

W.P. No.18284/2018
Smt. Hussaina Bai W/o Fida Hussain V/s State of M.P. & Others

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HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

SINGLE BENCH : HON'BLE SHRI JUSTICE VIVEK RUSIA

W.P. No.18284/2018

Petitioner : *Smt. Hussaina Bai W/o Fida Hussain*

Respondents : *State of M.P. & Others*

Petitioner by Shri R.R.Trivedi, Advocate.

Respondents No.1 to 3/State by Shri Mayank Purohit,
Govt. Advocate.

Respondent No.4 by Shri Abhishek Tugnawat, Advocate.

Whether approved for reporting : Yes

O R D E R

(Passed on 11.02.2020)

The petitioner has filed the present petition challenging the validity of order dated 09.07.2018; whereby respondent No.4 has rejected representation and declined to correct the date of birth recorded in the service book.

2. Facts of the case in short are as under :-

The petitioner was initially appointed on the post of Safai Daroga vide order dated 01.07.1979. At the time of entry into the service a service book was prepared in which her date

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of birth was recorded as 27.06.1956 and she put the thumb impression on it. On 24.07.2017, the petitioner filed an affidavit to the effect that her correct date of birth is 08.12.1959 but same is wrongly recorded in the service book, which is liable to be corrected. The respondent No.3 vide letter dated 23.03.2018 informed the petitioner that she is going to be retire from the service on 30.06.2018 upon attaining the age of superannuation i.e. 62 years. The petitioner submitted a representation to the respondent No.1 for correction of her date of birth. In support of her claim she submitted a Birth Certificate issued by Nagar Palika, Shirpur, District Dhule (Maharashtra). The C.M.O. vide letter dated 01.03.2018 sought a direction from the Joint Director. In reply the Joint Director vide letter dated 16.04.2018 has directed C.M.O. to get the Birth Certificate verified from the competent authority and if it is found to be genuine then proposal be sent for further proceeding. Vide letter dated 27.04.2018 the C.M.O., Nagar Parishad, Kasravad requested the C.M.O., Nagar Parishad, Shirpur to do the physical verification of birth register and verify the entries made in the Birth Certificate.

3. According to the petitioner, Nagar Parishad, Shirpur have got verified the Birth Certificate of the petitioner to be correct and accordingly the C.M.O. vide letter dated 24.05.2018 sought a further direction from the Joint Director, Urban Administration and Development for correction of Date of

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Birth. According to the petitioner despite the aforesaid verification the respondent No.1 has wrongly rejected the claim of the petitioner in light of the Rule 84 and 85 of M.P. Financial Code No.1.

4. Being aggrieved by the aforesaid order, petitioner filed the present petition.

5. After notice the respondent No.4 has filed the return by submitting that the petitioner was found negligent while performing the duties, therefore, she was placed under suspension, thereafter she submitted an apology and the suspension was revoked, hence, her service record is not clear and unblemished as she is claiming. It is further submitted that under Rule 84 and 85 of M.P. Financial Code No.1, the date of birth which was entered in the service book, will be final and no correction in the same will be permissible except the clerical mistake. The petitioner herself has admitted in her application dated 21.03.2018 that at the time of joining service the date of birth was registered as per her own disclosure since the correct date of birth was not known to her, therefore, there was no clerical error regarding the date of birth, hence, no permission is permissible. Hence, the petition is liable to be dismissed.

6. I have heard learned counsel for the parties.

7. Shri R.R.Trivedi, learned counsel for the petitioner submits that once the respondents have got verified the Birth Certificate of the petitioner in which the correct date of birth is

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recorded as 08.12.1959 then they ought to have corrected the date of birth. She is an illiterate lady, therefore, she was not aware about the recording of her date of birth as 27.06.1956 in the service book. She was appointed as Class-IV employee and retired as Class-IV employee. There was no promotion or any benefit in the service given to her, therefore, she had no occasion to inspect the service book. Just before the retirement she came to know that her date of birth is wrongly recorded in the service book and still she has two and half years' of service. In support of her contention, learned counsel is relying on the judgment passed by the Apex Court in the case of **State of M.P. & Others V/s. Premal Shrivastava** reported in **(2011) 9 SCC 664** in which specially the observation is made in Para 8.

