

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3037 of 2018

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Lal Mohan Son of Late Titay, Resident of Village- Kurkuri, P.O. and P.S.-
Phulwarisharif Town and District- Patna.

... .. Petitioner/s

Versus

1. Patna Municipal Corporation Through Patna Municipal Commissioner, Patna.
2. Patna Municipal Commissioner, Patna Municipal Corporation, Patna.
3. Additional Municipal Commissioner (Establishment) Patna Municipal Corporation, Patna.
4. Executive Officer, Bankipore Circle, Patna Municipal Corporation, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate Mr. Ravi Kumar, Advocate Mr. Shashi Kumar, Advocate
For the Respondent/s	:	Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
Date : 08-07-2025

Heard Learned Counsel for the petitioner and
Learned Counsel for the Patna Municipal Corporation.

2. The present writ petition has been filed with
the following reliefs:-

*“(i) For quashing of
order bearing Memo No. 3674 dated
11.12.2017 issued under the signature
of Executive officer, Bankipore Circle,
Patna Municipal Corporation, Patna,
whereby and whereunder the earlier
order contained in Memo No. 1678*



dated 12.12.2014 by which the petitioner 9 Safai Majdoor of Ward No. 48 has been made to retire with retrospective effect from 30.04.2014 has been upheld.

(ii) For a direction on the respondent to reinstate the petitioner in service until petitioner attains the age of 60 years in the light of Medical Board Report dated 28.02.2014 whereby the age of the petitioner has been determined in between 45 to 50 years.

(iii) For any other relief or reliefs to which the petitioner is found entitled in the fact and circumstances of the case.”

3. Learned Counsel for the petitioner submits that the petitioner is citizen of India. He is an illiterate belongs to scheduled caste and does not know writing and reading. He was initially engaged as safai majdoor on daily wage basis in the year 1983 in Patna Municipal Corporation. Counsel submits that services of the petitioner was regularised on Class-IV post of safai majdoor and was allowed pay scale of Class-IV post. Upon regularization of service, the petitioner was not aware as to whether his service book was opened or not?

4. Learned Counsel for the petitioner submits



that while he was functioning as safai No.48, the Executive Officer, Bankipore Circle, Patna Municipal Corporation, issued letter No.2320 dated 17.12.2013 requesting the Civil Surgeon-cum-Chief Medical Officer, Patna, to get the age of the petitioner determine by Medical Board. The petitioner has appeared before Medical Board and the Medical Board in its meeting held on 22.02.2014, opined the age of the petitioner is in between 45 to 50 years. The report of Medical Board was forwarded to Executive Officer, Patna Municipal Corporation, Bankipore Circle, with his letter No.2578 dated 28.02.2014.

5. Learned Counsel for the petitioner submits that the petitioner continued to work as safai majdoor, but he was not paid his salary for the month of November and December, 2014 and finally an order contained in Memo No.1678 dated 12.12.2014 was served, intimating that he had been retired from service with retrospective effect from 30.04.2014. Counsel for the petitioner submits that in the service book it has been mentioned that on 24.04.1989 the petitioner was 35 years of age and thereby the Corporation treated the date of birth of the petitioner is 24.04.1954 and upon attaining the age of 60 years on 30.04.2014 retired the petitioner. It has been submitted that the order dated 12.12.2014,



directing the petitioner to retire with retrospective effect has been issued without issuing notice to the petitioner and is in complete violation of the principles of nature justice. More particularly, when by the order of the Executive Officer of the Municipal Corporation, the age of the petitioner was determined and according to him, age of the petitioner is 45 to 50 years as on 22.02.2014, date of retirement is 60 years. Therefore, he is entitled to continue in the service treating his date of birth as 22.02.1969 and, as such, his date of retirement shall be February, 2029.

6. Learned Counsel further submits that the petitioner being aggrieved and dissatisfied with the said order contained in Memo No.1678 dated 12.12.2014, filed a writ petition in CWJC No.2914 of 2015 before this Hon'ble Court. The said writ petition was disposed of vide order dated 19.02.2015, directing the Executive Officer, Patna, to consider the case of the petitioner in the light of the observation made by the Hon'ble Court and pass a reasoned order after issuing show-cause notice to the petitioner. When order has not been complied then petitioner has preferred contempt petition bearing M.J.C. No.1359 of 2015, which was disposed off vide order dated 09.01.2018 with liberty to challenge the order dated



09.01.2018. Accordingly, the present writ petition has been filed challenging the order dated 09.01.2018 passed by the Executive Officer, Patna Municipal Corporation. Learned Counsel for the petitioner submits that in the order dated 19.02.2015 passed in CWJC No.2914 of 2015, it has been specifically directed to the Executive Officer, Bankipore Circle, Patna, to give a show-cause notice to the petitioner as to why the petitioner should not be retired with effect from 30.04.2014 by ignoring the Medical Report in favour of the petitioner, especially when such medical report has been relied and acted upon in case of other employees.

