

**(2006) 05 AHC CK 0192**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 314 (D) of 2006**

Betawa River Board and Executive Engineer, Rajghat Bandh  
Paryavaran Bhu Arjan Prakhand

APPELLANT

Vs

Gauri Shanker Chaturvedi

RESPONDENT

---

**Date of Decision :** 18-05-2006

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2006) 7 AWC 7285

**Hon'ble Judges :** Dilip Gupta, J; B.S. Chauhan, J

**Bench :** Division Bench

**Advocate :** K.C. Sinha, for the Appellant; B.N. Singh, for the Respondent

**Final Decision :** Allowed

---

## Judgement

B.S. Chauhan, J.—The appeal has been reported to be time barred by two days. The delay has been successfully explained by the appellants and after having heard learned Counsel for the parties and considering the grounds taken for explaining the delay in the appeal, we find that sufficient ground has been made out for condoning the same. Accordingly, the application for delay condonation is allowed and the appeal is being proceeded with on merits.

2. The dispute essentially in this special appeal is about the date of birth of the solitary respondent Gauri Shanker Chaturvedi which was altered by the then Ixecutive Engineer on an application been moved by the respondent vide order dated 27/4/2004. The claim of the respondent was that his correct date of birth was 01/6/1948. The respondent therefore applied for the alteration in the date Of birth as recorded in the service book. As a consequence of this alteration the respondent would stand to gain continuance in service for three years and would have retired in the year 2008 instead of in 2005. Later on the said correction which was carried out was cancelled under the orders of the Chief Engineer dated 18/1/2005, whereby five such employees including the respondent, who had succeeded in getting their date of birth as recorded in the service book altered,

were ordered to be retired on the basis of the original date of birth as was previously recorded in their service book. Pursuant to the order of the Chief Engineer, the appellant No. 3 issued formal orders on 30/4/2005 for retiring the respondent. On coming to know about this order the respondent moved an application before the Executive Engineer that there is absolutely no basis for implementing the said direction of the Chief Engineer as his date of birth has already been corrected and further such incorrect recording of date of birth has been altered in the case of almost 50 percent of the work charge employees of the establishment and hence no action is required to be taken against the respondent-petitioner. Subsequently, the order dated 27/4/2004 has been cancelled by the appellants on 8/11/2005.

3. Aggrieved, by the aforesaid action of the appellants, the respondent-petitioner instituted the writ petition giving rise to the present special appeal on the ground that the order passed by the appellants was in violation of the principles of natural justice and that the appellants themselves had resorted to correction of date of birth in the case of at least 50 percent of the employees in the establishment, hence they could not discriminate the respondent-petitioner on the grounds taken by them.

4. The appellants in their counter affidavit before the learned Single Judge took a stand that under the provisions of paragraph 3.02 of C.P.W.D. Manual Volume 33 read with the Ministry of Home Affairs Office Memorandum dated 30/11/1999, it was not possible for the appellant authority to have altered the date of birth as no such change was permissible in terms of the aforesaid provisions which clearly indicate that an application, for correcting the date of birth as recorded in the service book at the time of entering into service, cannot be moved after five years of the entry in service. It was also stated that vide letter dated 09/7/2005, the petitioner had been informed about the stand of the appellants to the objection raised by the respondent and therefore, he was given an opportunity to clarify the stand taken by him.

5. Shri K.C. Sinha, learned Counsel appearing for the appellants also pointed out that the respondent has resorted to fraud and manipulation of interpolating the certificate of Junior High School and also by relying on a forged certificate of the Head Master of the school and as such the writ petition ought to have been dismissed on this ground alone.

6. A perusal of the judgment of the learned Single Judge demonstrates that the letter of cancellation also relied on certain provisions to support the same which need not be reproduced as they are already referred to in the judgment under appeal.

7. The learned Single Judge allowed the writ petition holding that the order dated 08/11/2005 canceling the previous order dated 27/4/2004 was in violation of the principles of natural justice; that the said action of the appellants amounts to an act of face saving device; that the reliance placed by the appellants on the

C.P.W.D. Manual Is misplaced as it is only a guideline and not law; that the appellants have discriminated the respondent-petitioner as they themselves had carried out corrections in the case of more than 50 percent of the work charge employees which orders have not been cancelled except the 5 employees referred to in the order dated 08/11/2005, and finally the issuance of the charge sheet to the then Executive Engineer Shri K.M. Sharma is a fabrication attempted by the appellants for the purposes of upturning the case of the respondent and it was done on the advise of the counsel and therefore the writ petition deserved to succeed. The learned Single Judge allowed the writ petition quashing the order dated 30/4/2005 by which the respondent was retired from service and allowed him to continue on his post treating his date of birth to be 01/6/1948. further, a cost of Rs, 10,000/- was imposed on the appellants.

