**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 25th OF NOVEMBER, 2022

WRIT PETITION NO.27216 OF 2022

BETWEEN:-

1. **SHANTI W/O LATE SHRI RAMDAS AGE – 61 YEARS, OCCUPATION-SERVICE R/O SHRI NAGAR, GALLA KOTAHAR, THATIPUR, GWALIOR (MADHYA PRADESH)**
2. **LAXMI W/O SHRI RAMSWAROOP AGE – 56 YEARS, OCCUPATION – SERVICE R/O SHRI NAGAR, GALLA KOTAHAR, THATIPUR, GWALIOR (MADHYA PRADESH)**

…....PETITIONERS

(BY SHRI K.K.SHARMA – ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH IT'S PRINCIPAL SECRETARY PUBLIC WORKS DEPARTMENT VALLABH BHAWAN BHOPAL, (MADHYA PRADESH)**

2. **EXECUTIVE ENGINEER PWD DIVISION 1 GWALIOR (MADHYA PRADES)**

3. **SUB DIVISIONAL OFFICER PWD, HEADQUARTER, SUB DIVISION 2**

GWALIOR (MADHYA PRADESH)

……..RESPONDENTS

(SHRI JITESH SHARMA – GOVERNMENT ADVOCATE FOR STATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:

> (i) That, impugned order Annexure P/1 may kindly be quashed.
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> (ii) That respondents be directed to take the date of birth as mentioned initially at the time of appointment and all subsequent changes be held illegal.
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> (iii) That, any other relief which this Hon'ble High Court may deem fit, with cost of the petition.

2. It is submitted by the counsel for the petitioners that the date of birth of petitioner No.1 was recorded as 15.03.1961, whereas the date of birth of petitioner No.2 was recorded as 28.05.1965 in their service books. It appears that both the petitioners were directed to undergo a medical examination and accordingly, the date of birth of petitioner No.1 was changed to 15.03.1958, whereas the date of birth of petitioner No.2 was changed as 28.05.1958. It is submitted that both the petitioners were appointed on compassionate ground after the death of their husbands. The petitioners were illiterate. By the impugned order dated 16.11.2022,

they have been informed that they would stand retired with effect from the afternoon of 30.11.2022 after attaining the age of 62 years. In fact the petitioners have not attained the age of 62 years and they are being retired pre-maturely. It is further submitted that in case of change of date of birth, the respondents should have given an opportunity of hearing to the petitioners which has not been given to them, therefore, the order under challenge is liable to be quashed. To substantiate his submission, counsel for petitioners have relied upon the judgment passed by the Supreme Court in case **Shankar Lal Vs. Hindustan Copper Ltdl. & Ors. Dated 20.04.2022 passed in Civil Appeal No.2858/2022** and the judgment passed by the Division Bench of this Court in the case of **Bhan Singh Bhadoria Vs. State of M.P. & Others**, reported in **(2002) 3 MPLJ 195** as well as the judgment passed by the Andhra Pradesh High Court in case of **P.Pochamma Vs. Principal Secretary,** reported in **2004 (4) ALT 156**.

3. *Per contra*, the petition is vehemently opposed by counsel for State. It is submitted that he is in possession of original service books of both the petitioners. In fact the petitioners have not come to this Court with clean hands. The petitioner No.1 has not filed her complete service book whereas the petitioner No.2 has not filed her service book at all. The service book of both the petitioners contain a medical certificate which has been certified by Medical Board. Petitioners were directed to undergo medical examination and on the basis of age assessed by the Medical Board, the date of birth in their service books were changed. Even otherwise, petitioners have already attained the age of 62 years.

