

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 22nd OF JUNE, 2023

WRIT PETITION No. 12758 of 2023

BETWEEN:-

**NEELAM PAL S/O SHRI BABBUL PAL, AGED
ABOUT 62 YEARS, OCCUPATION: JANSEVAK
R/O493.1 WARDNO 27 BHEELPURA
NARMADAPURAM DISTRICT NARMADAPURAM
(MADHYA PRADESH)**

....PETITIONER

(BY SHRI SHANKAR PRASAD SINGH - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY URBAN
DEVELOPMENT AND HOUSING
DEPARTMENT R/O VALLABH BHAWAN
BHOPAL (MADHYA PRADESH)**
- 2. THE JOINT DIRECTOR, URBAN
ADMINISTRATION AND DEVELOPMENT
DEPARTMENT, BHOPAL DISTRICT
BHOPAL (MADHYA PRADESH)**
- 3. THE COMMISSIONER, URBAN
ADMINISTRATION AND DEVELOPMENT
DEPARTMENT DISTRICT BHOPAL
(MADHYA PRADESH)**
- 4. CHIEF MUNICIPAL OFFICER, NAGAR
PALIKA PARISHAD, NARMADAPURAM
DISTRICT NARMADAPURAM (MADHYA**

PRADESH)

.....RESPONDENTS

(BY MS. SWATI ASEEM GEORGE – PANEL LAWYER)

This petition coming on for admission 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) Issue a writ in the nature of mandamus or prohibition and accordingly the respondents be directed about not superannuating the petitioner on 11.01.2022 (Anx-P/7).

(ii) Issue any other writ, order or direction as this Hon’ble court deems fit.”

2. It is the case of the petitioner that the petitioner was a daily wagger employee and was regularized on 06.09.2013. In the service book of the petitioner, the date of birth of the petitioner has been recorded as 01.07.1961 whereas his correct date of birth is 01.07.1971. Accordingly, on account of such mistake in date of birth, respondent No.2 to 4 have passed the impugned order indicating that the petitioner shall stand retire on 30.06.2023.

3. Accordingly, the petitioner made a representation to the respondents for correction of date of birth in her service record, however no heed has been paid and her representation is pending.

4. Heard the learned counsel for the petitioner.

5. The petitioner has approached this Court by filing this petition on 13.06.2023 and according to the impugned order, the petitioner shall stand superannuated with effect from afternoon 30.06.2023.

6. Now, the only question for consideration is as to whether the present petition for change of date of birth at the fag end of the service period is maintainable or not ?

7. 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.

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)

“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.”

8. 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.”

9. 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 किश्चियन एरा में, घोषणा करना चाहिए। यह 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।”

10. The Supreme Court in the case of **State of M.P. and others Vs. Premlal Shrivias** 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.”

11. Since the petitioner had approached the Court at the fag end of his career, therefore the petition cannot be considered on the ground of delay and laches.

12. Accordingly, the petition fails and is hereby **dismissed**.

(G.S.AHLUWALIA)
JUDGE

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