

(i)(d) of the Act which is the subject-matter of interpretation in this case. In fact, both the cases were decided on the basis of their own facts by applying the general principles of law. It may be noted here that in the present case there is no plea taken by the tenant that he was a licensee. On the other hand, the ratio laid down in the other two judgments i.e. one by the apex court in *Karam Chand's case* (supra) and by this court in *S. S. Jain Sabha's case* (supra) is fully applicable to the facts of the instant case.

For the reasons recorded above, this revision petition fails and is dismissed with no order as to costs. The petitioner-tenant is, however, allowed three months' time to vacate the demised premises.

S.C.K.

Before J. V. Gupta and Amarjeet Chaudhary, JJ.

JIWAN DASS,—*Petitioner*

versus

STATE OF HARYANA AND ANOTHER,—*Respondent*

Civil Writ Petition No. 3095 of 1985.

October 31, 1988

Punjab Civil Services, Volume I, Part I (Haryana Third Amendment) Rules, 1973—Rl. 2.5—Declaration regarding date of birth made at the time of entry into service—Rules fixing period of limitation for correction of such date—No attempt made within the stipulated period for correction—Correction sought after expiry of such period—Forum for seeking such correction.

Held, that 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 cannot, in fact, the C.S.R. and P.F.R. do not bar jurisdiction of civil courts. It may be stated here that decisions of administrative authorities allowing or rejecting these 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,

(Para 18).

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Held, further that the proper forum to seek the remedy is a civil court of competent jurisdiction. To this extent, the view taken in Sohan Singh Bawa's case that the date of birth is a valuable right is correct but the proper forum to decide the same will be the civil court. The same could not be decided either departmentally or in writ jurisdiction.

(Para 20).

Writ petition under Article 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to :—

- (i) send for the record of the case;
- (ii) issue a writ of certiorari quashing the impugned action including order Annexure P-2 and declaring that the petitioner continues in service till he attains age of superannuation, on 27th September, 1989 ;
- (iii) issue a writ of mandamus directing the respondents to continue the petitioner in service till he attains age of 58 years after correction of his date of birth as 23rd July, 1929 in place of 6th June, 1925 ;
- (iv) issue any other writ direction or order as this Hon'ble Court may deem fit in the case;
- (v) grant exemptions from service of prior notices of filing of the writ petition on respondents, and obtaining authenticated copies of Annexures ; and
- (vi) stay retirement pending decision of the case.

S. P. Chauhan, Advocate, for the Petitioner.

M. S. Jain, Addl. A.G. Haryana with Viney Jain Advocate, for the respondent.

JUDGMENT

Amarjeet Chaudhary, J.

(1) The petitioner joined service in the Excise and Taxation Department in Gurgaon District on September 17, 1947. The date of birth of the petitioner, on the basis of affidavit given by him, was recorded as June 6, 1925 in the office record. The petitioner who at present is Process Server in the office of the Deputy Excise and Taxation Commissioner, Faridabad (East), has filed present writ petition for quashing the order, dated May 31, 1985 of the Excise and Taxation Commissioner, Haryana, rejecting application of the petitioner for amendment of his date of birth in his service record. The petitioner claims that his date of birth, as per school leaving certificate from the Headmaster of G.L.M.S. Kotla Lodhian,

D.I. Khan (Pakistan) issued on 14th February, 1985, is July 23, 1929. The petitioner was to retire from service on the basis of the date of birth recorded in the service record on June 30, 1985 i.e. the date of superannuation. The petitioner could not submit the said certificate earlier as the same was not available with him. It was only with the help of a friend in Pakistan that he was able to procure the school leaving certificate in February, 1985. The petitioner, after receipt of the said school leaving certificate submitted an application to the Excise and Taxation Commissioner, Haryana, Chandigarh, requesting that his date of birth be changed from 6th June, 1925 to 23rd July, 1929 and that he be retired on October 23, 1989 instead of June 30, 1985. The Excise and Taxation Commissioner rejected the request of the petitioner for changing the date of birth.—*vide* order, dated May 24, 1985.

(2) This writ petition was admitted to a D.B. for reconsideration of this Court's view taken in *Sohan Singh Bawa, District Education Officer v. State of Haryana and another* (1).

(3) The stand of the State counsel is that the petitioner had joined government service on 19th September, 1947 as a peon and he submitted his own affidavit dated 25th January, 1955 duly attested by Magistrate I Class, Gurgaon stating his date of birth as June 7, 1925. The petitioner failed to get his date of birth corrected even at a later stage in terms of Note 4 below Rule 2.5, Chapter II Punjab Civil Services, Volume I, Part I (Haryana Third Amendment) Rules, 1973. The petitioner, therefore, cannot be allowed to agitate for correction of date of birth after 38 years at this belated stage.