7. Learned Counsel for the petitioner submits that vide Annexure-3 it becomes crystal clear that the Executive Officer, Bankipore Circle, has instructed the petitioner vide Memo No.2379 dated 31.12.2013 for medical checkup for age determination and on his instruction the petitioner has presented himself before the Medical Board. The Medical Board i.e., constituted by a team of five doctors, submitted report that on 22.02.2014 the age of petitioner is about 45 to 50 years on the basis of physical, dental and radiological finding. Counsel submits that once the Medical Board has ascertained his age 40 to 45 years on 04.01.2014, particularly upon instruction of the



Executive Officer, who is appointing authority for him as well as for other employees. It has been further submitted that the report of Medical Board has been accepted as in case of Smt. Manju Annexed as Annexure-8 then denial by the officials of the said age in case of the petitioner is completely violative to law and is basically a case of discrimination with the petitioner. Counsel also submits that in the impugned order the plea which has been taken that Executive Officer is not the competent authority for recommendation of ascertainment of age by Medical Board may not be accepted. The other points which has been taken in the impugned order is not acceptable to the petitioner as for the purpose of taking loan documents were filled up by different persons and not by the petitioner. Counsel for the petitioner relied in the case of **Saraswati Devi V. State of Bihar** reported in **1998 (3) PLJR 340 para-7**, which talks about authenticity of ossification test ascertained by Medical Board and with this prayer he submits that the impugned order contained in Memo No.3674 dated 11.12.2017 be set aside and age as reported by Medical Board may be accepted.

8. Learned Counsel for the Patna Municipal Corporation, on the other hand, vehemently opposes the petitioner's case and submits that the petitioner has earlier



moved before this Hon'ble Court in CWJC No.2914 of 2015. Counsel submits that the final order in CWJC No.2914 of 2015 has been passed behind the back of Patna Municipal Corporation as on the said date Patna Municipal Corporation could not be represented and only due to this reason such order has been passed. But he submits that the present writ petition is devoid of any merit and fit to be dismissed due to the reason that the petitioner was initially engaged as daily wager in the year 1983 in Patna Municipal Corporation. His services was regularized on Class-IV post of safai majdoor on 01.04.1985 and he was granted pay scale since then. Counsel submits that in the service book, the age of petitioner mentioned as 35 years on 24.04.1989 and date of birth has been mentioned as 22.04.1954. As such, petitioner has completed 60 years of age on 30.04.2014. Learned Counsel further submits that during his service period, petitioner has been granted 1st and 2nd A.C.P. with effect from 22.11.2011 considering his date of birth and date of retirement as 22.04.1954 and 30.04.2014 respectively. The copy of the fixation form has been annexed with this counter affidavit as Annexure-A. Learned Counsel further submits that in the year 1988, the petitioner submitted an application demanding provisional advance from provident fund



for marriage of his daughter Chunmun Kumari. In the said form, age of her daughter was mentioned as 20 years, meaning thereby her birth took place in the year 1968. If it has been accepted the report of Civil Surgeon that petitioner is aged about 45 to 50 years on 22.04.2014 then the date of birth of petitioner would be 1969-64 and as such the petitioner has his daughter in just 1-4 years of age, either four years of age or prior to her birth of daughter took place, which is quite impossible.

9. Learned Counsel for the Patna Municipal Corporation has taken further plea that from Annexure-C of the counter affidavit, it is apparent that the petitioner himself has filed an application before Executive Officer, Bankipore Circle, for ascertaining of his age at the fag end of his service on 10.11.2013; whereas his age of retirement was 30.02.2014. He further submits with regard to issuance of direction made by the Executive Officer, Bankipore Circle, Patna Municipal Corporation, for age determination that direction of Executive Officer, Bankipore Circle, is not acceptable in accordance with law due to the reason that under Municipal Act, it is the Municipal Commissioner who is the competent authority to take decision to ascertain the age in the light of Section 27B(ii) of the Bihar Municipal Act. Counsel further submits that in the



reasoned/impugned order, this plea has specifically been taken that Municipal Commissioner has never approved the decision of said age determination and Executive Officer was not the competent authority for acceptance of age. Counsel also submits that in the light of Hon'ble Court's order, passed in CWJC No.2914 of 2015, show-cause notice has been issued to the petitioner on which no response has been made by the petitioner. Learned Counsel submits that there are three relevant documents, first is service book in which date of birth is indicated as 24.04.1954, second is application for taking advance loan for the marriage of his daughter and third is document relating to grant of 1st and 2nd A.C.P. indicates that the correct age of petitioner is 24.04.1954, according to which his date of retirement is 30.04.2014 considering all aspects of the matter, enquiry made and then final order passed.

