
(2018) 08 MP CK 0191

In the Madhya Pradesh High Court

Case No : Writ Appeal No. No.1001 Of 2018

Govind Prasad Agrawal

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 08 MP CK 0191

Hon'ble Judges : Pankaj Kumar jaiswal., J;Sunil Kumar Awasthi, J

Bench : Division Bench

Advocate : S. C. Bagadiya, L. C. Patne

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J

This intra-court appeal has been filed against the order dated 26.07.2018 passed in W. P. No.21626/2017(S) by which learned Writ Court upheld the

order dated 23.09.2017 issued by the Principal, Government Degree College, Khategaon informing about his date of retirement on 31.12.2017 and

dismissed the writ petition by holding that appellant is not entitled for any benefit after 31.12.2017 except the salary paid to him.

2. According to the appellant, his correct date of birth is 16. 12.1958 and the respondent No.4 without authority has wrongly retired him treating his

date of birth as 16.12.1952. To support the aforesaid, he has filed copy of birth certificate issued by the Gram Panchayat Deepgaon, Tehsil Khategaon

dated 13.11.1978, record of Primary School, Deepgaon, transfer certificate dated 17.03.1978 and mark-sheet of middle school.

3. His contention is that as per school leaving certificate and other documents, his correct date of birth is 16.12.1958 and the Higher Secondary School

Certificate Examination, which was held in 1975, his date of birth was wrongly mentioned as 16.12.1952. The Board of Secondary Education has issued a certificate in which also his incorrect date of birth i.e. 16.12.1952 was mentioned. The appellant entered into the government service as Assistant Professor and in service book, his correct date of birth i.e. 16.12.1958 was recorded. In all official documents, like e-service book, seniority, gradation list, Personal Identification Number, GPF Account, all are containing correct date of birth of 16.12.1958. The Principal of Degree College has wrongly retired him from services w.e.f. 31.12.2017 treating his date of birth as 16.12.1952 and prayed for quashment of the same.

4. As per reply, the appellant was appointed as Assistant Professor and after attaining the age of 65 years, he has been rightly retired from the services on 31.12.2017 treating his date of birth as 16. 12.1952. He was initially appointed in the Private College on 19. 07.1983 and his date of birth was recorded as 16.12.1952. When the list of all the employees, including the appellant was sent to the Higher Education Department for the purpose of absorption of their services in the Government College, a list was prepared in which the name of the appellant was found at serial No.4 and his date of birth was mentioned as 16.12.1952. There is overwriting in the service book by which the date of birth has been changed from 16.12.1952 to 16.12.1958. Learned Writ Court considering the fact that mark-sheet and school leaving pertaining to Class-V and Class-VIII are only photocopies and no original of these certificates were filed and, therefore, on the basis of photocopies, it cannot be accepted that his date of birth recorded thereunder is correct. The date of birth in the Higher Secondary School Certificate Examination, 1975 is authentic and universally accepted as correct date of birth. It has also been observed that from the day one the appellant was aware that his date of birth was recorded as 16.12.1952 in the mark-sheet of Higher Secondary School Certificate Examination, 1975 but he has never made any effort for correction of the same. The said certificate he had used in securing the employment in Private College and by virtue of said appointment, later on he became the Assistant Professor in Government College and dismissed the writ petition by assigning following reasons :-

[10] So far as the date of birth recorded in the service book is concerned, it is clearly evident that there is an interpolation in the date of birth, 1952 has

been made as 1958. Even in FR-84 and FR-85 the date of birth recorded in service book and the mark-sheet of Higher Secondary School Certificate

Examination, 1975 are accepted as correct date of birth. Therefore, no case for interference by the High Court under Article 226 of the Constitution

of India is made out. The petitioner is not liable to be continued in the service after 31.12.2017.

[11] Even otherwise the scope of interference is very limited as held by Hon'ble Supreme Court of India in following cases :

It has been held by Hon'ble Supreme Court in the case of State of Maharashtra and another v/s Gorakhnath Sitaram Kamble and others, reported in

(2010) 14 SCC 423, especially in para 10 to 12 as under :-

10. Entertainments by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services

and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a

right to correction of birth date and entertainments of such writ applications for correction of dates of birth of some employees of Government or its

instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar

applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the

jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or

its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing

reliance on the so-called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for over

decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward

towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record,

the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to

entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be

said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in

his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the

extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of their

discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of

his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of

continuing in service beyond the normal period of his retirement.

11. Prudence on the part of every High Court should, however, in our considered view, prevent it from granting interim relief in a petition for

correction of the date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well-settled legal

position governing such correction of date of birth, which precisely stated, is the following:

12. When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the

service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements of the

post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is

verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate.

The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service

record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the

employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may

be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its

impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules.