(4) The Additional Advocate General, Haryana further contended that the disputed question of fact is as to whether the petitioner was born on June 7, 1925 as stated by him in his affidavit, dated January 25, 1955 duly attested by Magistrate I Class, Gurgaon, or on July 23, 1929 as stated in the alleged school leaving certificate which is not properly authenticated as the same was not procured through or verified by the High Commissioner of India in Pakistan and, therefore, it cannot be considered to be a genuine document.

(5) For an in-depth study of the matter, it will be appropriate to examine the relevant administrative law which is contained in

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rule 2.5 of the C.S.R. Volume I, Part I, and rule 7.3 of the Financial Rules, Volume I. These rules are reproduced below for facility of reference :—

Rule 2.5 of the C.S.R. Volume I, Part I :

“2.5 Age—When a Government employee is required to retire, revert, or cease to be on leave on attaining a specified age, the date on which he attains that age is reckoned as a non-working day and the Government employee must retire, revert or cease to be on leave (as the case may be) with effect from and including that day.

Note-1. Every person appointed to a service or a post under Government should at the time of appointment declare the date of his birth by the Christian Era with confirmatory evidence as far as possible, confirmatory evidence such as Matriculation certificate, Municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under an approximate date may be kept in respect of the Government employees service under Government and once recorded, it cannot be altered except in the case of a clerical error, without the previous orders of Government. See also Annexure A to Chapter VII of Punjab Financial Rules, Volume I.

Note 2(a). If a Government employee is unable to state his exact date of birth but can state the year or year and month of birth, 1st July or 16th of the month respectively may be treated as the date of his birth.

(b) If a Government employee is only able to state his approximate age, his date of birth may be assumed to be corresponding date after deducting the No. of years representing his age from his date of appointment.

(c) When a Government employee, who first entered as a Military employee is subsequently employed in a civil department the date of birth for civil employment should be the date stated by him at the time

of attestation, or if at the time of attestation he stated only his age, the date of birth should be deduced with reference to that age according to the method indicated in sub-para (b) above.

Note 3. In respect of alteration in date of birth the provisions laid down in Annexure A to Chapter VII of Punjab Financial Rules, Volume-I, shall apply."

Rule 7.3 of Financial Rules, Volume I :

"7.3. Every person newly appointed to a service or a post under Government should at the time of appointment declare the date of his birth by the Christian era with confirmatory evidence as far as possible, confirmatory evidence such as Matriculation certificate, Municipal birth certificate and so on. If the exact date is not known an approximate date may be given. The actual date or the assumed date determined under note 1 below should be recorded in the History of Service, Service Book or any other record that may be kept in respect of the Government servant's service under Government and once recorded, it cannot be altered except in the case of a clerical error, without the previous orders of Government. See also Annexure B to this Chapter.

Note 1(a). If a Government servant is unable to state his exact date of birth but can state the year, or year and month of birth, 1st July or the 16th of the month, respectively may be treated as the date of his birth.

(b) If a Government servant is only able to state his approximate age, his date of birth may be assumed to be the corresponding date after deducting the No. of years representing his age from his date of appointment.

(c) When a Government servant who first entered military employment is subsequently employed in a civil department the date of birth for civil employment should be the date stated by him at the time of attestation, or if at the time of attestation he stated only his age, the date of birth should be deduced with reference to that age according to the method indicated in sub-para (b) above.

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Note 2. Corrections in the dates of birth already reported in the annual establishment returns of previous years should not be made without the sanction of the Government in the case of Government servant holding gazetted appointment and of the Head of the department or Commissioner of Division in the case of ministerial and subordinate servants. Against every such correction a note should be made of the number and date of the order authorising it, and a copy of the order should be attached to the return.

Note 3. For administrative instructions in respect of alterations in the date of birth, see Annexure B to this Chapter."

(6) The provisions of both these rules have been clarified and elaborated in administrative instructions contained in Annexure B to Chapter VII of the Financial Rules, Volume I, which is reproduced below :—

"ANNEXURE B

(Referred to in Rule 7.3 and note 3 thereunder)

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 servant, in question, be deemed to be conclusive unless he applies for correction of his age as recorded within two years from the date of his entry into Government service. Government, however, reserves the right to make a correction in the recorded age of a Government servant at any time against the interests of that Government servant when it is satisfied that the age recorded in his service book or in the History of Services of a Gazetted Government servant is incorrect and has been incorrectly recorded with the object that the Government servant may derive some unfair advantage therefrom.
2. The orders in this annexure have effect from the 4th July, 1928. With regard to persons in Government service on that date one year from that date was allowed within which they could apply for correction of their recorded date of birth.

