

Before G. S. Sandhwalia, J.

KARTAR SINGH—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No.9487 of 2021

September 15, 2021

Constitution of India, 1950—Arts. 226 and 227—Correction of date of birth and benefits in service after correction of date of birth—Held, in view of case in M/s Bharat Coking Coal Limited and others v. Shyam Kishore Singh, 2020 (3) SCC 411, even if there was no evidence to establish that recorded date of birth is erroneous, correction cannot be claimed as a matter of right at fag end of service—Hence, writ petition dismissed.

Held, that similarly, in M/S Bharat Coking Coal Limited and others vs. Shyam Kishore Singh, 2020 (3) SCC 411, it was held that even if there was no evidence to establish that recorded date of birth is erroneous, the correction cannot be claimed as a matter of right at the fag end of service. It was noticed that service had been joined in the year 1982 and a representation was made in the year 2009 and employee had to retire in the year 2010. Reliance having been placed upon the matriculation certificate and since the High Court at Jharkhand had allowed the writ petition, which had been upheld by the Division Bench, the said orders were set aside on the ground of delay itself. Relevant portion reads as under:-

“11. The learned counsel for the respondent, on the otherhand, has relied upon the decision of this Court relating the very same employer namely, the appellants herein in the case of Bharat Coking Coal Ltd. & Ors. vs. Chhota Birasa Uranw (2014) 12 SCC 570 wherein this Court with reference to the earlier decisions of this Court has upheld the order of the High Court wherein a direction had been issued to effect the change in the date of birth. Having perused the same we are of the opinion that the said decision cannot render assistance to the respondent herein. This is for the reason that in the said case it was taken note that in 1987 on implementation of the National Coal Wage Agreement (iii) was put into operation for stabilising the service records of the employees and all its

employees were provided a chance to identify and rectify the discrepancies in the service records by providing them a nomination form containing details of their service records. In the cited case the respondent (employee) therein had noticed the inconsistencies in the records regarding his date of birth, date of appointment, father's name and permanent address and availed the opportunity to seek correction. Though he had sought for the correction of the errors, the other discrepancies were set right but the date of birth and the date of appointment had however remained unchanged and it is in that view the employee had remedy was sought wherein the benefit was extended to him.

12. On the other hand, in the instant case, as on the date of joining and as also in the year 1987 when the respondent had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 04.03.1950 and had further reiterated the same when Provident Fund Nomination Form was filled in 1998. It is only after more than 30 years from the date of his joining service, for the first time in the year 2009 he had made the representation. Further the respondent did not avail the judicial remedy immediately thereafter, before retirement. Instead, the respondent retired from service on 31.03.2010 and even thereafter the writ petition was filed only in the year 2014, after four years from the date of his retirement. In that circumstance, the indulgence shown to the respondent by the High Court was not justified.

(Para 17)

Further held, that keeping in view the settled principles of law, this Court is of the opinion that no case is made out for issuance of any writ of mandamus for correcting the date of birth, which the petitioner has accepted throughout his service since he joined in the year 2002. Now at the fag end of service after almost two decades, the correction sought for is unwarranted. The writ petition stands dismissed, accordingly.

(Para 18)

Mani Ram Verma, Advocate, *for the petitioner.*

Kirti Singh, DAG, Haryana.

G.S. SANDHAWALIA, J.

(1) In the present writ petition filed under Article 226/227 of the Constitution of India, the petitioner seeks issuance of a writ in the nature of mandamus with the directions to respondent-authority to get the date of birth corrected, as per the authentic proof of his date of birth and to give him due benefit in service of the correct date of birth.

(2) In particular the petitioner wants to correct his date of birth from 08.05.1963 to 07.12.1964 in his service book. The same is based on a certificate which has now been issued on 10.12.2020 (Annexure P-1) by the Registrar (Birth & Death). The date of registration of his date of birth is dated 23.12.1964. It is not disputed that the petitioner was appointed as a Maths Master on 02.12.2002 and his date of birth was recorded as 08.05.1963 and by virtue of the same he was due to retire on 31.05.2021, which would be as per prevalent service rules.

(3) It is his case that due to illiteracy of his family members, the date of birth was wrongly recorded in his service record and mainly on account of entry as per the matriculation certificate, which continued throughout his service. It is his own case that nearing to his retirement, he tried to find out his correct date of birth and got the same from the Registrar (Birth & Death) {Annexure P-1}. Resultantly, legal notice was served on 10.03.2021 as pleaded in the writ petition, though allegedly dated 10.03.2020 as per Annexure P-2. It has also been mentioned that the same was sent through registered post on 12.03.2021. On account of the inaction on the same, he had approached this Court. Affidavits of the relatives as such have also been attached in support of his date of birth which would give him a year and half extra in service.