8. We have heard Shri K.C. Sinha, learned Counsel for the appellants and Shri B.N. Singh for the respondents. The appellants have also produced the original service book and the documents pertaining to the claim of correction of date of birth of the respondent which have also been perused by us.

9. From the records it is clear that the respondent has admitted having kept in his custody his own service book for a long time. This admission by the respondent is contained in his reply dated 12/7/2005 appended as (Annexure 22A) to the affidavit filed in support of the stay application in the appeal. The said fact is relevant in order to examine the contentions made on behalf of the appellants in respect of interpolations and manipulations which have been attempted by the respondent for getting an order to correct his date of birth.

10. A perusal of the service book demonstrates that the respondent joined the service on 14/5/1980 and at the time of his entry in service the date of birth was recorded as 01/6/1945. From a perusal of Annex 4 to the affidavit in the appeal, it is clear that the respondent filled up an application for receiving benefits under an insurance scheme of the Life Insurance Corporation of India. This application has been filled up in his own hand writing where the date of birth recorded is 01/6/1945. Apart from this, a tentative seniority list was issued by the department dated 28/7/1999 (Annex-5) to the affidavit to which objections were invited and the name of the respondent appears at Serial No. 46 of the said list wherein his date of birth endorsed is 01/6/1945.

11. No objection was ever filed by the respondent to the said list. Thereafter the same list was finalised and published on 21/9/1999 recording his date of birth as 01/6/1945. Thus, up to that stage it is clear that the respondent continued to accept his date of birth as 01/6/1945 which is almost after 24 years of his inception in service.

12. The next document which is worth noting is the Junior High School Certificate issued by the District Inspector of Schools in respect of the respondent. It is relevant to point out that the Junior High School examinations which were held earlier were conducted by the Board and the certificate was issued by the

Education Department under the relevant rules. The said certificate is therefore of a probative value which cannot be discarded. The certificate of the respondent which was submitted before the authorities is on the record in the counter affidavit (Annex CA -9) of the appellants filed in the writ petition. The same is sworn by Shri A.K. Gupta who was representing the appellants before the learned Single Judge. A perusal of the said certificate issued on 01/7/1961, clearly records the date of birth as 01/6/1945, It is this date of birth which was recorded in the service book of the respondent. The service book under mysterious circumstances was retained by the respondent as admitted by him and the said date of birth has been scored out and interpolated. The photo stat copy of the certificate relied upon by the respondent-petitioner appears to have been manipulated and the digit 5 of the year 1945 has been interpolated as 8 so as to make the year 1948. It is this fraud and manipulation which became the basis for the respondent to move the application to get his date of birth changed and altered. Apart from this, the last page of the service book containing the information about the status of the family of the respondent has been filled up by the respondent himself, but the portion regarding the date of birth of the respondent has been torn and the other particulars remain intact. Whether this was done by the respondent or not is a separate issue, but none the less the circumstances indicated hereinabove are a clear indicator towards the fraud and manipulation attempted of which the beneficiary is the respondent.

13. Before examining the facts any further, it is relevant to first consider the proposition of law about the stage at which an employee can claim correction in the date of birth as recorded in his service book. The provisions which are applicable to the controversy have been referred to hereinabove namely Clause 3,02 of the C.P.W.D. Manual read with the Office Memorandum issued by the Central Government which is analogous to it.

14. Clause. Clause 3.02 reads as under:

The date of birth declared by the Government Servant accepted by the appropriate authority shall not be subjected to any alteration. A change in the date of birth of a Government Servant can be made with a sanction of the Ministry of Urban Development if:

(a) A request in this regard is made within 5 years of his entry into the Government Service.

(b) It is clearly established that genuine bonafide mistake has occurred.

