



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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 6<sup>th</sup> OF NOVEMBER, 2024**

**WRIT PETITION No. 7763 of 2024**

***MAHESH TANWAR***

*Versus*

***NANJI DESHMUKH PASHUCHIKITSA VIGYAN VISHWA***

***VIDYALAYA JABALPUR AND OTHERS***

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**Appearance:**

*Shri Sachin Patel - Advocate for the petitioner.*

*Shri Mukul Bhutda – Advocate for respondents.*

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**ORDER**

- 1] Heard.
- 2] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“a. Appropriate Writ, Direction or order in the nature of mandamus or other, the impugned order dated 23.11.2023 be quashed.

b. Appropriate Writ, Direction or order in the nature of mandamus or other, all the proceedings of the Respondents on the subject matter negating the plea for correction of Petitioner’s date of birth in the service record be quashed.

c. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to correct the Petitioner’s date of Birth in the service record by entering his correct date of Birth, which is 09.12.1964.

d. Appropriate Writ, Direction or order in the nature of mandamus or other, the Respondents be directed to confer all the service benefit including the superannuation, to the Petitioner by acting and treating his actual date of birth to be ‘09.12.1964’.

e. Costs of this Petition be awarded.



f. Any other appropriate relief, which this Hon'ble court may deem fit, be awarded to the Petitioner.”

**3]** The petitioner is aggrieved by the order dated 23.11.2023, whereby it has been conveyed to the petitioner that his date of birth shall be treated as 21.05.1962. The case of the petitioner is that he was appointed on the post of Time Pay Labour on 21.05.1990 in the college of Veterinary Science and Animal Husbandry, Mhow (Respondent No.2). On 12.09.1997, an order was passed that the date of birth mentioned by the petitioner in his service record as 02.09.1967, has not been supported by any document, and thus, on the basis of the certificate given by the Doctor of the College, as on 24.05.1990 his age is determined as 28 years and corresponding date of birth is held to be 21.05.1962, and thus, it was directed that in place of 02.09.1967, the date of birth of the petitioner be mentioned as 21.05.1962 in the official records. The aforesaid order was challenged by the petitioner in the year 2000, the application regarding which has not been filed on record. However, on the said application, the order was passed on 09.10.2001 (Annexure P/6) holding that since his age has already been determined vide order dated 12.09.1997, hence, his date of birth cannot be changed any further.

**4]** The petitioner's contention is that his original date of birth is 09.12.1964, which is also reflected in all his documents viz., transfer certificate, mark-sheets, his Aadhar Card as also his *Janampatri*/Birth Chart, and there was no reason for him not to disclose the aforesaid date of birth in his official records, and thus, it is submitted that the respondents have erred in not correcting the date of birth of the petitioner.

**5]** A reply to the petition has also been filed.



6] Counsel for the respondents has also drawn the attention of this Court to the undertaking given by the petitioner on 23.05.2000, wherein he has accepted that his date of birth is 21.05.1962 only, which he has accepted. Thus, it is submitted that when the petitioner himself has given an undertaking as aforesaid, no case for interference is made out.

7] Counsel for the respondents has also submitted that the documents filed by the petitioner along with the petition are dubious in nature as it is not clear as to when these documents have been issued to the petitioner, and also that his first objection was filed after seven years of his appointment, and the petition has been filed at the fag end of his services. Counsel has also relied upon certain decisions rendered by the Supreme Court in the cases of **The General Manager M/S Barsua Iron Ore Mines Vs. The Vice President United Mines Mazdoor Union and Ors.** passed in **Civil Appeal No.4686 of 2024 dated 02.04.2024** paras 18, 19 & 21 reported as **2024 SCC OnLine SC 491** and **Karnataka Rural Infrastructure Development Limited and Ors. Vs. T.P. Nataraja and Ors.** passed in Civil Appeal Nos.5720 and 5721 of 2021 dated 21.09.2021 paras 10 & 11. reported as **(2021) 12 SCC 27**.

8] In rebuttal, counsel for the petitioner has submitted that the aforesaid undertaking was given by the petitioner under coercion as the petitioner was extended the benefit of increments on 04.12.1999, however, the actual benefits were released only after the aforesaid undertaking on 23.05.2000. Counsel has also relied upon certain decisions rendered in the cases of **Matuwarram Chaurasiya Vs. Northern Coalfields Limited & Ors.** reported as **I.L.R. [2016] M.P., 1028** paras 1, 2, 3, 6, 7 & 8 and **Rajaram**



**Soni Vs. South Eastern Coal Fields Ltd. & Ors.** passed by the Coordinate Bench of this Court at Jabalpur in **W.P. No.11671 of 2021 dated 12.03.2024.**

9] Heard counsel for the parties and perused the documents filed on record.

