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*Before Viney Mittal and H.S. Bhalla, JJ.*

DIMPY SHARMA,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 13594 of 2005

18th April, 2006

*Constitution of India, 1950—Art. 226—Petitioner appointed as a Lecturer on regular basis—Her date of birth wrongly entered in her matriculation certificate—After correction by PSEB, petitioner applying for correction of DOB in service record—No action taken by respondents—Challenge thereto—DOB of petitioner correctly mentioned in her middle standard examination—Clerical mistake in mentioning DOB in matriculation certificate—Petitioner failing to apply for correction of her DOB within two years of her entry into service as provided in notification dated 21st June, 1994—Neither petitioner had taken any undue advantage of her incorrect DOB nor she secured her employment on the basis of any fraud—Petitioner also eligible for appointment on the basis of her correct DOB—Petition allowed directing respondents to correct DOB of petitioner in her service record.*

*Held*, that a perusal of the certificate issued by the Punjab School Education Board, when the petitioner had passed her middle standard examination in February, 1983 shows that date of birth of the petitioner had correctly been mentioned as February 27, 1969. However, on account of a clerical mistake committed by the School Authorities, her date of birth was incorrectly mentioned in her matriculation certificate. The petitioner applied for correction of the aforesaid mistake. A communication was also addressed by the School Authorities to Punjab School Education Board and on the aforesaid communication, after being satisfied, the Punjab School Education Board Authorities corrected the date of birth of the petitioner and issued a duplicate matriculation certificate, whereby the date of birth of the petitioner was correctly reflected as February 27, 1969. The aforesaid duplicate certificate was issued on January 18, 2001. However, in the meantime, the petitioner was appointed as a Lecturer with the Education Department of Punjab with effect from August 19,

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1994. Thus, at the time of entry into service, the date of birth of the petitioner was entered on the basis of the then existing entry in the matriculation certificate. Within two years of the aforesaid entry into service the petitioner could not have applied for change of her date of birth, because for the first time she got a duplicate matriculation certificate only on January 18, 2001, which duly reflected the correct date of birth of the petitioner. In these circumstances, the respondents cannot be heard to claim that since the petitioner had not applied for correction of her date of birth within two years of her entry into service, therefore, she could not get the same changed later on. This stand of the respondents is not only unreasonable but is also not sustainable under the facts and circumstances of the present case.

(Para 9)

*Further held*, that the petitioner was born on February 27, 1969. She had joined the services of the State Government with effect from August, 1994. On the basis of her correct date of birth also the petitioner was duly eligible for appointment and as such it cannot be said that she had taken any undue advantage of her incorrect date of birth. It cannot be held that she had secured her employment on the basis of any fraud.

(Para 13)

Sanjay Gupta, Advocate *for the petitioner*.

M.C. Berry, Senior DAG, Punjab.

### JUDGMENT

**VINEY MITTAL, J :**

(1) The petitioner Dimpy Sharma has approached this Court seeking a writ of mandamus for directing the respondents to make correction of the date of birth in her service record.

(2) The petitioner has pleaded that she was born on February 27, 1969. At the time of her admission in St. Parvati Devi Arya Mahilla Senior Secondary School, Hoshiarpur, her date of birth was rightly mentioned as February 27, 1969 in the record of the school. The petitioner passed her middle standard examination from Punjab School Education Board has been appended as Annexure P.1 with the present petition. Thereafter, the petitioner appeared for her matriculation

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examinations conducted by the Punjab School Education Board. She passed the aforesaid examination in March, 1985. However, when she received the matriculation certificate issued by the Board, it was realised that her date of birth was wrongly mentioned as February 27, 1967 instead of February 27, 1969. The aforesaid certificate issued by the Punjab School Education Board is appended as Annexure P. 2 with the present petition.