15. It is settled proposition of law that the date of birth entered in the service-book cannot be corrected at a belated stage. Where the date of birth entry remains in existence for a long time, the same does not require to be disturbed on any ground whatsoever. In Union of India Vs. Harnam Singh, , the Apex Court, while deciding the case of correcting the date of birth held as under:

A Government servant, after entry into service, acquires the right to continue in

service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

(Emphasis added).

16. In *Union of India and others Vs. Kantilal Hematram Pandya*, the Hon''ble Supreme Court reiterated a similar view observing as under:

He allowed the matter to rest till he neared the age of superannuation. The respondent slept over his rights to get the date of birth altered for more than thirty years and woke up from his deep slumber on the eve of his retirement only.... Stale claims and belated applications for alteration of the date of birth recorded in the service book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement, need to be scrutinized carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual. On facts, the respondent was not entitled to the relief which the Tribunal granted to him.

17. The Apex Court has consistently followed the said ratio as is evident from the judgments in *Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran*, *Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another*, *Chief Medical Officer v. Khadeer Khadri* AIR 1995 SC 8501 ; *Collector of Madras and Another Vs. K. Rajamanickam*, *Union of India and others Vs. Mrs. Saroj Bala*, *Union of India (UOI) Vs. Ram Suia Sharma*, *State of Orissa and others Vs. Ramanath Patnaik*, *G.M., Bharat Coking Coal Ltd., West Bengal Vs.*

Shib Kumar Dushad and Others, Hindustan Lever Ltd. Vs. S.M. Jadhav and Another, Cement Corpn. of India Ltd. Vs. Raghubir Singh and Another, and State of U.P. and Another Vs. Shiv Narain Upadhyaya,

18. In AIR 2002 SC 2418 , the Hon''ble Supreme Court held that while examining the issue of correction of date of birth, the Court must be very slow in accepting the case of applicant if issue has been agitated at a much belated stage and it must examine the pros and cons involved in the case even if not raised by the parties. In the said case the application for correcting the date of birth was rejected observing that if it was allowed the applicant would be permitted having joined the service when he was below 18 years of age, and therefore, accepting such an application would amount to sanctifying his illegal entrance in service.

19. In view of the above, the law can be summarised that an application for correcting the Date of Birth can be entertained at the initial stage of service and if any statutory Rule/Executive Instructions/Government Order provides for a limitation within which the application can be entertained, it is not permissible for the employer to entertain the application after expiry of the said limitation. There must be evidence of unimpeachable character to support the application. Under no circumstance, such an application is permissible to be entertained at the stage when the employee reaches near the age of superannuation.

20. The facts and the law on the issue referred to hereinabove leaves no room for doubt that the appellants were themselves in error by entertaining any application moved by the respondent in the correction of his date of birth after 24 years in service. This was not permissible in law at all and therefore the order issued in favour of respondent on 27/4/2004 was without authority and patently illegal. Apart from this, the then Executive Engineer appears to have very casually granted the said benefit without conducting any inquiry which was in violation of the settled norms and was a clear irresponsible act. The very initiation of the proceedings to entertain such a claim at this belated stage was impermissible and therefore the contention of the appellants in this regard deserves to be accepted. Apart from this, there was no clinching material which could have impelled the appellants to make an attempt to correct the date of birth of the respondents. On the contrary, an attempt was made on the basis of manipulated documents as indicated hereinabove to achieve an end by unlawful means.

21. The respondent while attempting to defend his action filed a certificate purported to have been issued by the Head Master of the same Junior High School from where he had been awarded the certificate referred to hereinabove. This certificate was obtained by the respondent on 05/1/2004, but it does not contain the date of birth of the respondent. Another certificate dated 13/7/2005 has been relied upon by the respondent alleged to have been issued by the Head Master of the same Junior High School stating that the date of birth of the respondent was 01/6/1948. From a bare comparison of the certificates dated 05/1/2004 and 13/7/2005, it is apparent that the signature of the Head Master

in the Certificate dated 13/7/2005 is altogether different and therefore it clearly appears to be another manipulation by the respondent. Even otherwise, the certificate dated 13/7/2005 cannot be relied upon as this document has come into existence during the course of this dispute before the authorities after the respondent No. 1 attained the age of superannuation. The Hon'ble Apex Court had occasion to consider this issue in respect of reliance being placed on a document which came into existence during the pendency of the proceedings.

22. In Kantilal Hematram Pandya, (supra) it has been held that when such a document is brought into existence claiming benefits then the correctness and genuineness of such a certificate is not free from doubt.