10] On perusal of the record, it is found that the cause of action to object the erroneous date of birth recorded by the respondents in the service record of the petitioner arose only on 12.09.1997, which is reflected from the letter dated 23.05.2000, when the petitioner submitted an application to the respondents regarding confirmation of his date of birth admitting that his date of birth has been held to be 21.05.1962 as per the order dated 12.09.1997, whereas the petitioner has filed this petition only on 20.03.2024 i.e., after a period of almost around 27 years. The petitioner's contention that he had made the aforesaid communication dated 23.05.2000 only under coercion as subsequent to that his increments were released only after the aforesaid date is not tenable after a period of around 27 years. In Para 3 of the petition, which refers to delay, if any, (although, it should have been para 4 as per the proper format), it is mentioned by the petitioner that the cause of action is recurring and, hence, there is no delay in challenging the order dated 23.11.2023.

11] So far as order dated 23.11.2023 is concerned, it is a communication made by the respondents on the application filed by the petitioner for correction of his date of birth and it has been informed to the petitioner that as per his service record his date of birth shall be considered as 21.05.1962 only. This Court is of the considered opinion that such communication



issued to the petitioner by the respondents would not give him a fresh cause of action. Regarding delay, the respondents have also relied upon the decision rendered by the Supreme Court in the case of **Karnataka Rural Infrastructure Development Limited & Ors. (supra)** in which it has been held as under:-

“10. Even otherwise and assuming that the reasoning given by the High Court for the sake of convenience is accepted in that case also even Respondent 1—employee was not entitled to any relief or change of date of birth on the ground of delay and laches as the request for change of date of birth was made after lapse of 24 years since he joined the service. At this stage, few decisions of this Court on the issue of correction of the date of birth are required to be referred to.

**10.1.** In *Home Deptt. v. R. Kirubakaran* [*Home Deptt. v. R. Kirubakaran*, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449] , it is observed and held as under : (SCC p. 158, para 7)

“7. An application for correction of the date of birth should not be dealt with by the Tribunal or the High Court keeping in view only the public servant concerned. 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 the promotion for ever.”

**10.2.** In *State of M.P. v. Premlal Shrivastava* [*State of M.P. v. Premlal Shrivastava*, (2011) 9 SCC 664 : (2011) 2 SCC (L&S) 574] in paras 8 and 12, it is observed and held as under : (SCC pp. 667 & 669)

“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* [*Union of India v. Harnam Singh*, (1993) 2 SCC 162 : 1993 SCC (L&S) 375] ).

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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.”

**10.3.** In *LIC v. R. Basavaraju* [*LIC v. R. Basavaraju*, (2016) 15 SCC 781 : (2015) 3 SCC (L&S) 167] , it is observed as under : (SCC p. 782, para 5)

“5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag-end of retirement.”

**10.4.** In *Bharat Coking Coal Ltd. v. Shyam Kishore Singh* [*Bharat Coking Coal Ltd. v. Shyam Kishore Singh*, (2020) 3 SCC 411 : (2020) 1 SCC (L&S) 535] of which one of us (A.S. Bopanna, J.) was a party to the Bench has observed and held in paras 9 & 10 as under : (SCC pp. 415-17)

“9. 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 *State of Maharashtra v. Gorakhnath Sitaram Kamble* [*State of Maharashtra v. Gorakhnath Sitaram Kamble*, (2010) 14 SCC 423 : (2011) 2 SCC (L&S) 585] wherein a



series of the earlier decisions of this Court were taken note of and it was held as hereunder : (SCC pp. 428-29, paras 16-17 & 19)

“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* [*U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri*, (2005) 11 SCC 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* [*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 [*Pitamber Dutt Semwal v. State of U.P.*, 1999 SCC OnLine All 1610] of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

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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* [*Home Deptt. v. R. Kirubakaran*, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449] 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.” ’

10. 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. v. Premlal Shrivastava* [*State of M.P. v. Premlal Shrivastava*, (2011) 9 SCC 664 : (2011) 2 SCC (L&S) 574] it is held as hereunder : (SCC pp. 667 & 669, paras 8 & 12)

“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* [*Union of India v. Harnam Singh*, (1993) 2 SCC 162 : 1993 SCC (L&S) 375] ).

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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.’ ”

**11.** Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation.

**12.** Therefore, applying the law laid down by this Court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order [T.P. Nataraja v. State of Karnataka, 2019 SCC OnLine Kar 3510] passed by the High Court is unsustainable and not tenable at law.”