4. Heard learned counsel for the parties.

5. It is true that only the petitioner No.1 has filed few pages of service

book whereas petitioner No.2 has not filed the copy of her service book at all. Thus, it is clear that the petitioner No.1 is in possession of her service book. The original service book of petitioners have been provided for perusal of this Court and both the service books contain the medical certificate given by the District Invalidating and Medical Board Gwalior. According to said certificate, the age of petitioners No.1 and 2 was assessed as 42 years on their own disclosure and petitioner No.1 had LMP on 05.05.2020 whereas the petitioner No.2 had LMP on 20.04.2020. Both the certificates were issued in the year 2020. Further both the petitioners were granted appointment on compassionate ground after the death of their husbands. As per the service book, the petitioner No.1 had two children aged about 11 years and 10 years on the date of her appointment. The petitioner No.1 was appointed by order dated 06.11.1987. Thus, it is clear that petitioner No.1 was having two children aged about 11 and 10 years on 06.11.1987. Even assuming that the petitioner No.1 got married at age of 18 years, then it is clear that on the date of her appointment she was 30 years of age i.e. 18 years + 1 year from her marriage + 11 year of her elder child = 30 years. The petitioner No.1 has served for 35 years from her date of appointment i.e. 06.11.1987. If the petitioner No.1 was 30 years of age on 06.11.1987, then it is clear that today she is 65 years, whereas the department has treated her to be 62 years of age. Similarly, the date of birth of petitioner no.2 was changed from 28.05.1965 to 28.05.1958 after her medical examination. She was given appointment on compassionate ground on 28.10.1994. As per the medical certificate, the petitioner herself had disclosed her age as 42 years and her was LMP was on 20.04.2020. If the petitioner No.2 was 42 years of age in the year 2020, then it is clear that

she has attained the age of 64 years, but still the petitioner No.2 is being treated as 62 years by the respondents.

6. The petitioner is right in making submission that whenever the date of birth of an employee is changed in the service book, then an opportunity of hearing should be given to her but it is equally well settled principle of law that unless and until a prejudice is pointed out by the petitioner, an order cannot be quashed merely on the ground of violation of principle of natural justice. The Supreme Court in the case of **Nirma Industries Limited and another Vs. Securities and Exchange Board of India** reported in **(2013) 8 SCC 20** has held as under:

> **30.** In *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , having defined the meaning of "civil consequences", this Court reiterated the principle that the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the employee. It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. In other words, the Court reiterated that the person challenging the order on the basis that it is causing civil consequences would have to prove the prejudice that has been caused by the non-grant of opportunity of hearing.…....
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> **35.** Mr Venugopal has further pointed out that apart from the appellants, even the merchant bankers did not make a request for a personal hearing. He submitted that grant of an opportunity for a personal hearing cannot be insisted upon in all circumstances. In support of this submission, he relied on the judgment of this Court in *Union of India* v. *Jesus Sales Corpn.* [(1996) 4 SCC 69] The submission cannot be brushed aside in view of the observations made by this Court in the aforesaid judgment, which are as under: (SCC pp. 74-75, para 5)

"*5.* The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred to. It need not be pointed out that under different situations and conditions the requirement of compliance with the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such

> authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."

The Supreme Court in the case of **Chairman, State Bank of India and another Vs. M.J. James** reported in **(2022) 2 SCC 301** has held as under:-

> **31.** In *State of U.P.* v. *Sudhir Kumar Singh* [*State of U.P.* v. *Sudhir Kumar Singh*, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] referring to the aforesaid cases and several other decisions of this Court, the law was crystallised as under : (SCC para 42)
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> "*42*. An analysis of the aforesaid judgments thus reveals:
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> *42.1*. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
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> *42.2*. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
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> *42.3*. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural

justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

The Supreme Court in the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others** reported in **(2015) 8 SCC 519** has held as under:-

20. Natural justice is an expression of English Common Law. Natural justice is not a single theory—it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "*naturalist***"** approach to the phrase "*natural justice***"** and is related to "*moral naturalism***"**. Moral naturalism captures the essence of commonsense morality—that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision-making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must

deal with the question referred both without bias and they must give (*sic* an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "*natural justice*". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (*i*) rule against bias i.e. *nemo debet esse judex in propria sua causa*; and (*ii*) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "*reasoned order*".

