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**(1975) 10 SHI CK 0003**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 40 of 1973**

Manak Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

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**Date of Decision :** 21-10-1975

**Acts Referred:**

Constitution of India, 1950 — Article 311(2)  
General Financial Rules, 1963 — Rule 79

**Citation :** (1975) 4 ILR HP 641

**Hon'ble Judges :** R.S. Pathak, C.J.; Chet Ram Thakur, J

**Bench :** Division Bench

**Advocate :** P.N. Nag, for the Appellant; B. Sita Ram, General, for the Respondent

**Final Decision :** Allowed

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## Judgement

R.S. Pathak, C.J.—The Petitioner prays for a writ, direction or order quashing a notice dated October 26, 1972, issued by the Chief Medical Officer, Kangra, retiring him from service with effect from March 12, 1973.

2. In the year 1958 the Petitioner was appointed as a Vaid in a Government dispensary under the District Medical Officer, Chamba. On the date when he filed the present writ petition he was working as Government Ayurvedic Dispenser in Tehsil Nurpur in the District of Kangra. According to the Petitioner, he was born on March 30, 1917, and on that basis would attain the age of superannuation of 58 years on March 29, 1975. It is said that his date of birth recorded in the matriculation certificate, which examination he passed from the Panjab University, Lahore, was shown erroneously as March 13, 1915. That was the date subsequently recorded in his service book. On October 26, 1972, he was served with a notice by the Chief Medical Officer, Kangra, intimating that he was due for retirement from service with effect from March 12, 1973. The Petitioner pointed out that his true date of birth was March 30, 1917, and requested that the error should be rectified in the service record. The request was rejected by the Chief Medical Officer on the ground that it was belated and that the date of birth must

be taken as it appeared in the matriculation certificate. The Petitioner then applied to the Panjab University, Chandigarh, for correction of the entry in the matriculation certificate relating to his date of birth. It appears that during the pendency of the writ petition the Punjab University examined the matter and found that the date of birth was in fact March 30, 1917. A fresh matriculation certificate dated July 21, 1973, was issued setting out the corrected date of birth. The Petitioner challenges the validity of the order of the Chief Medical Officer that he stood retired with effect from March 12, 1973. He contends that he is entitled to continue in service upto March 29, 1975.

3. The petition is opposed on the ground that it has become infructuous on the date of hearing inasmuch as the Petitioner attained the age of superannuation, even upon his own showing, while the petition was still pending and, it is said, the appropriate relief for the Petitioner is to file a suit for arrears of salary. It is also urged that the Petitioner had made a request for correction of the entry of age in his service book at a very late stage. It is contended further that the determination of the Petitioner's true age involves highly complicated questions of fact, and a writ petition is not the appropriate remedy for such determination. It is also faintly pleaded that the petition is barred by estoppel because the Government, at the time the Petitioner was admitted into service, accepted his date of birth as March 13, 1915. As regards the correction made in the matriculation certificate by the Panjab University, it is said that the correction was made without notice to the Himachal Pradesh Government and it was, therefore, not bound by it.

4. The first point to be considered is whether this writ petition has become infructuous, and relief should be refused on that ground. The writ petition was filed on March 12, 1973. On the case of the Petitioner, he had not yet retired on that date. According to him, he was entitled to continue in service upto March 29, 1975. He prayed for the quashing of the order dated October 26, 1972, intimating that he was due to retire on March 12, 1973 and for a declaration that he should be treated as continuing in service until he had actually attained the age of 58 years. He also prayed for an order declaring him entitled to all consequential benefits. Along with the writ petition the Petitioner applied for an order suspending the operation of the impugned order dated October 26, 1972. This Court declined to suspend the order. Meanwhile, before the writ petition could come up for hearing, the Petitioner (according to his case) reached the age of 58 years on March 12, 1975. In my opinion, the Petitioner should not be denied relief on the writ petition merely because the writ petition could not be heard more expeditiously. It was no fault of his that the writ petition remained pending in this Court for some time. In the circumstances, he is entitled to a consideration of the writ petition on its merits. He is entitled to such relief as is admissible in the circumstances prevailing now.

5. On the merits the question is whether the Petitioner is entitled to a consideration by the Respondents of his application for- the determination of his

true age and for a consequent rectification of his service record. The case of the Petitioner is that he is entitled as of right to continue in service until the age of superannuation is reached. That, he urges, is a guarantee conferred on a Government servant by law, and in case he is made to retire before he reaches the age of superannuation (except where the rules provide for compulsory retirement) the infringement of the guaranteed right brings the case within the terms of Article 311(2) of the Constitution. The Respondents rely on what is described as a Government of India decision under Rule 79 of the General Financial Rules, 1963.

It reads:

Requests for alteration of date of birth should not be entertained after the preparation of service books of the Govt. servants concerned, and in any event not later than the completion of the probation period or declaration of quasi-permanency, whichever is earlier. The date of birth may, however, be altered at a later stage by a competent authority if that authority is satisfied that a bona fide clerical mistake has been committed and that it should be rectified. Efforts should, however, be made to settle the matter within the period stated above.