3. When a Government servant, within the period allowed, makes an application for the correction of his date of birth as recorded a special enquiry should be held to ascertain his correct age and reference should be made to all available sources of information such as certified copies of entries in the municipal birth register, university or school age certificate, Janam Patris or horoscope. It should, however, be remembered that it is entirely discretionary on the part of the sanctioning authority to refuse or grant such applications and no alteration should be allowed unless it has satisfactorily been proved that the date of birth as originally given by the applicant was a bonafide mistake and that he has derived no unfair advantage therefrom.
4. The result of every such enquiry should, in the case of non-gazetted servants, be briefly stated in their service books and if a correction is sanctioned the fact should be reported to the Accountant-General."

(7) These instructions are, in our view, supplemental to the rules and prescribed the procedures to be followed in implementing the provisions of the rules.

(8) A perusal of these provisions makes the following points abundantly clear :—

- (1) That whatever declaration as to date of birth/age is made by a person at the time of entry into Government service, is deemed to be conclusive, and it is ordinarily not subjected to any scrutiny, verification, etc.
- (2) That the date of birth/age once entered in the service record of the Government servant cannot be changed except in the case of a clerical error, or with the previous approval of Government when an application is made by the Government servant himself within 2 years from the date of his entry into Government service. The Government is obliged in such cases to make a special enquiry to ascertain the correct age of the applicant. The special enquiry has to take cognizance of all available sources of information which have been fairly described in para 3 of said Annexure B.

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(3) That after the special enquiry, change in date of birth/age, can be allowed if it has been satisfactorily proved that the date of birth as originally given by the applicant was a bonafide mistake and that he has not derived any unfair advantage therefrom.

(4) That the Government may make a correction in the recorded date of birth/age, at any time, against the interests of the Government servant when it is satisfied that the age recorded in the service book etc. (i) is incorrect; and (ii) has been incorrectly recorded with the object that the Government servant may derive some unfair advantage from it.

(9) A parallel to these provisions can be found in Sections 13 and 15 of the Registration of Births and Deaths Act, 1969, relevant extracts from which are reproduced below :—

“13. Delayed registration of births and deaths.—

(1)

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but without one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4)

”

“15. Correction or cancellation of entry in the register of births and deaths.—

If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him

under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alternation of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

(10) Essential features of the above are discussed below :—

- (1) A birth is required to be registered within 30 days.
- (2) Within a period of one year thereafter, a birth can be registered only with written permission of the 'prescribed' authority.
- (3) After one year, a birth can be registered only on an order made by a Magistrate I Class or a Presidency Magistrate after verifying the correctness of the birth.
- (4) The Register has the power to correct or cancel an entry of a birth when he is satisfied that the entry is erroneous in form or substance, or has been fraudulently or improperly made.

(11) Haryana Government added the following Note below rule 2.50 of the C.S.R. Volume I, Part I, —*vide* Punjab Civil Services, Volume I (Haryana Third Amendment) Rules, 1973 :—

"Note 4. A Government employee in service on or before 21st February, 1969, may within a period of six months from the date of coming into force of the Punjab Civil Services, Volume I (Haryana Third Amendment) Rules, 1973, apply for an alteration in his date of birth as recorded in his service record whereupon an enquiry shall be held and appropriate orders passed. Any request received after the said date shall not be entertained."

(12) This amendment is obviously a one-time provision which allowed another opportunity to those of its employees who had

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entered service on or before 21st February, 1969, to apply for alteration in the recorded date of birth, within six months from the date of coming into force of the said Amendment of 1973. The amendment having come into force on 27th April, 1973, the last date for making applications expired on 26th October, 1973. The original general provision whereby a period of two years from entry into Government service is prescribed for making applications for alterations in date of birth/age, is not affected by this one-time amendment and hence remains operative.

(13) It is rare that the Courts are approached in those cases where the concerned Government servants approach the Government within the stipulated period of alteration in date of birth. It is obvious that where requests are made within time, Government do have enquiries made as prescribed in the rules and as a consequence thereof the request for alteration is either accepted or rejected and in the latter event reasons for rejection are intimated to the applicant, with which they apparently feel satisfied.

(14) The problems would seem to arise when a Government servant makes request for alteration after the stipulated period of two years is over. In fact, such requests are generally made at the fag end of the service career. It seems to be the normal practice in Government departments to summarily reject such belated requests, on the plea that the same are barred by time and hence cannot be considered. In almost all such cases of rejection Courts at various levels, including this Court in writ jurisdiction, are approached. Various pleas are taken, the more common being that the order of rejection was not a speaking order; that the concerned authority did not apply its mind while rejecting the request; that provisions of article 311 of the Constitution has been violated in that no opportunity was provided to the applicant before rejecting his request for alteration in date of birth; that a valuable right has been infringed by denying to the applicant the right to serve till actually attaining the age of superannuation.