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38. But that is not the end of the matter. While the law on the principle of *audi alteram partem* has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the

punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice***"**. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

41. In *ECIL* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle: (SCC pp. 756-58, para 30)

> "*30.* Hence the incidental questions raised above may be answered as follows:
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> (*v*) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is

not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in *ECIL* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: (SCC p. 758, para 31)

> "*31.* Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the

court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

The Supreme Court in the case of **Canara Bank and others v. Debasis Das and others** reported in **(2003) 4 SCC 557** has held as under:-

22. What is known as "useless formality theory" has received consideration of this Court in *M.C. Mehta* v. *Union of India* [(1999) 6 SCC 237] . It was observed as under: (SCC pp. 245-47, paras 22-23)

"*22*. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court

thinks that the case of the applicant is not one of ‘real substance’ or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed see *Malloch* v. *Aberdeen Corpn.* [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] (per Lord Reid and Lord Wilberforce), *Glynn* v. *Keele University* [(1971) 2 All ER 89 : (1971) 1 WLR 487] , *Cinnamond* v. *British Airports Authority* [(1980) 2 All ER 368 : (1980) 1 WLR 582 (CA)] and other cases where such a view has been held. The latest addition to this view is *R.* v. *Ealing Magistrates' Court, ex p Fannaran* [(1996) 8 Admn LR 351] (Admn LR at p. 358) [see de Smith, Suppl. p. 89 (1998)] where Straughton, L.J. held that there must be ‘*demonstrable beyond doubt*’ that the result would have been different. Lord Woolf in *Lloyd* v. *McMahon* [(1987) 1 All ER 1118 : 1987 AC 625 : (1987) 2 WLR 821 (CA)] has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy* v. *Grant* [1959 NZLR 1014] however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is ‘real likelihood — not certainty — of prejudice’. On the other hand, *Garner's Administrative Law* (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. *On the other side* of the argument, we have apart from *Ridge* v. *Baldwin* [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935 (HL)] , Megarry, J. in *John* v. *Rees* [(1969) 2 All ER 274 : 1970 Ch 345 : (1969) 2 WLR 1294] stating that there are always ‘open and shut cases’ and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J. has said that the ‘useless formality theory’ is a dangerous one and, however

inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in *R.* v. *Chief Constable of the Thames Valley Police Forces, ex p Cotton* [1990 IRLR 344] by giving six reasons. (See also his article '*Should Public Law Remedies be Discretionary*?' 1991 PL, p. 64.) A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* [(1971) 2 All ER 1278 : (1971) 1 WLR 1578 (HL)] and *Glynn* [(1971) 2 All ER 89 : (1971) 1 WLR 487] were wrongly decided. Foulkes (*Administrative Law*, 8th Edn., 1996, p. 323), Craig (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are *not* all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their '*discretion*', refuse certiorari, prohibition, mandamus or injunction even though natural

> justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala* v. *S.K. Sharma* [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460] that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.
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> *23*. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as in the case before us, '*admitted and indisputable*' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J."
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> **23.** As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see *Gadde Venkateswara Rao* v. *Govt. of A.P.* [AIR 1966 SC 828]). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See *Charan Lal Sahu* v. *Union of India* [(1990) 1 SCC 613 : AIR 1990 SC 1480] .)

7. Thus, it is clear that any order cannot be quashed merely on the ground that opportunity of hearing was not given unless and until any prejudice is caused to the aggrieved person.

8. This Court has already considered the material available in the

service book of the petitioner coupled with the fact that petitioners have deliberately suppressed the material fact of either filing incomplete service book or by not filing the service book at all.

9. Be that whatever it may.

10. In view of the above mentioned facts and circumstances of the case, this Court is of the considered opinion that even otherwise the petitioners have failed to prove that they have not attained the age of 62 years.

11. Furthermore, it is well established principle of law that the petition for change of date of birth at the fag end of service cannot be entertained.

12. The Supreme Court in the case of **State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others** reported in **(2010) 14 SCC 423** has held as under:-

> "**12.** Apart from the notification and the said instruction this Court in a series of cases has categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty-eight years.
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> **13.** In *Union of India* v. *Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92] this Court was confronted with almost similar facts. The Court laid down as under: (SCC pp. 172-73, para 15)
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> > "*15*. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20-5-1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also

reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty-five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct."

