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**(2003) 08 MP CK 0045**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 236 of 2001**

Phool Chand Rathore

APPELLANT

Vs

Nagar Palika Parishad and Others

RESPONDENT

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**Date of Decision : 04-08-2003**

**Acts Referred:**

Madhya Pradesh Financial Code — Rule 84

**Citation : (2003) 4 MPHT 324 : (2003) 4 MPLJ 319**

**Hon'ble Judges : S.P. Khare, J**

**Bench : Single Bench**

**Advocate : Mukhtar Ahmed, for the Appellant; V.K. Shukla, for Respondent Nos. 1 and 2 and S. Tiwari, Panel Lawyer for State, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India for quashing order dated 29-11-1999 (Annexure P-3) by which the petitioner has been retired from service.

It is not in dispute that the petitioner was appointed as Driver in the Municipal Council, Betul by order dated 12-12-1957. His date of birth as recorded in the service book was 14-2-1944. A complaint was received against him in the year 1997 that his actual date of birth is 16-2-1940. A photo-copy of his transfer certificate obtained from Gandhi Primary School, Tikari was also enclosed with the complaint which certified the date of birth of the petitioner as 16-2-1940. A copy of this certificate is Annexure R/1-C. By letter dated 8-10-1997, the Chief Municipal Officer asked the petitioner to produce his school certificate. The petitioner did not do so. He was again directed by the letter dated 23-8-1999 to produce the certificate but the petitioner did not comply with it. The Chief Municipal Officer then wrote to the Head Master of the Gandhi Primary School for verification of the date of birth of the petitioner. The Head Master sent the reply

on 9-9-1999 and that is Annexure R/1-G. According to this letter, petitioner Phoolchand was a student of this school from 1-4-1946 to 31-3-1951 and his date of birth as per school record is 16-2- 1940. Again a show-cause notice was given to the petitioner on 7-10-1999 stating therein that the Head Master of the School has certified his date of birth as mentioned in the photo-copy of the transfer certificate. The petitioner did not submit any reply to this show-cause notice also. His date of birth in the service book was corrected as 16-2-1940 in place of 14-2-1944 and the petitioner was retired on 29-2-2000.

The petitioner's case is that the date of birth recorded in the service-book was final and it could not be corrected in the year 1999.

The respondents' case is that the petitioner did not submit any certificate while declaring his date of birth as 14-2-1944. The petitioner was given three opportunities to rebut the material showing his date of birth as 16-2-1940 but he remained silent. Therefore, the date of birth in the service book was corrected. It is pointed out that the plea of the petitioner that his date of birth is 14-2-1944 is false as he joined the post of driver on 12-12-1957 and he could not do so at the age of less than 14 years.

The learned Counsel for both the sides have been heard. It is true that the date of birth recorded in the service-book at the time of the entry in service is generally not disturbed either at the instance of the employee or the employer but there are exceptions. Where it is proved by clinching and irrefutable evidence that the date of birth entered in the service-book is wrong, it can be corrected. Mistake or fraud can not be perpetuated. In the present case, the petitioner did not submit any proof of his date of birth at the time of entry in the service. He was given repeated opportunities to produce the evidence of his date of birth after a complaint was received against him but he did not do so. The school certificate and the letter of the Head Master unmistakably go to show that the date of birth of the petitioner is 16-2-1940 and it has not been rebutted by the petitioner. He did not reply any of the three letters of the Chief Municipal Officer. In this Court after the filing of the return, the petitioner took time to file rejoinder, but he did not do so. The most striking feature is that the petitioner could not do the work of driver at the age of less than 14 years. Therefore, the impugned action by the Chief Municipal Officer does not call for any interference by this Court in exercise of the writ jurisdiction.

The Supreme Court in *G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others*, , has reviewed the earlier case law and held that the date of birth entered in the service book can be corrected if "acceptable evidence of a clinching nature" is produced. In *Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran*, also, it was held that correction can be made "on the basis of materials which can be held to be conclusive in nature". In the present case, as already discussed, there is evidence of that nature and, therefore, the correction in the date of birth has been rightly made.

The petition is dismissed.