23. Similarly, Rajasthan High Court in R.S. Mehrotra Vs. Central Govt. Industrial Tribunal and Another, has held that the documents obtained subsequent to the date of joining the service cannot be relied upon for the purpose of correcting the date of birth as it might be very easy for the employee to mention another date in the papers while preparing the other documents which came into existence subsequently and the Industrial Tribunal should not have accepted the claim of the workman placing reliance on such documents.

24. In Maharashtra State Electricity Board v. Sakharan Sitaram Shinde 1996 (72) FLR 562, the Bombay High Court has taken a similar view observing that the possibilities of fabricating the documents just to support the bogus claim of an employee cannot be ruled out in such circumstances.

25. The Rajasthan High Court in Nagar Mahapalika, Bareilly v. Labour Court, Bareilly and Anr. 1995 (71) FLR 950, held that the Industrial Tribunal committed an error in placing reliance on the documents prepared by the employee subsequently. Similar view has been reiterated by this Court while deciding Writ Petition No. 42485 of 1992, L.H. Sugar Factory Ltd. v. Shri Jacob and Ors., decided on 12.12.1996.

26. Therefore, it is not safe in such a case to place much reliance on the document which came into existence subsequently to the entrance into the service. Thus, on this score as well, we are of the considered opinion that the petition ought to have been dismissed.

27. The next issue which deserves consideration is the question of violation Of principles of natural justice as complained by the respondent. The learned Single Judge in the judgment has noticed that a notice/letter was sent to the respondent on 09/7/2005 before the cancellation of the order dated 27/4/2004. It is to be noted that the order dated 18/1/2005 had emanated much earlier. Pursuant thereto, the respondent was put to notice for being retired vide impugned order dated 30/4/2005. The order dated 18/1/2005 had been passed without any notice and opportunity to respondent, but at the same time, the respondent himself has come out with a case that after having come to know of the same he immediately protested by filing an application dated 01/5/2005 itself. It may be correct that the order dated 30/4/2005 was passed without

canceling the order dated 27/4/2004 which was later on cancelled on 08/11/2005 and has been done without giving opportunity to the respondent employee. However, such a plea is not going to tilt the balance in his favour for four reasons.

28. Firstly, the order obtained by the respondent employee dated 27/4/2004 was without authority in law and was a result of fraud and manipulation and in complete disregard to the settled law and the statutory provisions in this regard.

29. Secondly, even assuming for the sake of argument that the order was in violation of the principles of natural justice, then giving an opportunity could be a futile exercise as respondent employee can have no defence in case of such a fraud and manipulation. Thirdly, interfering with the impugned order would amount to restoration of an illegal order which is otherwise unsustainable in law, thus does not require to be quashed. It is settled legal proposition that writ Court should not quash the order if it revives a wrong and illegal order. [Vide *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, ; *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, ; *Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others*, ; and *Chandra Singh Vs. State of Rajasthan and Another*,

30. Fourthly, writ is a discretionary relief. It should be issued only to promote the cause of justice and it should not be issued merely because if it is lawful to do so. Once a factual stand is taken, it cannot be changed on any legal proposition whatsoever nor it is permissible for the Court to examine the correctness of the findings of fact unless it is found to be perverse being based on no evidence or contrary to evidence, as the writ Court exercises its supervisory jurisdiction and not of appellate forum. The purpose of the writ Court is not only to protect a person from being subjected for violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the Court. However, the power being discretionary, the Court has to balance competing interest, keeping in mind that interest of justice and public interest can coalesce in certain circumstances. Petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, ; *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, ; *Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd.*, ; *Shama Prashant Raje Vs. Ganpatrao and Others*, ; *Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another*, *Roshan Deen Vs. Preeti Lal*, ; *S.D.S. Shipping Pvt. Ltd. Vs. Jay Container Services Co. Pvt. Ltd. and Others*, ; and *Chandra Singh Vs. State of Rajasthan and Another*, The fact situation of this case did not warrant any interference at all in writ jurisdiction.

31. Another aspect which deserves mention is about the role of Shri K.M. Sharma, the then Executive Engineer. During his period the respondent came to

be benefited by practicing fraud and manipulation. The application was moved by the respondent which was forwarded by Shri K.M. Sharma with recommendations that the case of the respondent be considered for correction of date of birth. When the application of the respondent reached the higher authority then the same Executive Engineer Shri K.M. Sharma who was working in the same office issued orders correcting his date of birth on 27/4/2004. It appears that for this very reason disciplinary proceedings were initiated against Shri K.M. Sharma and a charge sheet was issued to him who is facing an inquiry.

