

Before Permod Kohli, J.

RAGHBIR KAUR,—Petitioner

versus

STATE OF PUNJAB,—Respondent

CWP No. 17508 of 2009

10th January, 2011

Constitution of India, 1950 - Art. 309 - Punjab Civil Services, Rules, Vol. 1 Part-1 - Rl. 2.5 - Petitioner joined as Steno on 7.3.1977 - Petitioner was nominated to Punjab Civil Services on 20.10.1994 - After joining petitioner came to know that date of birth was wrongly mentioned in the matriculation certificate - Petitioner could not seek alteration as under Rule 2.5 of PCS, Rules Vol. Part-1, alteration could be sought only where there was a clerical error - On 21.6.1994 Rule was amended - Existing employees could seek alteration within 2 years from the date of notification - Petitioner applied for holding enquiry in respect of her date of birth after obtaining record from Registrar, Birth & Deaths - Later on State Government suspended instructions regarding change of date of birth - Claim of petitioner was rejected - Challenge thereto - Held that the amended rule was in operation when the petitioner had applied for change of date of birth. The impugned order is, thus, not sustainable.

Held, That thus, the petitioner had the advantage of this notification as she made application within two years as stipulated in the amended memo. By withdrawing the aforesaid notification by a subsequent notification, the right and claim of petitioner cannot be defeated particularly when the State itself decided to consider all application made within the prescribed period. The claim of petitioner has rejected on the basis of the unamended rules, whereas the amended rule was in operation when the petitioner had applied for change of date of birth. The impugned order is, thus, not sustainable in law. The same is hereby quashed and set aside.

(Para 12)

R. K. Chopra, Senior Advocate with Maninder, Advocate, *for the petitioner.*

B. S. Chahal, DAG, Punjab, *for the respondents.*

PERMOD KOHLI, J.

(1) I have heard the learned counsel for the parties at length.

(2) The petitioner is aggrieved of the order dated 2nd January, 2009 (Annexure P-11) whereby her claim for correction of the date of birth has been rejected, primarily, on the ground that there is no patent error/ clerical mistake therein. An additional ground is that the petitioner has completed more than 30 years of service, her claim has been received when she is nearing retirement. The same is not acceptable on account of long delay.

(3) The facts necessary and relevant for the purpose of the present writ petition are being noticed herein.

(4) The petitioner joined the Punjab Civil Secretariat on 7th March, 1977 as Steno and later promoted as Senior. At the time of her entry into service, her date of birth was entered as 14th November, 1951. Later, the petitioner was nominated to Punjab Civil Services on 20th October, 1994. At the time of filing of this writ petition, she was posted as Sub Divisional Magistrate, S.A.S. Nagar (Mohali). It is stated that after joining service, the petitioner came to know that her correct date of birth is 14th November, 1954 which has been wrongly recorded as 14th November, 1951 in the Matriculation Certificate. However, Vol. 1, Part-1 (hereinafter referred to as the Rules), she could not seek alteration in the date of birth as there was no clerical error which is the only ground for alteration of the date of birth in terms of Rule 2.5 of the Rules.

(5) The State of Punjab issued a notification dated 21st June, 1994 amending the aforesaid rules. Vide this notification, Rule 2.5 of the Rules, was amended and for the existing Note-I, following Note-I was substituted, which is as under :—

“Note-I. Every person newly appointed to a service or a post under Government should at the time of appointment be asked to produce birth certificate issued by the Registrar, Birth and

Deaths, and in the absence of such a certificate, he should furnish either an attested copy of Matriculation certificate or an affidavit in proof of correctness of the date of birth. The actual date or the assumed date determined under Note-2 below should be recorded in the History of Service, Service Book, or any other record that may be kept in respect of the Government Employee's service under Government and once recorded, it cannot be altered except in the case of clerical error, without the previous order of Government (See also Annexure "A" to this Chapter)."

(6) Even Note-3 along with Annexure "A" to Chapter-II in the Rules was amended/substituted. Amended Annexure "A", which is relevant for the purpose of this petition is reproduced hereunder :—

"1. In regard to the date of birth, a declaration of age made at the time of or for the purpose of entry into Government service shall, as against the Government employee in question, be deemed to be conclusive. The employee already in the service of the government of Punjab on the date of coming into force of the Punjab Civil Services (First Amendment) Rules, Volume-I, Part-I, 1994 may apply for the change of date of birth within a period of two years from the coming into force of the amended rules on the basis of confirmatory documentary evidence such as matriculation certificate or municipal birth certificate etc. No request for the change of date of birth shall be entertained after the expiry of the said period of two years. Government, however, reserves the right to make a correction in the record age of a Government employee at any time against the interests of the Government employees when it is satisfied that the age recorded in his service book or in the history of a Gazetted Government employees is incorrect and has been incorrectly recorded with the object that the Government employee may derive some unfair advantage therefrom."

(7) The above amended rule, particularly Annexure "A" to Chapter-II provided an opportunity for change of date of Birth to the existing Government employees within two years from the date of coming into force of the amended rules.