14. In *State of T.N.* v. *T.V. Venugopalan* [(1994) 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294] this Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under: (SCC p. 307, para 7)

> "*7.* … The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When

rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground."

15. In *Home Deptt.* v. *R. Kirubakaran* [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] the Court again reiterated the legal position that the courts have to be extremely careful when application for alteration of the date of birth is filed on the eve of superannuation or nearabout that time. The Court observed as under: (SCC p. 160, para 9)

> "*9*. … As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier."

16. xxxxx

17. In another judgment in *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 of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

18. Two decades ago this Court in *Govt. of A.P.* v. *M. Hayagreev Sarma* [(1990) 2 SCC 682 : 1990 SCC (L&S)

542 : (1990) 13 ATC 713] has held that subsequent claim for alteration after commencement of the Rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on *State of U.P.* v. *Gulaichi* [(2003) 6 SCC 483 : 2003 SCC (L&S) 908] , *State of T.N.* v. *T.V. Venugopalan* [(1994) 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294] , *Bhadrak (R&B) Division* v. *Rangadhar Mallik* [1993 Supp (1) SCC 763 : 1993 SCC (L&S) 276 : (1993) 23 ATC 807] , *Union of India* v. *Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92] and *Home Deptt.* v. *R. Kirubakaran* [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] .

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 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] 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."
>
> **20.** In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the notification and the instructions set out in the preceding paragraphs leads to the conclusion that no application for alteration of the date of birth after five years should have been entertained."

The Supreme Court in the case of **Factory Manager, Kirloskar Bros. Ltd. v. Laxman,** reported in **(2020) 3 SCC 419** has held as under :

> **"4.** The affidavit filed by the employee indicated that he was well aware that his date of birth had not been corrected by the employer on the basis of representation that was allegedly filed in the year 2003. Thus, it was not open to him to have waited for ten years i.e. till his date of retirement and to file a representation again and to approach the Labour Court. He slept over his right and it is also doubtful whether he had submitted representation. Even if he has submitted his representation, he could not have waited for ten years for seeking correction in the date of birth after his retirement. A perusal of the record also indicated that once the respondent himself had declared his date of birth as 1-1-1956. There is no document in service book indicating that he has ever declared his date of birth as 1-12-1956."

Rule 84 of M.P. Financial Code reads as under :

84. शासन के अधीन किसी सेवा अथवा पद पर प्रत्येक नवनियुक्त व्यक्ति को भर्ती के समय अपनी जन्म तिथि की जहां तक हो, ऐसे अभिलेखों के साथ जो उस तिथि की पुष्टि करते हों जैसे मेट्रीकुलेशन सर्टिफिकेट, म्युनिसिपल जन्म तिथि सर्टिफिकेट, आदि के साथ क्रिश्चियन एरा में, घोषणा करना चाहिए। यहि वास्तविक जन्म तिथि ज्ञात न हो तो लगभग क्या तिथि है यह बताया जाना चाहिए। सेवा–विवरण, सेवा पुस्तिका अथवा अन्य अभिलेख जो शासकीय सेवक के संबंध में रखे जायें उनमें वास्तविक जन्म तिथि अथवा 85 के अंतर्गत निश्चित की गई तिथि अंकित की जाना चाहिए। इस तरह एक बार अंकित की गई जन्म तिथि, अन्तिम रूप से नियत तिथि समझी जावेगी और केवल लिपिकीय त्रुटि के मामलों को छोड़कर ऐसी घोषणा में किसी भी प्रयोजन के लिये तदुपरान्त कोई संशोधन मान्य नहीं किया जावेगा।

The Supreme Court in the case of **State of M.P. and others Vs. Premlal Shrivas** reported in **(2011) 9 SCC 664** has held as under:-

"**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.

13. xxxxx

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is

clear that the said Rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the Rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said Rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence."

13. Accordingly, no case is made out warranting interference in the matter. The petition fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

(alok)