It is urged by the learned Advocate-General, on behalf of the Respondents, that the late stage at which the Petitioner applied for the alteration of his date of birth called for a rejection of the Petitioner's application. Our attention has been invited to the opening words of the aforesaid Government of India decision, where the period is specified after which a request for alteration of the date of birth is not to be entertained. Now, Government servant has the right to continue in service until he attains the age of superannuation, except where the rules validly provide for compulsory retirement at an earlier age. In order to determine the period for which such Government servant is entitled to continue, it is necessary to determine his true date of birth. If his service record indicates a particular date as his date of birth, that date of birth must be accepted for the purpose of determining whether he has reached the age of superannuation. As has been observed by the Supreme Court in *The State of Assam and Another Vs. Daksha Prasad Deka and Others*, until that record is corrected the Government servant cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired before attaining the true age of superannuation. A Government servant is entitled to show that the entry made in his service record does not represent his true date of birth. That is a right which flows from his right to continue in service until he reaches the age of superannuation. He is entitled to show that the recorded entry, which determines the date on which he attains the age of superannuation, does not reflect the true position and that on its misleading basis he is liable to be retired before he in fact attains the age of superannuation. Shortly put, the erroneous entry will abridge the period during which he is entitled to continue in service. Therefore, involved in his right to continue in service is his right to show that the recorded entry of his date of birth is erroneous. If on application made by the Government

servant, the Government finds that there is substance in the claim it is bound to give effect to the claim and alter the relevant entry in the service record. If the entry is found to be erroneous it must, in all fairness to the Government servant, be corrected. When such application should be entertained is a matter relating to procedure. A provision determining when the application should be entertained has the effect of limiting the exercise of the right of the Government servant to show that the recorded entry is erroneous. Such limit can be imposed only by a provision having the force of law. If it does not have the force of law and is merely an executive direction without sanction of law, it cannot affect the exercise of the Government servant's right to show that the recorded entry is erroneous. Now, the Government of India decision, on which the Respondents rely, does not have the status of a statutory rule and, therefore, cannot defeat the legal right of the Government servant mentioned above. So far as it affects the determination of the true date of birth it must be considered ultra vires for the reasons set out above.

6. In *Daksha Prasad Dea* (supra) the Supreme Court was called upon to construe S.R. 8 Note which provided that no alteration in the date of birth of a Government servant should be allowed except in very rare cases where a manifest mistake had been made, and that in no case should the request for change in the date of birth of a Government servant be entertained if it was made on a date within three years of the date of his actual superannuation. The Supreme Court applied S.R. 8 Note, and held that the entry in the service record could not be corrected. But it also observed that the validity of the rule had not been challenged before it. That distinguishes the case decided by the Supreme Court from the one before us. The learned Advocate-General has relied on *Sukhdeo Prasad Misra v. General Manager, Northern Railway* 1972 S.L.R. 30. With great respect, I am unable to agree with the learned Judge who decided that case. Reliance is also placed on *Kamla Jaiswal v. Nagar Mahapalika* 1972 S.L.R. 882, but that case does not lay down the proposition that a corrected date of birth in the documents recognised for the purposes of Rule 47 of the U.P. Nagar Mahapalika Sewa Niyamawali, 1962, could not be relied on. On the contrary, in the view taken by me I am fortified by the decision in *Mir Ahmed Ulla v. State of Jammu and Kashmir* 1971 (1) S.L.R. 495.

7. It is urged by the learned Advocate-General that the question as to what is the true age of the Petitioner is a highly complicated question of fact and this Court should not enter into it. I do not think that this is a case where the court itself should determine the age of the Petitioner. That is a function which belongs primarily to the Government. All that this Court can do is to direct the Government to consider the Petitioner's application for the determination of his true age and to correct the Petitioner's service record accordingly. The right of the Petitioner to continue in service until he truly reaches the age of superannuation places an obligation on the Government to determine his true date of birth, unless such enquiry is barred by law or any provision having the force of law.

8. The learned Advocate-General has also urged that the Petitioner is barred by estoppel from pleading a different date of birth when the entry in that regard in the service record was entered on his representation at the time when he entered service. It has not been shown that the Petitioner gained any advantage by representing that his date of birth was March 13, 1915. The case in *Daksha Prasad Deka (supra)* is distinguishable. In that case it was found that if the contention of the Government servant was correct, on the date on which he entered service he was a minor, and on the basis of his representation that he had attained the age of majority he had been inducted into service. The factual situation in the present case is different.

9. It is finally urged that the Government is not bound by the correction made by the Punjab University in the matriculation certificate of the Petitioner. It is pointed out that the Government was not a party to the proceeding in the University which resulted in a correction being made in the matriculation certificate. The matriculation certificate is only a piece of evidence and the Government, although it normally accepts it, may for good reason decline to consider it as setting out the true date of birth. It is for the Government to consider whether the date of birth now shown in the matriculation certificate should be accepted or not. But it cannot decline to consider the certificate merely because it was not a party to the proceeding taken by the University for correcting the matriculation certificate.

10. In my judgment, as the Government of India decision mentioned above is *ultra vires*, there is no valid provision limiting the time for entertaining a request for alteration of the date of birth of a government servant. Consequently, the Petitioner's application in that behalf could not be rejected as belated.

11. Accordingly, the writ petition is allowed. The Petitioner is entitled to an order directing the Respondents to consider his application for correction of his age in his service record. In case the claim of the Petitioner is found valid, he will be given all consequential benefits flowing from the corrected entry in the service record of the Petitioner. There is no order as to costs.

Petition allowed.