(15) The basic administrative law governing the conditions of service in matters of age is laid down in rule 2.5 of C.S.R. Volume I, Part and rule 7.3 of Punjab Financial Rules, Volume I (supra). The essential feature in these rules is that age/date of birth at the time of entry into Government service is recorded as per the declaration made by the entrant to service "with confirmatory evidence as far as possible, confirmatory documentary evidence such as

Matriculation Certificate and so on" and once recorded it cannot be changed or altered without previous approval of Government except in the case of a clerical error. It is obvious from these provisions that a declaration as to age is assumed as correct and true even without corroborative evidence or record. The door is, however, still kept for alteration, and the condition in the rules is that it can be done only with previous approval of Government. It should be noted that matters regarding consideration of requests for alteration in date of birth and grant of "approval of Government" have not been left to the whim and fancy of the competent authority, but specific administrative orders in this behalf have been laid down and incorporated in the service rules itself as Annexure B to Chapter VII of the Punjab Financial Rules, Volume I. By this administrative order, the Government has made it a binding obligation on itself to hold a special enquiry into all such requests for alteration in date of birth as are made within two years from the date of entry into Government service. It is also provided that the result of enquiry should be briefly stated in the Service Book. Obviously, a speaking order is required to be made on each application if, it is made within the stipulated period. There can be no two opinions on the point that matters like date of birth and age which are vital to service, cannot be left open for indefinite periods of time, more so because many a time questions of seniority are determined by age and also because age of employee is one of the vital statistics for planning of cadres and careers and replacement schedules. It should be noted that the statute relating to registration of births and deaths too, bars the departmental authorities from entertaining and deciding by themselves, requests for registration of births after expiry of a period of one year and the concerned persons have to go to a court of law.

(16) The limitations on departmental authorities in both these laws are both reasonable and essential. The more belated a request of this nature, the more difficult it would be to sort it out satisfactorily through departmental enquiries. Also, it could be that while alternation in date of birth might make an employee eligible to remain in service for a longer period, it might, at the same time, render him ineligible to a benefit which he may have obtained as a consequence of declaring a certain date as his date of birth at the time of entering service, which he subsequently disputes and wishes to have altered. It is logical that the consequences of alteration in date of birth, whether beneficial or harmful, must visit upon the

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person of the employee who sought the change. Whereas the benefit of serving for longer years will automatically accrue, the negative consequences will naturally need a digging out and undoing of a benefit unduly given, will raise quite a few legal complications, which in our opinion, should better be agitated before and decided by a court of competent jurisdiction.

(17) In view of above discussion, we find that the rules and orders governing the determination, recording and alteration in date of birth/age, are reasonable and do not violate or infringe any material or fundamental right.

(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 I, by an amendmendt 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 alternation 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 cannot, in fact, the C.S.R. and P.F.R. 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.

(19) We have considered all aspects of the case and given anxious thought to all the involved matters. We are of the considered opinion that the questions of authenticity etc. of the documents produced and the other allied matters discussed earlier essentially involve and relate to questions of fact, which can be decided only after examining and assessing the supporting and corroborative evidence. This Court, being a Court of Record, is thus not the appropriate forum to adjudicate on these matters in exercise of its writ jurisdiction.

(20) We are further of the view that the proper forum to seek the remedy is a civil court of competent jurisdiction. To this extent, the view taken in Sohan Singh Bawa's case (supra) that the date of birth is a valuable right is correct but the proper forum to decide the same will be the civil court. The same could not be decided either departmentally or in writ jurisdiction.

(21) Consequently, the petition fails and is dismissed with no order as to costs.

S.C.K.

Before G. C. Mital and S. S. Sodhi, JJ.

SWARAN KANTA,—Applicant.

versus

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—Respondent.

Income Tax Reference No. 177 of 1980.

November 16, 1988.

Income Tax Act (XLIII of 1961)—Ss. 292(B), 159—Death of assessee during the pendency of assessment proceedings—Widow impleaded as legal representative and notice issued—Assessment finalised in her presence—Name of deceased assessee written in heading of order—Such error whether invalidates the Assessment order.

Held, that there is clearly a clerical error or omission in the heading of the order. Section 159 of the Income Tax Act, 1961 relates to liability of the legal representatives of the deceased assessee. According to section 159(2)(a) of the Act, any proceedings taken against the deceased before his death shall be deemed to have been taken against the legal representatives and may be continued against the legal representatives from the stage at which it stood on the death of the deceased and for completing the proceedings by virtue of section 159(2)(c) of the Act, the provisions thereof were applied accordingly. Sub-section (3) of section 159 of the Act further provides that the legal representatives of the deceased, shall for the purpose of this Act, be deemed to be an assessee. (Para 5).