32. Coming to the findings recorded by the learned Single Judge, it is to be noticed that the learned Single Judge even though indicated the documents which have been referred to hereinabove, but has not addressed himself to the Impact created on account of the reliance placed on such documents. Having failed to do so, the learned Single Judge in our considered opinion did not approach the issue in correct perspective and therefore the conclusion drawn by him is unacceptable. We, further disagree with the view taken by the learned Single Judge, that since more than 50 percent of the employees had benefited out of such corrections, therefore the petitioner and other four employees referred to in the impugned order have been discriminated in as much as equality in illegality is not a facet of Article 14 of the Constitution of India.

33. Article 14 is not meant to perpetuate an illegality. Therefore, we are not bound to direct any authority to repeat the wrong action done by it earlier. This view stands fortified by the judgments of the Hon"ble Apex Court e.g., Smt. Sneh Prabha etc. Vs. State of U.P. and Another, Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, ; State of Haryana and Others Vs. Ram Kumar Mann, ; and M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others,

34. In Finance Commissioner (Revenue) v. Gulab Chandra and Anr. 2001 AIR SCW 4774, the Hon"ble Apex Court rejected the contention that as other similarly situated persons had been retained in service, the petitioner could not have been discharged during the period of probation observing that if no action has been taken in a similar situation against similarly situated persons, it did not confer any legal right upon the petitioner therein.

35. In Union of India and Others Vs. Rakesh Kumar etc., and Union of India and Others Vs. Rakesh Kumar etc., the Hon"ble Supreme Court held that Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship.

36. Any action/order contrary to law does not confer any right upon any person for similar treatment. (Vide State of Punjab and Others Vs. Dr. Rajeev Sarwal, ; Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, ; and Union of India (UOI) and Another Vs. International Trading Co. and Another, ; Anand Button Ltd. v. State of Haryana and Ors. 2005 AIR SCW 67).

37. Even otherwise, Article 14 provides only for positive equality and not

negative equality. Article 14 does not provide for passing wrong order, if it had been committed by an authority. No person can claim any right on the basis of a decision which is de hors the statutory rules, nor there can be any estoppel.

38. We are further of the view that the conclusion drawn by the learned Single Judge, that the charge-sheet issued to the Executive Engineer Shri K.M. Sharma appears to be a fabricated document, prepared for the purposes of this case, is not based on any correct factual premise but is based on surmises and conjectures. The finding of the learned Single Judge that it was merely on the instructions of the Personal Assistant is unsubstantiated in fact and in law both. The said finding is also unsustainable in view of the conclusion drawn by us hereinabove. In our considered opinion, in case a correct legal advise was tendered by the counsel for the appellants then the order passed pursuant to such an advise cannot be termed as illegal or irrational.

39. The retirement of the respondent was brought to his notice by the order of the Chief Engineer on 18/1/2005 and it was found that the date of birth has been recorded in the seniority list, against which no objection had been filed.

40. For the reasons given hereinabove, we have no option, but to reverse the decision of the learned Single Judge and we accordingly do so.

41. The appeal succeeds and is allowed. The judgment and order dated 28.03.2006 passed by the learned Single Judge are hereby set aside.

42. We further direct that in view of the conduct of the respondent and the facts found by us on record, the interest of justice would be met if a cost of Rs. 10,000/- (Rupees Ten Thousand Only) is imposed on the respondent. Accordingly, the respondent shall be liable to make the payment of Rs. 10,000/- to be deposited by him within a period of four weeks with the Legal Service Committee, High Court, Allahabad and in the absence of such deposit, the same shall be recovered by the District Collector, Lalitpur as arrears of land revenue, and tendered before the Legal Service Committee, High Court, Allahabad thereafter.

43. We would further direct the Chief Engineer i.e. the appellant No. 2 to initiate proceedings for getting an inquiry conducted into the large scale manipulations that was resorted to for bringing about changes in the date of birth of more than 50 percent employees as alleged in the pleadings and if such instances are in existence, then appropriate corrective measures should be undertaken to rectify the same keeping in view the law referred to by us hereinabove.