It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The

first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of

birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may

have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a

change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer

may refuse to permit correction in the date at a belated stage. It must be remembered that such a sudden and belated change may upset the legitimate

expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in

the hierarchy. In any case in such cases interim injunction for continuance in service should not be granted as it visits the juniors with irreparable

injury, in that, they would be denied promotions, a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other

hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage

can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the

opinion that in such cases it would be imprudent to grant interim relief.â??

In case of *State of Maharashtra v. Gorakhnath Sitaram Kamble*, reported in (2010) 14 SCC 423 : (2011) 2 SCC (L&S) 582, at page 426 the Apex

court has further cautioned that normally, no application for alteration of the entry regarding date of birth as recorded in the service book or service

roll of a government servant should be entertained after a period of five years commencing from the date of his entry in government serviceâ?|.â??

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*¹ 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*² 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.â??

15. In *Home Deptt. v. R. Kirubakaran*³ 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)

â??9. â?| 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.â??

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*⁴. 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*⁵ 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*⁶ 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*⁷, *State of T.N. v. T.V. Venugopalan*², *Bhadrak (R&B) Division v.*

*Rangadhar Mallik*⁸, *Union of India v. Harnam Singh*¹ and *Home Deptt. v. R. Kirubakaran*³.

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. Kirubakaran³

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.”

In the case of Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 has the Apex Court retreated as under

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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.â??

[12] The petitioner has continued after 31.12.2017 by virtue of the interim order passed by this Court. Therefore, due to dismissal of the writ petition

he is not entitled for any benefit after 31.12.2017 except the salary paid to him.

His service for the purposes of pension and other benefit liable are to be considered up to 31.12.2017.â??

5. Learned Senior Counsel for the appellant has submitted that there is no overwriting in the service record of the appellant when he was absorbed in the Government College and in service record, his correct date of birth is mentioned as 16.12.1958. An enquiry is also pending before the State

Government but in view of the dismissal of the writ petition, the Enquiry Officer on the basis of findings recorded by the learned Writ Court consider

his date of birth and will give report against the appellant and, therefore, either his service record be called for or the respondents be directed to

conclude the enquiry independently and the order passed by the learned Writ Court will not come on the way in deciding his date of birth. He has also

drawn our attention to the Division Bench decision of this Court in the case of Komalchandra S/o Fatehsingh Mandloi vs. Indore School of Social

Work & another reported in 1992 MPLJ 181 and submitted that the date in service book which continued to be acted upon not open to challenge and

prayed for setting aside of the order passed by the learned Writ Court and quashment of order impugned in the writ petition.

6. Annexure-R/1 is the Higher Secondary School Certificate Examination issued by the Board of Secondary Education, M. P., Bhopal on 12.06.1976.

In the aforesaid certificate, date of birth of the appellant is mentioned as 16.12.1952. In the mark-sheet of Higher Secondary School Certificate

Examination, his date of birth is mentioned as 16.12.1952. Annexure-R/2 is the list of Assistant Professors of Khategaon, District Dewas and the

name of the appellant is at serial No.4 and in column 3(a), his date of birth is mentioned as 16.12.1952.

7. As per Rule 84 of the M. P. Financial Code, the date of birth recorded in the service book at the time of entry into service is conclusive and binding

upon the government servant.

8. In the present case, the appointment of the appellant was made in the Private College. When the list for absorption of the appellant and other

employees, who were working in the Private College was prepared, the date of birth of the appellant was recorded as 16.12.1952. On 18.02.2016, the

appellant wrote a letter vide Annexure-R/4 to the Principal of the Government College, Khategaon that he lost his original Higher Secondary mark-

sheet and in the same paragraph, he has stated that after search, he got the aforesaid mark-sheet and his date of birth was wrongly mentioned therein

as 16.12.1952. Paras-3 and 5 of the aforesaid letter reads as under :-

3- pqafd gk;j lds.Mjh dh ewy vadlwph xqe gks pqdh Fkh vr% mijksDr nksuks izek.ki=ksa ds vk/kkj ij esjs }kjk ewy lsok iqfLrdk esa esjk tUe fnukad

16-12-1958 ntZ fd;k x;k tks okLrfod :i ls IR; gSA

5- vkids }kjk ewy vadlwfp;ka ekaxus ij eSus iqu% 'kS{kf.kd nLrkostksa dh ryk'k dh ftlesa eq>s gk;j lds.Mjh Ldwy lfVZfQdsV Â¼iwjdÂ½ 1976 jksy

ua-&77201 izek.k i= dz-&3090 izkIr gqv k ftlesa esjh tUe frfFk 16-12-1958 ds LFkku ij 16-12-1952 ntZ dh xbZ gSA

9. Similar is the letter written by the appellant on 29.04.2016 (Annexure-R/5). Paras-3 to 5 of the aforesaid letter reads as under :-