(4) The Coordinate Bench by summarising the dispute had passed the following order on 05.05.2021, while passing no interim orders:-

“The petitioner who is aged about 56 years has filed this writ petition praying for issuance of a writ of mandamus directing the respondents to correct his date of birth in the service record.

Counsel for the petitioner has submitted that the petitioner was appointed as a Math Master on 02.12.2002 in a Government School and his date of birth is recorded as 08.05.1963, therefore, the petitioner is due to retire on 31.05.2021. It is further submitted that in fact the correct

date of birth of the petitioner is 07.12.1964. In support of the same, the petitioner relies upon his birth certificate and affidavits of some of his villagers that his correct date of birth pertains to the year 1964. Counsel for the petitioner has further argued that the petitioner has given a legal notice on 10.03.2020 (Annexure P2), however, the same is not decided. Counsel for the petitioner has also submitted that the petitioner was not aware about his correct date of birth and now on coming to know the same, he has given the legal notice which is not decided till date.

It is very strange and surprising that the Registry has treated this case in the Urgent List during this restrictive hearing period when there is no specific prayer for stay. Even surprisingly, the petitioner is aged about 56 years and has joined the service way back in the year 2002 and never approached the competent Court of law for redressal of his grievance within reasonable time. Even the legal notice was issued in the month of March, 2020 and this petition has been filed after a period of 01 year, for the obvious reason that if the same is rejected, the petitioner may claim that limitation should start from the date of rejection.

It is well settled principle of law as held by the Hon'ble Supreme Court in "*State of Punjab and others vs S.C. Chadha*", 2004(1) SCT 863 that a claim for correction of date of birth based on unreasonable delay is liable to be rejected. It is also held by the Hon'ble Supreme Court in "*Seema Ghosh vs Tata Iron & Steel Company*", 2006 AIR (SC) 2936 that after taking the benefit of the date of birth to enter into service, later an employee cannot be allowed to change or ask for correction at the time of retirement. It is also held by the Hon'ble Supreme Court in "*Burn Standard Co. Ltd. vs Shri Dinabandhu Majumdar*", 1995 AIR (SC) 1499 that writ petition filed for correction of date of birth at the fag end of service to avoid superannuation cannot be entertained as it would be imprudent to allow interim relief to such employee for continuation in service. Similar view has been taken by the Hon'ble Supreme Court in "*State of Gujarat & Ors. Vs Vali Mohmed Dosabhai Sindhi*", 2006 AIR (SC) 2735 that even if there is no period of limitation, the employee should

seek the correction within some reasonable time and the belated petitions should not be entertained. It is also held that no interim relief of continuing in service should be granted. Similar view has also been taken by the Hon'ble Supreme in **2001 AIR (SC) 166 and 2020 (3) SCC 411**.

Though on merits, this petition otherwise, is not maintainable as it involves disputed questions of facts and only a civil suit is maintainable that too within the prescribed period of limitation accruing from the cause of action and therefore, this writ petition must fail on all counts.

On request made by counsel for the petitioner, list again on 27.05.2021.

To be shown in the Urgent List.”

(5) Mr. Verma, in his usual vehement style has tried to project the case of the petitioner on all accounts which had been controverted by filing a affidavit of respondent No.5 by the State.

(6) The defence of the State as such is that the petitioner being decree holder of B.Sc and B.E.D, was fully aware of his correct date of birth at the time when he entered into service. The date of birth was recorded in the service book as 08.05.1963 and the attested copy of Matriculation Certificate was submitted at the time of joining. It has further been mentioned that the petitioner has retired from service in the meantime on 31.05.2021 as per his official record. It is submitted that the petitioner is 58 years old and he had joined in the service in the year 2002 and no such request had been made within a reasonable time. Only a civil suit would be maintainable and that too within the prescribed period of limitation. Reliance was placed upon the judgments which the Coordinate Bench had quoted in the abovesaid order dated 05.05.2021 i.e. ***State of Punjab and others versus S.C. Chadha***¹, ***Seema Ghosh versus Tata Iron & Steel Company***², ***Burn Standard Co. Ltd. versus Shri Dinabandhu Majumdar***³, ***State of Gujarat & Ors. versus Vali Mohmed Dosabhai Sindhi***⁴.