8. The petitioner was appointed as Safai Daroga on 01.07.1979 being a family member of Smt. Nazeembai, who left the service being incapacitated on 3rd September, 1975. At the time of entering into the service her date of birth was recorded 27.06.1956 in the service book which the petitioner did not dispute. According to the petitioner, she was not having any proof of date of birth at that time, therefore, on the basis of assumption she disclosed her date of birth and same was recorded in the service book. In the year 2017 she obtained Birth Certificate from Municipal Council, Shirpur Varvade to establish that her date of birth is 08.12.1959. According to the petitioner, date of birth is recorded in Birth Certificate after

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obtaining information from the original record of birth. The petitioner obtained this Certificate on 06.07.2017 and thereafter submitted a representation for correction of date of birth. Though the respondents have got verified the validity of the aforesaid Certificate but declined to correct the date of birth in view of the provisions of Rule 84 and 85 of M.P. Financial Code No.1. The aforesaid provision of financial code came up for consideration before the Apex Court in the case of **State of M.P. & Others V/s. Premlal Shrivastava (supra)** in which it has been held that it is manifest from the bare reading of Rule 84 of 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. Obviously, only that the 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 and no evidence has been placed on record by the employee to show that the date of birth recorded was due to negligence of some other person. It has also been observed that the delay of over two decades in applying for the correction of date of birth is *ex facie fatal*.

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9. Para 12, 13, 14, 15, 16 and 17 of the judgment passed in State of M.P. & Others V/s. Premlal Shrivastava (supra) are reproduced below :-

“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. Rule 84 of the M.P. Financial Code, heavily relied upon by the Respondent reads as under :-

Rule 84. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a 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 Rule 85 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. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever.

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

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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.

15. In *Commissioner of Police, Bombay and Anr. v. Bhagwan V. Lahane*, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him.

16. Again, in *Union of India v. C. Rama Swamy and Ors.*, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

17. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the Appellants to correct the date of birth of the Respondent under Rule 84 of the said Rules.”

10. Therefore, the judgment cited by the petitioner goes against her because she has not established that the date of birth recorded in the service book was due to the negligence or want of proper care on part of some other employee.

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11. The issue of correction of date of birth at the fag end of service came up before the Apex Court recently in the case of **Bharat Coking Coal Ltd. & Others V/s. Shyam Kishore Singh (Civil Appeal No.1009/2020)** decided on 5th February, 2020, in which the Apex Court has held that,

“.....merely because a verification was made from the Bihar School Examination Board and even if it was confirmed that the date of birth was 20.01.1955 such change at that stage was not permissible.

8. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of ***State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & Ors.*** (2010) 14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder :-

“**16.** The learned counsel for the appellant has placed reliance on the judgment of this Court in *U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri* [(2005) 11 SCC Page 9 of 16 465 : 2006 SCC (L&S) 96]. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

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.

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

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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.”

9. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in *State of M.P. vs. Premal Shrivastava*, (2011) 9 SCC 664 it is held as hereunder;

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“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

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

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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.”

10. The learned Additional Solicitor General has also relied upon the decision of this Court in the case of ***Factory Manager Kirloskar Brothers Ltd. vs. Laxman*** in SLP (C) Nos.25922593/2018 dated 25.04.2019 wherein the belated claim was not entertained. Further reliance is also placed on the decision of this Court in the case of ***M/s Eastern Coalfields Ltd. & Ors. vs. Ram Samugh Yadav & Ors.*** in C.A.No.7724 of 2011 dated 27.05.2019 wherein this Court has held as hereunder :-

“Nothing is on record that in the year 1987 when the opportunity was given to Respondent No.1, to raise any issue/dispute regarding the service record more particularly his date of birth in the service record, no such issue/dispute was raised. Only one year prior to his superannuation, Respondent No.1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge as well as the employer was justified in refusing to accept such an issue. The Division Bench of the High Court has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent No.1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier.”

12. Therefore, in view of the aforesaid verdict given by the Apex Court even if the Birth Certificate is found to be genuine as claimed by the petitioner, she is not entitled for correction of date of birth because she applied at the fag end of service and she has failed to prove that there was any clerical

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error or negligence on part of some employee while recording the date of birth in the service book. Hence, no case for interference is made out. Petition is accordingly **dismissed**.

**(VIVEK RUSIA)
JUDGE**

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