10. Learned Counsel for the Patna Municipal Corporation relied on the following judgments, firstly in the case of **Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others**, reported in **AIR 1978 Supreme Court 851**, secondly on the judgment of **Bharat Cooking Coal Limited and others Vs. Shyam Kishore Singh** reported in **(2020) 3 SCC 411** and in the case of



General Manager M/S. Barsua Iron Ore Mines Vs. The Vice President, United Mines Majdoor Union and Others reported in **2024 INSC 264** as well as on the judgment of **Karnataka Rural Infrastructure Development Limited Vs. T.P. Natraja and Others**, a reportable judgment of Hon'ble Supreme Court passed in **Civil Appeal No.5720 of 2021** reported in **(2021) 12 Supreme Court Cases 27**, and submits that any correction at the fag end must be discouraged by the Hon'ble Apex Court. He submits that application for change of birth can only be as per relevant provisions/regulation applicable. It has also been submitted that even if there is cogent evidence the same cannot be as a matter of right. It has been further submitted that application can be rejected on the ground of delay and latches, if it is made at the fag end of service particularly when the employee is about to retire on attaining the age of superannuation. He further submits that in the present matter the said permission was not made by the competent authority, prayer for change in date of birth made at the fag end of career, particularly when service has been less than one year. By virtue of documents present in the office placed by the petitioner himself, it transpires that demand of age has been made by the petitioner at the fag end of his career and it has been allowed by



an incompetent authority and not approved by competent one. Counsel submits that, hence, on this ground alone the writ petition is fit to be dismissed.

11. After hearing the parties and upon perusal of the documents, it transpires to this Court that petitioner has earlier moved before this Hon'ble Court in CWJC No.2914 of 2015, in which final order has been passed on 19.02.2015 in the absence of Patna Municipal Corporation by which this Hon'ble Court has been pleased to direct that the petitioner will not be reinstated in the service till an enquiry is held as with regard to age of petitioner. The Executive Officer, Bankipore Circle, Patna, was directed to issue show-cause notice to the petitioner as to why the petitioner should be retired with effect from 30.04.2014 by ignoring the medical report in favour of the petitioner, especially when such medical report has been relied and acted upon in the case of other employees. It transpires to this Court that in compliance of said order passed in CWJC No.2914 of 2015, the Executive Officer, Bankipore Circle, Patna Municipal Corporation, has passed a reasoned order containing Memo No.3674 dated 11.12.2017 which is the impugned order in the present writ petition.

12. On perusal of the materials on record, it



transpires to this Court that in the service book, the date of birth has been entered as 35 years. It transpires from Annexure-C that it is the petitioner, who filed application before the Executive Officer, Bankipore, Municipal Corporation Patna, on 10.11.2013, i.e., six months prior to his retirement, by which the petitioner had requested to ascertain his age by a doctor claiming that he has been appointed in the year 1985 and upon opening of service book his approx age has been inserted. It also transpires vide Annexure-A that the documents relating to granting of promotion to the petitioner, his age has been shown as 24.04.1954 and date of retirement has been shown on 30.04.2014. The said document was prepared on 17.06.2011 by virtue of which he has been granted benefit of A.C.P. Annexure-B is the document which has been prepared by the petitioner himself in the year 1988 that is the document on which the petitioner had taken advance from the corporation for marriage of his daughter. In the said document, his date of appointment was 01.04.1984, age of his daughter was shown as 20 years and marriage date was shown as 12.03.1988. From the record it transpires that direction for ascertainment of age has been made by the Executive Officer, Bankipore Circle, Patna Municipal Corporation, an incompetent authority, on the request of the



petitioner himself and report of Medical Board has been submitted vide Memo No.2578 dated 28.02.2014, by which his age was ascertained on 22.02.2014 as 45 to 50 years which cannot be accepted in the light of decision of Hon'ble Apex Court. Counsel for the petitioner relied on the judgment of **Saraswati Devi and Others Vs. The State of Bihar and Others** reported in **1998(3) PLJR 340** extract of para-7 states as follows:-

“Now it is a settled law that the Matriculation certificate cannot be stated to be an authentic document to verify the exact age of a person and in such a case, the authority may verify the age on examination through a Medical Board. Generally such examination by a Medical Board based on ossification test is accepted as valid.... ”

But it is also true that there are two documents which were in absolute contradiction with the report of the Medical Board.