(3) The petitioner took up the matter with the school authorities and it was realised that at the time of forwarding her examination form to the Board by the School authorities, due to a clerical mistake, her date of birth had been wrongly mentioned as February 27, 1967, instead of February 27, 1969. In these circumstances, the school authorities sent a communication to the Punjab School Education Board bringing the aforesaid fact to the notice of Board Authorities and also requesting that necessary correction be made in the record of the Board and a corrected matriculation certificate be issued. On the aforesaid request made by the school authorities and after examining the entire matter, the Punjab School Education Board issued a duplicate matriculation certificate *qua* the petitioner, whereby her date of birth was correctly reflected as February 27, 1969. The aforesaid duplicate matriculation certificate was issued to the petitioner on January 18, 2001. A copy of the aforesaid duplicate matriculation certificate has been appended as Annexure P. 4 with the present petition.

(4) In pursuance to a selection process conducted by the Department of Education of the State of Punjab, the petitioner was appointed as a Lecturer (Fine Arts) with effect from August 19, 1994. The petitioner joined on the aforesaid post and was posted in Senior Secondary School, Magowal Doaba, Hoshiarpur as a regular employee. However, on account of the fact that at the time of joining the said services, the date of birth of the petitioner was reflected as February 27, 1967 in the matriculation certificate, her date of birth was so entered in the service record as well. However, after correction of her date of birth by the Punjab School Education Board and upon receipt of the duplicate matriculation certificate carrying the correct date of birth, the petitioner applied to the departmental authorities for correcting her date of birth in the service record as well. No action was taken by the respondents. Various reminders seem to have been

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issued by the petitioner, but without any response from the respondents. The aforesaid request made by the petitioner and the reminders sent by her are Annexures P. 6 to P. 11, appended with the present petition.

(5) Consequently, the petitioner has approached this Court through the present petition seeking directions to the respondents to correct the aforesaid date of birth in her service record.

(6) The claim of the petitioner has been contested by the respondents. In the written statement filed on behalf of respondents No. 1 to 4, the only objection taken by them is that as per the State Government notification dated June 21, 1994, a Government employee can apply for correction in his/her date of birth recorded by him/her while entering into Government service, within two years from his/her date of joining the service. Consequently, it has been maintained that since the petitioner had not applied within the aforesaid period of two years, therefore, she was not entitled to the correction. Various facts pleaded by the petitioner with regard to correction of her date of birth by the Punjab School Education Board Authorities are not contested.

(7) We have heard the learned counsel for the parties and have also gone through the record of the case.

(8) We are satisfied that the claim of the petitioner deserves to be accepted.

(9) A perusal of the certificate issued by the Punjab School Education Board, when the petitioner had passed her middle standard Examination in February, 1983 (Annexure P. 1), shows that date of birth of the petitioner had correctly been mentioned as February 27, 1969. However, on account of a clerical mistake committed by the School Authorities, her date of birth was incorrectly mentioned in her matriculation certificate. The petitioner applied for correction of the aforesaid mistake. A communication was also addressed by the School Authorities to Punjab School Education Board and on the aforesaid communication, after being satisfied, the Punjab School Education Board Authorities corrected the date of birth of the petitioner and issued a duplicate matriculation certificate, Annexure P. 4, whereby the date of birth of the petitioner was correctly reflected as February 27, 1969. The aforesaid duplicate certificate was issued on

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January 18, 2001. However, in the meantime, the petitioner was appointed as a Lecturer with the Education Department of Punjab with effect from August 19, 1994. Thus, at the time of entry into service, the date of birth of the petitioner was entered on the basis of the then existing entry in the matriculation certificate. Within two years of the aforesaid entry into service, the petitioner could not have applied for change of her date of birth, because for the first time she got a duplicate matriculation certificate only on January 18, 2001, which duly reflected the correct date of birth of the petitioner. In these circumstances, the respondents cannot be heard to claim that since the petitioner had not applied for correction of her date of birth within two years of her entry into service, therefore, she could not get the same changed later on. This stand of the respondents is not only unreasonable but is also not sustainable under the facts and circumstances of the present case.