(7) In the counter to the reply filed by the State, the said judgments were sought to be distinguished and reliance is placed upon

¹ 2004 (1) SCT

² 2006 AIR (SC) 2936

³ 1995 AIR (SC) 1499

⁴ 2006 AIR (SC) 2735, 2001 AIR (SC) 166 and 2020 (3) SCC 411

Punjab Financial/Civil Service Rules, Volume-1, Part-1 (applicable to Haryana State), apart from other judgments, which in the opinion of this Court would not be relevant, specially keeping in view the fact that most of them pertained to an earlier point of time and have been rendered by this Court when the law regarding the date of birth was more liberal.

(8) The Apex Court in *Union of India versus Harnam Singh*⁵ has held that it is open to the employee to seek correction in his date of birth, if he is in possession of irrefutable proof relating to his date of birth but the limitation was that it must be done without any un-reasonable delay. In the case of *Burn Standard Co. Ltd.* (*supra*) the High Courts extra-ordinary jurisdiction of writ Court was commented upon and it was held that the extra-ordinary nature of the jurisdiction is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of entitlement according to their date of birth accepted by the employers. In the said case by virtue of an interim order passed by the Learned Single Judge, the employee had continued in service and though he was to retire on 24.04.1991 and had been informed of the said fact on 05.06.1990. He prayed for the benefit of extension in service on account of his date of birth found in matriculation admit card, in which it was showed that he was born on 07.07.1934, though his declared date of birth with the employer was 25.04.1931. Resultantly, the following observations were made:-

“10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under Article 226 of

⁵ 1993 (2) SCC 162

the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well settled legal position governing such correction of date of birth, which precisely stated, is the following: When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other

instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases Interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions a damage

which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief.”

(9) In the case of *Vali Mohmed Dosabhai Sindhi* (*supra*) it was held that once the date of birth was entered in the service book, no entry or alteration is allowed unless it was shown that it was due to want of care on the part of some person and it was obvious clerical error and once the State had framed statutory rules while relying upon the judgment passed in the case of *Harnam Singh* (*supra*). It was held that on the eve of the retirement, questioning the entry of the date of birth and in the absence of rules providing the change in date of birth cannot be permitted, which was in the said case within a period of 5 years in the Bombay Service Rules, 1959.

(10) Similar is the position laid down in the case of *Seema Ghosh* (*supra*) wherein the Apex Court had set aside the award of the Labour Court whereby the benefit had been granted.

(11) As noticed though there is no specific pleading or reference to any rule or instructions as such has been made, but now in the counter to the reply, reference is made to Punjab Financial Rules (Annexure-A) as applicable to Haryana State, which was attached with the counter.

(12) A perusal of the said rules would go on to show that under Rule 7.3 and Annexure-A application for correction of date of birth has to be made within a period of 2 years from the date of entry into government service, which further provides that if at a later stage an application is made, a special inquiry should be held to ascertain the correct age.

(13) The Division Bench of this Court in *Ambika Kaul versus Central Board of Secondary Education and others*⁶ had examined the issue of the correction of date of birth, on the basis of the entry in the register maintained by the Registrar (Births and Deaths), which was at variance with the certificates issued by the Central Board

⁶ 2015 (3) SCT 350

of Secondary Education. The Punjab Civil Services Rules and the Financial Rules were also examined and eventually a finding was recorded that the Government employee was stopped from disputing the entry in the matriculation certificate, in terms of the relevant recruitment rules. The same was on the principle of estoppel to the extent that once he had represented and grown up with a particular date of birth, he could not turn around to say that his date of birth is different. Even by relying upon Section 6 of the Limitation Act, 1963, such suits could not be entertained after three years from the date of attaining the age of majority. Relevant portions of the said judgment read as under:-

“[16] We respectfully agree with the views expressed by the Division Bench of this Court in Resham Singh's case (supra) that the birth certificate is a public record of births and deaths and must prevail over the matriculation certificate issued by school authorities. But the issue required to be examined is that even though the date of birth recorded in the matriculation certificate is at variance with the date of birth as recorded in the Register of Births & Deaths, whether such person is entitled to seek correction in the matriculation certificate relying upon the birth certificate. We find that he is estopped from disputing the entry in the matriculation certificate, which is made basis for employment in the public service in terms of the relevant recruitment Rules.