3- esjs izkFkfed ,oa ek;/fed 'kS{kf.kd vfHkys[kksa esa esjh okLrfod tUefrFk&16-12-1958 ntZ gS ftlds vk/kkj ij esjs }kjk ckn esa lsok iqfLrdk esa tUe

fnukad esa la'kks/ku fd;k tkdj 16-12-1958 ntZ fd;k x;kA

4- =qVho'k ek;/fed fo|ky; [kkrsxkWo }kjk esjh okLrfod tUe frfFk esa 16-12-1958 ds LFkku ij 16-12-1952 vafdr dj fn;k x;k rRi'pkr ;gh =qVh gk;j

lds.Mjh esa ntZ gksdj esjs 11oh ds izek.k i= esa 16-12-1952 ntZ gks xbZ tks okLrfod ugha gSA

5- pqafd gk;j lds.Mjh izek.k i= esa vafdr tUe fnukad dks gh 'kkldh; fu;eksa esa ekU; fd;k x;k gSA vr,o blds vk/kkj ij bZ&vkj-'khV@lsok iqfLrdk esa

esjs tUe fnukad esa la'kks/ku dj 16-12-1952 ntZ fd;k tkosa

10. From the aforesaid, it is not in dispute that the appellant was appointed in the Private College and at the time of appointment, he submitted the

mark-sheet of Higher Secondary in which his date of birth was mentioned as 16.12.1952 and on the basis of the aforesaid, he was appointed in the

Private College. On 07.06.2017, the Additional Director, Higher Education, Ujjain Division, Ujjain gave the following opinion in respect of date of birth

of the appellant :-

mijksDr fo""k; ,oa lanHkZ ds vUrxZr ys[k gS fd tkWp dk dk;Z bl dk;kZy; ds i= dzekad 136@vfr-lapk-@17 fnukad 28-04-2017 ds }kjk izkpk;Z 'kkldh;

ds-ih- dkWyst Jh ,l-,y-ojs dks lkSik x;k FkkA muds }kjk fnukad 03-05-2017 dks 'kkldh; egkfo|ky; [kkrsxkWo esa Lo;a mifLFkr gksdj tkWp dk dk;Z

fd;k x;k tkWp fjiksVZ leLr nLtkostksa lfgr bl i= ds lkFk layXu dj vkidh vksj iszf""kr dh tk jgh gSA bl tkWp fjiksVZ ij esjk Li""V vfHker fuEukuqlkj gS

%&

%%vfHker%%

1- ;g IR; gS fd 15-09-1987 dks [kkrsxkWo egkfo|ky; ds 'kklu }kjk vf/kxzg.k ds le; Jh vxzoky dh IsokiqfLrdk esa tUefrFk 16-12-1952 ntZ FkhA

2- Jh vxzoky }kjk 'kS{kf.kd vfHkys[k mudh O;fDrxr uLrh esa ls muds }kjk Lo;a gh gVk;s x;sA

3- Jh vxzoky }kjk gh IsokiqfLrdk esa tUe fnukad 16-12-1952 dks dkjdj 16-12-1958 fd;k tkdj fdlh Hkh vf/kdkjh }kjk izek.khdj.k ugha djok;k x;kA

4- Jh vxzoky }kjk viuh Isok iqfLrdk esa tUefrFk esa ifjorZu vukf/kd`r :i ls Lo;a ds }kjk fd;k x;k] mUgs fu;ekuqlkj tUefrFk esa ifjorZu gsrq vk;qDr

dk;kZy; dks vkosnu djuk Fkka

5- iwoZ IsokiqfLrdk izHkkjh Jh txnh'k tks'kh tks fd Isokfuo`Rr gks pqds gS] muds }kjk bl rF; dh tkudkjh fdlh Hkh vf/kd`r vf/kdkjh vFkok deZpkjh dks

ugha nh xbZA orZeku esa Jh tkfgn csx xzsM&2 }kjk fnukad 23-01-2016 dks ;g tkudkjh izHkkjh izkpk;Z Jh lh-,y-;kno dks nhA rRi'pkr~ Jh ;kno }kjk bl

rF; ls vk;qDr dk;kZy; dks voxr djok;k x;kA

vr% lUnfHkZr i= }kjk pkggh x;h tkudkjh mijksDr of.kZr rF;ksa ,oa layXu nLrkostksa ds vk/kkj ij vkids fopkjkFkZ izLrqr gSA

11. On due consideration of the aforesaid, we are of the view that the learned Writ Court has rightly appreciated the material facts, which was

brought on record and came to the conclusion that correct date of birth of the appellant is 16.12.1952 and dismissed the writ petition. No case to

interfere with the well reasoned order, as prayed is made out. The writ appeal filed by the appellant has no merit and is accordingly, dismissed. No

costs