(10) At this stage, certain observations made by a Division Bench of this Court in the case of **Jiwan Dass versus State of Haryana and another (1)** may be noticed as follows :

“(18) A question that would naturally arise now is what should happen in cases where after the stipulated period of two years, a Government servant comes to know, or acquires proof to the effect that his actual date of birth is different from the one he had given out at the time of his entry into Government service. We find that the Government is not insensitive to such situations. It must be precisely for this reason that the Government of Haryana inserted a new provision,—*vide* Note 4 below rule 2.5 of C.S.R. Volume I, Part 1, by an amendment in 1973 whereby those employees who entered service on or before 21st February, 1969 were given a special opportunity to apply within six months requesting for alteration in date of birth. For reasons which need not be elaborated, such relaxations cannot be granted too frequently, and may not always cover all categories of cases. Nevertheless the fact remains that even though there is no remedy under the administrative law after the stipulated period has expired, legal remedy under the civil law will still be available, because administrative law

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(1) 1982 (2) ILR Pb. & Hy. 110

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cannot, in fact, the CSR and PFR do not bar jurisdiction of civil courts. It may be stated here that decisions of administrative authorities allowing or rejecting those requests for alteration in date of birth which may have been made within the stipulated period, too are open to judicial scrutiny when challenged before a Court of competent jurisdiction.” (Emphasis supplied).

(11) Thus, as per the observations made by the Division Bench, it is apparent that even if a remedy as per the administrative law/ rules had become barred by limitation, a legal remedy is available to the aggrieved person under the civil law before a civil court.

(12) This Court in the case of **Hari Parshad Handa versus The State of Punjab, (2)** held as follows :

“The statement regarding the date of birth made by the employee is based upon his belief and not his personal knowledge. From further information it would always be open to him to show that the statement made was incorrect and his date of birth was in fact different from the one earlier stated by him. However, if he has entered into the service fraudulently by misstating his date of birth the question of estoppel would arise and he would be debarred from challenging the correctness of his date of birth. For instance, a man may not be of age to enter a particular service but by wrongly giving his age he may secure employment. Later on, he would certainly be estopped from saying that he was of a younger age than the one stated by him at the time of his entry into service. Short of such a fraud or misrepresentation there is no rule of estoppel which would debar him from claiming and proving that the date of birth earlier given at the time of his entry into service was not the correct one.”

(13) It is apparent that the petitioner in the present case was born on February 27, 1969. She had joined the services of the State Government with effect from August, 1994. On the basis of her correct date of birth also the petitioner was duly eligible for appointment and

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as such it cannot be said that she had taken any undue advantage of her incorrect date of birth. It cannot be held that she had secured her employment on the basis of any fraud. In these circumstances, the observations made by this Court in **Hari Parshad Handa's** case (*supra*) and **Chander Singh's** case (*supra*) are fully attracted.

(14) Consequently, we allow the present petition and direct the respondents to correct the date of birth of the petitioner in the service record. Necessary process in this regard shall be completed within a period of four months from the date a certified copy of this order is received.

(15) A copy of the order be given dasti on payment of usual charges.

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**R.N.R.**

*Before Nirmal Yadav, J.*

JASJIT SINGH BHASIN,—*Petitioner*

*versus*

STATE OF PUNJAB AND ANOTHER—*Respondents*

CRL. MISC. NO. 36225/M OF 2005

17th March, 2006

*Code of Criminal Procedure, 1973—S. 154—Execution of GPA by respondent No. 2 in favour of petitioner No. 2—Allegations against petitioner No. 2 and her husband for forging GPA and selling/transferring property of respondent No. 2—Registration of F.I.R. under various sections of IPC—Compromise between the parties—Another F.I.R. against petitioners—Civil Suit on the instance of respondent No. 2 also filed—Allegations made in second F.I.R. verbatim the same as made in first F.I.R.—Whether a second F.I.R. on the same set of facts and circumstances can be registered—Held, no—Information received after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in F.I.R. would be considered as statements u/s 162 Cr. P.C.—Such information cannot be treated as an F.I.R. and entered in the diary of the police station again—Petition allowed, second F.I.R. quashed while holding the same as an abuse of process of law.*