to appear for cross-examination by Management No.3 & 4. Ld. Tribunal also observed that son of the workman stepped into witnesses as AW-1, to discharge the onus under issue No.1, and stated therein that the date of birth of his father (petitioner-workman) is 29.05.1947 but in the cross-examination, AW-1 deposed that there is no date of birth certificate of his father. Rather, there is a specific observation that neither son of the workman, nor the workman himself produced any documentary evidence. Even, no such application was ever moved for correction of the date of birth to the Management, whereas, as per the notification, transferring the petition to the office of Municipal Corporation, Chandigarh, specific date of birth is

mentioned along with the date of joining in the service.

7. Relying upon a case law/order passed by the Central Administrative Tribunal (CAT) in **OA No.664/CH/2012 (Govindan vs. Union Territory, Chandigarh through its FC-cum-Secretary, Engineering, UT, Chandigarh and others)**, pronounced on **04<sup>th</sup> September, 2013**, Ld. Tribunal made an observation that right to get the date of birth changed, is contained in FR 56 (Note 6) of the Fundamental Rules and Supplementary Rules, and request for altering the date of birth can be entertained, if same is addressed to the Department within five years of entry into the Government service.

However, workman failed to point out any such instance of making a request to alter the date of birth, which was mentioned in the notification while transferring him to the office of Municipal Corporation, Chandigarh.

8. This Court has also gone through the detailed discussion done in the paragraphs No.10, 11 & 12 of the impugned award, and finds that the view point taken by the Ld. Tribunal is worth to be endorsed by this Court also. Undoubtedly, without there being any strong & cogent evidence, such a request for altering the date of birth, should not be entertained, so casually.

Thus, finding no merits, present writ petition stands **dismissed**.

**(SANJAY VASHISTH)**  
**JUDGE**

**January 08, 2024**

*J.Ram*

*Whether speaking/reasoned: Yes/No*  
*Whether Reportable: Yes/No*