13. Counsel for the Patna Municipal Corporation who relied on the case of **Bharat Coking Coal Limited and Others Vs. Shyam Kishore Singh** reported in **(2020) 3 Supreme Court Cases 411**, based on service law clearly held that prayer for change of date of birth at the fag end of career is



impermissible. Paragraph-9 of the said judgment is most relevant which states as follows:-

*“9. 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 State of Maharashtra v. Gorakhnath Sitaram Kamble [(2010) 14 SCC 423] wherein a series of the earlier decisions of this Court were taken note and was held as hereunder:
(SCC pp. 428-29, paras 16-17 & 19)*

"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]. 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] 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] 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 promotions



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.'''

Here in the present case, the Patna Municipal Corporation (respondent) have maintained the date of birth as 24.04.1954, the document relating to grant of ACP indicates the date of appointment as 01.04.1984 and, therefore, age of retirement is 30.04.2014. But on 10.11.2013, the petitioner has applied to ascertain his date of birth, which is at the fag end of career, is not permissible according to this judgment.



14. The another judgment on which the respondent relied is case of **Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja and Others with Civil Appeal No.5721 of 2021** reported in **(2021) 12 Supreme Court Cases 27**, whose paragraphs- 9 to 11 states as follows:-

“9. So far as the appellant Corporation is concerned, they adopted the provisions of the 1974 Act by the Resolution dated 17-5-1991. Therefore, as such the request for change of date of birth as per the 1974 Act as adopted by the appellant Corporation in the year 1991 was required to be made by Respondent 1—employee within a period of one year from 17-5-1991 being the employee of the appellant Corporation. However, Respondent 1—employee made the request for change of date of birth vide notice dated 23-6-2007 i.e. after the lapse of 24 years since he joined the service and nearly after the lapse of 16 years from the date of adoption of the enactment (the 1974 Act) by the appellant Corporation. The High Court in the impugned judgment and order [T.P. Nataraja v. State of Karnataka, 2019 SCC OnLine Kar 3510] has observed that nothing is on record that the Resolution dated 17-5-1991 adopting the 1974 Act was brought to the



notice of the employee and that therefore Respondent 1—employee might not be aware of the applicability of the 1974 Act. Aforesaid cannot be accepted. Being the employee of the Corporation, he was supposed to know the rules and regulations applicable to the employees of the Corporation. Ignorance of law cannot be an excuse to get out of the applicability of the statutory provisions.

10. Even otherwise and assuming that the reasoning given by the High Court for the sake of convenience is accepted in that case also even Respondent 1—employee was not entitled to any relief or change of date of birth on the ground of delay and laches as the request for change of date of birth was made after lapse of 24 years since he joined the service. At this stage, few decisions of this Court on the issue of correction of the date of birth are required to be referred to.

10.1. In Home Deptt. v. R. Kirubakaran [Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449] , it is observed and held as under : (SCC p. 158, para 7)

“7. An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view



only the public servant concerned. 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 the promotion for ever.”

10.2. *In State of M.P. v. Premlal Shrivastava [State of M.P. v. Premlal Shrivastava, (2011) 9 SCC 664 : (2011) 2 SCC (L&S) 574] in paras 8 and 12, it is observed and held as under : (SCC pp. 667 & 669)*

“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 [Union of India v. Harnam Singh, (1993) 2 SCC 162 : 1993 SCC (L&S) 375]).

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.”

10.3. *In LIC v. R. Basavaraju [LIC v. R. Basavaraju, (2016) 15 SCC 781 : (2015) 3 SCC (L&S) 167] , it is observed as under : (SCC p. 782, para 5)*

“5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per



the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag-end of retirement.”