(8) Taking advantage of the aforesaid amendment, the petitioner obtained entry from the Registrar, Births and Deaths from the place of her birth. This entry (Annexure P-2) indicates the date of birth of the petitioner as 14th November, 1954. Aforesaid notification dated 21st June, 1994 was followed by a circular dated 10th May, 1995 (Annexure P-3) whereby the earlier procedure prescribed for holding an enquiry in respect to the change of date of birth, has been changed and the Duty Commissioner of the district in which the birth place of the concerned employee falls, has been entrusted with the conduct of the enquiry in respect to the change of date of birth. The petitioner, accordingly, made a representation dated 2nd October, 1995 (Annexure P-4) seeking change of date of birth on the basis of the documents submitted by her.

(9) The State Government issued another letter dated 5th October, 1995 (Annexure P-5) whereby instructions regarding the change of date of birth of the Punjab Government Employees were suspended with immediate effect. It seems that the request of the petitioner for change of date of birth was considered and the Deputy Commissioner, Ludhiana, was asked *vide* Memo dated 19th October, 1995 (Annexure P-6) to hold a special enquiry. Pending this exercise, the State Government, issued yet another circular dated 13th December, 1995 (Annexure P-7) and the instructions dated 10th May, 1995 regarding change of date of birth, were totally withdrawn. This circular was followed by another Memo dated 7th October, 1996 (Annexure P-8). In this circular, the Government conveyed its decision to dispose of all the applications, on merits, received during period Punjab Government notification dated 21st June, 1994, remained in force. Accordingly, all the Head of the Departments, the Deputy Commissioners etc. were asked to dispose of such applications received within the aforesaid time, on merits. Some of the similarly situated employee filed C.W.P. No. 1476 of 1996. This writ petition came to be disposed of by a Division Bench of this Court *vide* order dated 15th February, 1996 holding therein that notification dated 21st June, 1994 issued under Article 309 of the Constitution of India, cannot be superseded by mere executive instructions. It was further observed that the aforesaid notification gave right to an employee to move application for consideration before the authorities for correction in the date of birth. It was,

thus, held that it was open to the authorities to consider application on the basis of available evidence that may be produced along with the application. Since the petitioner had filed an application after coming into operation of notification dated 21st June, 1994 and before its withdrawal, she made a representation dated 25th November, 2008 (Annexure P-10) for holding an enquiry by the Deputy Commissioner concerned in accordance with the procedure prescribed *vide* earlier circulars of the government. This representation of the petitioner seems to have been disposed of by the impugned order rejecting her claim.

(10) The stand of the State-respondent is that there is no clerical error/bonafide mistake in the present case and hence, the claim of the petitioner for change of date of birth has been rightly rejected.

(11) It is further mentioned that now that petitioner has since retired from Punjab Civil Services (Executive Branch) after attaining the age of superannuation on 13th November, 2009, her date of birth cannot be changed.

(12) Admittedly, the petitioner had applied for change of date of birth as per notification dated 21st June, 1994 which was in operation at that time. By subsequent notification dated 7th October, 1996, the Government itself has decided that all applications received during the period of operation of notification dated 21st June, 1994 remained in force, shall be disposed of on merits. In the impugned order, the claim of the petitioner has not been rejected on merits, but only on the basis of the unamended Rule 2.5 of the Rules which was subsequently amended by notification dated 7th October, 1996. This, the petitioner had the advantage of this notification as she made application within two years as stipulated in the amended memo. By withdrawing the aforesaid notification by a subsequent notification, the right and claim of the petitioner cannot be defeated particularly when the State itself decided to consider all applications made within the prescribed period. The claim of the petitioner has been rejected on the basis of the unamended rules, whereas the amended rules were in operation when the petitioner had applied for change of date of birth. The impugned order is, thus, not sustainable in law. The same is

hereby quashed and set aside. The Deputy Commissioner, Ludhiana, is directed to hold special enquiry in regard to change of date of birth of the petitioner within a period of three months from the date of receipt of a certified copy of this order and submit his report to the competent authority. The competent authority will pass consequential order within a period of three months from the date of receipt of the report. (In the even, the competent authority is of the opinion that date of birth of the petitioner needs correction, in such circumstances petitioner shall be entitled to benefit of additional service with all consequences including monetary benefits.)

(13) Petition allowed in above terms.

J.S. Mehndiratta

Before K. Kannan, J.

PUNJAB STATE ELECTRICITY BOARD,—Petitioner

versus

**PRESIDING OFFICER, LABOUR COURT, BATHINDA
AND ANOTHER,—Respondents**

CWP No. 6404 of 1990

06th June, 2011

Constitution of India, 1950 -Art.226 & 227 - Industrial Disputes Act, 1947 - S.25F, 33 - Petitioner was employed on daily wage basis with PSEB in June 1986 - Retrenched on 30.04.1987 - Retrenchment challenged before Labour Court - workman re-employed when proceedings were still pending - Retrenched again - Held - Subsequent retrenchment is illegal and unlawful being violation of Section 33 - No attempt made by PSEB to sustain validity of the earlier order of retrenchment - Petition dismissed.

Held, That the section enacts a fundamental rule that during the pendency of proceedings before an Industrial Tribunal, no employer shall alter to the prejudice of the workmen any matter which is connected to the dispute.

(Para 4)