(Emphasis supplied)

**12]** Similarly, in the case of **The General Manager M/S Barsua Iron Ore Mines (supra)**, which is a recent decision on the subject by the Supreme Court, in which also the date of birth was sought to be changed in the service record of the petitioner after more than 9 years and one month, the Supreme Court has made the following observations:-

“18. Undoubtedly, a decision on the issue of date of birth is as important for the employer as it is for the employee. Reference in this regard can be made to **Bharat Coking Coal Ltd. v Shib Kumar Dushad, (2000) 8 SCC 696**. As expressed in **Union of India v C Rama Swamy, (1997) 4 SCC 647**, “... the court also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that that would be to his advantage. ...”.

19. Moreover, the principles of estoppel would come into play in the present case. The respondent no.3, having stated on 27.12.1972, that his date of birth was 27.12.1948, cannot be



permitted to raise the claim of his date of birth being 12.03.1955, that too on 14.08.1982, i.e., almost after a decade (counting from 27.12.1972 to 14.08.1982). Even the STC was submitted after the appellant requested the respondent no.3 for documentary proof on 24.11.1998.

20. Although, we have examined the matter from the lens of fraud as well, in view of our discussions hereinabove, the said aspect does not merit deeper probe. We leave it at that. For the present, it would suffice to refer to a pronouncement of recent vintage by this Court in **Karnataka Rural Infrastructure Development Limited v T P Nataraja, (2021) 12 SCC 27**, where earlier precedents in **Home Department v R Kirubakaran, 1994 Supp (1) SCC 155**; **State of Madhya Pradesh v Premlal Shrivastava, (2011) 9 SCC 664**; **Life Insurance Corporation of India v R Basavaraju, (2016) 15 SCC 781** and **Bharat Coking Coal Limited v Shyam Kishore Singh, (2020) 3 SCC 411** were considered. Although this Court in T P Nataraja (supra) was looking at the facts therein, in the context of the Karnataka State Servants (Determination of Age) Act, 1974, the principle of law laid down would equally apply insofar as change of date of birth in service records is concerned, with which we concur:

“11. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarised as under:

- (i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;
- (ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;
- (iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag-end of service and/or when the employee is about to retire on attaining the age of superannuation.”

21. In view of the aforesaid, this Court finds that the much-delayed disclosure of the date of birth as 12.03.1955 by the respondent no.3, coupled with his initial declaration and the admitted position that based on such initial declaration, he had received employment, as otherwise based on 12.03.1955, he could not have been legally appointed due to being under-age, there is no manner of doubt that the respondent no.3, irrespective of his real date of birth, for the purpose of employment under the appellant, cannot be allowed the purported rectification/correction of date of birth to 12.03.1955. He would have to, necessarily, be content with his service and benefits accounted taking his date of birth as 27.12.1948.”

(Emphasis supplied)



**13]** So far as the decisions relied upon by the counsel for the petitioner in the cases of **Rajaram Soni** and **Matuwarram Chaurasiya** (supra) are concerned, which are of the co-ordinate Bench of this Court, it is found that in the case of **Rajaram Soni** (supra) the petitioner's case was that his date of birth has been arbitrarily shown by the respondents as 29 years in the year 1991, whereas he was 25 years of age at that time, whereas in the present case the petitioner had the opportunity to raise all the objections or file all the documents at the time when he gave an affidavit on 12.09.1997, when his date of birth was determined as 21.05.1962, which has also been admitted by him in his communication dated 23.05.2000, both the aforesaid documents have been filed on record along with reply. Thus, the aforesaid decision is of no avail to the petitioner.

**14]** In the case of **Matuwarram Chaurasiya** (supra) the petitioner was an employee of Northern Coalfields Limited, where such matters are referred to the Age Determination Committee (ADC) and this Court had held that the ADC has not even looked into that Matriculation Certificate produced by the petitioner nor has tested the correctness of the certificate issued by the statutory Council in respect of the validity of the Matriculation Certificate obtained by the petitioner. Whereas in the present case, this Court has already observed that the petitioner had the occasion to challenge his date of birth way back in the year 1997 when his age was first determined by the respondents, but surprisingly, he has not submitted any of the documents before the authority, which he has filed in the present petition and thus, the benefit of the aforesaid decision can also not be availed by the petitioner.



**15]** In view of the aforesaid discussion, under the facts and circumstances of the case, this Court is not inclined to appreciate the validity of the documents filed by the petitioner at this stage, which could have been produced before the original authority at the time when his date of birth had come under scanner, i.e., on 12.09.1997, when his date of birth was determined for the first time.

**16]** In view of the same, petition being devoid of merits, is hereby **dismissed.**

**(SUBODH ABHYANKAR)**  
**JUDGE**

Pankaj