10.4. In Bharat Coking Coal Ltd. v. Shyam Kishore Singh [Bharat Coking Coal Ltd. v. Shyam Kishore Singh, (2020) 3 SCC 411 : (2020) 1 SCC (L&S) 535] of which one of us (A.S. Bopanna, J.) was a party to the Bench has observed and held in paras 9 & 10 as under : (SCC pp. 415-17)

“9. 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 State of Maharashtra v. Gorakhnath Sitaram Kamble [State of Maharashtra v. Gorakhnath Sitaram Kamble, (2010) 14 SCC 423 : (2011) 2 SCC (L&S) 585] wherein a series of the earlier decisions of this Court were taken note of and it was held as hereunder : (SCC pp. 428-29, paras 16-17 & 19)

‘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 [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 [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 [Pitamber Dutt Semwal v. State of U.P., 1999 SCC OnLine All 1610] 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 [Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449] 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.” ’

10. 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. v. Premlal Shrivastava [State of M.P. v. Premlal Shrivastava, (2011) 9 SCC 664 : (2011) 2 SCC (L&S) 574] it is held as hereunder : (SCC pp. 667 & 669, paras 8 & 12)

‘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 [Union of India v. Harnam Singh, (1993) 2 SCC 162 :



1993 SCC (L&S) 375]).

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.' "

11. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:



(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation.”

15. Further the Patna Municipal Corporation relied on the judgment of the **General Manager, M/S Barsua Iron Ore Mines Vs. The Vice President, United Mines Mazdoor Union and Others**, reported in **2024 INSC 264**, whose paragraphs 17 to 19 states as follows:-

“17. From this point of view, it is clear that the disclosure of the originally given date of birth by the respondent no.3 was a well-thought out plan hatched by him, at the relevant time. His conduct cannot be simply brushed aside on a plea that there was an error on the part of the appellant in recording his date of birth. Another doubt cast on the conduct of the respondent no.3 is him not acting on time, which raises a



question about the bonafides of his claim of having been born on 12.03.1955. In fact, even after giving a declaration on 14.08.1982, on the merger of HSL with SAIL, the copy of the STC was never provided to the appellant, which was done only in response to the letter dated 24.11.1998, requiring him to submit documentary proof of his date of birth. Examined thus, the following is evincible: (a) the Competent Authority noticed discrepancy in the date of birth in the records of the appellant and, upon due scrutiny, opined that the declaration of date of birth made by the respondent no.3 at the first point of time, i.e., 27.12.1948, should be taken as his date of birth, as till 1998 no documentary proof was given, and; (b) the respondent no.3 would not have been able to legally come into employment on 27.12.1972, had he disclosed his date of birth as 12.03.1955. No fault can be found with the appellant on this score. It is a just and reasonable conclusion by the appellant's Competent Authority. Moreover, reckoning his date of birth as 27.12.1948, the respondent no.3 has been permitted to work for 36 years, which by itself is a sufficient period of employment. Hence, on this count too, we are unable to show any indulgence to the respondent no.3.



18. Undoubtedly, a decision on the issue of date of birth is as important for the employer as it is for the employee. Reference in this regard can be made to Bharat Coking Coal Ltd. v Shib Kumar Dushad, (2000) 8 SCC 696. As expressed in Union of India v C Rama Swamy, (1997) 4 SCC 647, "... the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. ...".

19. Moreover, the principles of estoppel would come into play in the present case. The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982). Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998."

16. In the light of the discussions made above, it becomes crystal clear to this Court that there are restrictions



casted by Hon'ble Supreme Court that at the fag end of the career, the determination of age is not permissible. Here in the present case, the petitioner has filed application in the month of October-November, 2013 for ascertainment of his age, whereas he has to retire in April, 2014 i.e., at the fag end of career is not permissible. As such, the judgment of **Saraswati Devi (Supra)** of this Hon'ble Court shall not help to the petitioner in any manner.

17. In addition to that the order for ascertainment of age has been made by the Executive Officer, Bankipore Circle, Patna Municipal Corporation, who is not competent authority according to Municipal Act, the competent authority is Municipal Commissioner/Chief Municipal Officer under Section 27B(ii) of the Act, which states as follows:-

“27B(2) Subject to the supervision and control of the Empowered Standing Committee, and the provisions of this Act and of any Rules and Bye-laws made there under, executive functions for carrying on the administration of the municipality shall vest in the Chief Municipal Officer.”

Here in the present case, admittedly a direction for ascertainment of age has been made by the authority, who is



not competent to take such decision. In this regard impugned order assigned reasoning, which is acceptable to this Court.

18. In addition to that the service book, the documents relating to promotion and grant of ACP and the documents by which the petitioner has demanded loan, the authorities reached on the conclusion that date of retirement is 30.04.2014 and, hence, this Court is of the firm view that there is no need of interference in the impugned order due to the reasons discussed above.

19. Accordingly, this writ petition stands dismissed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	26.06.2025
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Transmission Date	NA