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[45] The right to seek actual date of birth has to be exercised within three years of attaining the majority on the basis of the birth certificate issued by the Registrar of Births and Deaths. But, after expiry of period of three years from the cessation of disability, no person can rely upon the birth certificate. He is bound by the date given in the matriculation certificate. Therefore, in any case, the right of a person to seek actual date of birth on the basis of entry in the birth certificate by the Registrar of Births and Deaths is three years after attaining the majority on the basis of date of birth in the said certificate.”

(14) The said principle would also be directly applicable in the present facts and circumstances.

(15) Thus, this court is of the considered opinion that the claim for change of date of birth at this belated stage by serving a legal notice on 10.03.2021, the petitioner was only taking a gamble to get an extension of 1½ year in service, since he was due to retire on 31.05.2021. The said exercise was rightly nipped in bud by passing the order dated 05.05.2021 and not granting any interim order.

(16) The Apex Court in *State of M.P. and other versus Premal Shrivastava*⁷ has noticed that in the said case the employee had applied for correction of his date of birth after 25 years of service and it was held that the exception to get the date of birth corrected would be if there was a clerical error and no evidence had been placed on record to show that it was due to the negligence of some other person. Therefore, on the eve of retirement the Courts were being approached for such correction and the same was held to be unjustified. Resultantly, the appeal was allowed and the judgment passed by the High Court was set aside. Relevant portion of the said judgment reads as under:-

“15. In *Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane* 5 (1997) 1 SCC 247, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him. Again, in *Union of India Vs. C. Rama Swamy & Ors.* 6(1997) 4 SCC 647, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

(1) As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact

⁷ 2011 (9) SCC 664

situation the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules.”

(17) Similarly, in *M/S Bharat Coking Coal Limited and others versus Shyam Kishore Singh*⁸, it was held that even if there was no evidence to establish that recorded date of birth is erroneous, the correction cannot be claimed as a matter of right at the fag end of service. It was noticed that service had been joined in the year 1982 and a representation was made in the year 2009 and employee had to retire in the year 2010. Reliance having been placed upon the matriculation certificate and since the High Court at Jharkhand had allowed the writ petition, which had been upheld by the Division Bench, the said orders were set aside on the ground of delay itself. Relevant portion reads as under:-

“11. The learned counsel for the respondent, on the other hand, has relied upon the decision of this Court relating the very same employer namely, the appellants herein in the case of *Bharat Coking Coal Ltd. & Ors. vs. Chhota Birasa Uranw* (2014) 12 SCC 570 wherein this Court with reference to the earlier decisions of this Court has upheld the order of the High Court wherein a direction had been issued to effect the change in the date of birth. Having perused the same we are of the opinion that the said decision cannot render assistance to the respondent herein. This is for the reason that in the said case it was taken note that in 1987 on implementation of the National Coal Wage Agreement (iii) was put into operation for stabilising the service records of the employees and all its employees were provided a chance to identify and rectify the discrepancies in the service records by providing them a nomination form containing details of their service records. In the cited case the respondent (employee) therein had noticed the inconsistencies in the records regarding his date of birth, date of appointment, father’s name and permanent address and availed the opportunity to seek correction. Though he had sought for the correction of the errors, the other discrepancies were set right but the date of birth and the date of appointment had however remained unchanged and

⁸ 2020 (3) SCC 411

it is in that view the employee had again raised a dispute regarding the same and the judicial remedy was sought wherein the benefit was extended to him.

12. On the other hand, in the instant case, as on the date of joining and as also in the year 1987 when the respondent had an opportunity to fill up the Nomination Form and rectify the defect if any, he had indicated the date of birth as 04.03.1950 and had further reiterated the same when Provident Fund Nomination Form was filled in 1998. It is only after more than 30 years from the date of his joining service, for the first time in the year 2009 he had made the representation. Further the respondent did not avail the judicial remedy immediately thereafter, before retirement. Instead, the respondent retired from service on 31.03.2010 and even thereafter the writ petition was filed only in the year 2014, after four years from the date of his retirement. In that circumstance, the indulgence shown to the respondent by the High Court was not justified.

(18) Thus, keeping in view the settled principles of law, this Court is of the opinion that no case is made out for issuance of any writ of mandamus for correcting the date of birth, which the petitioner has accepted throughout his service since he joined in the year 2002. Now at the fag end of service after almost two decades, the correction sought for is unwarranted. The writ petition stands dismissed, accordingly.

Ritambhra Rishi