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**(2001) 01 MP CK 0066**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 6293 of 2000**

Rajbali Singh

APPELLANT

Vs

Board of Secondary Education

RESPONDENT

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**Date of Decision :** 29-01-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Date of Birth (Entries in the School Register) Rules, 1973 — Rule 3, 7, 8, 9

**Citation :** (2001) 5 MPHT 165 : (2001) 3 MPLJ 276

**Hon'ble Judges :** Dipak Misra, J

**Bench :** Single Bench

**Advocate :** N.C. Jain and Rakesh Jain, for the Appellant; V.K. Shukla, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dipak Misra, J.

If man could have arrested "Time", the greatest and invincible enemy of man, "that old common arbitrator" and make it his slave the history of man-kind would have been different. It has been said even when Almighty descends on earth in the shape of man, is governed by Rules of time. He who does not act within the framework of time loses not only the gifts of nature but also privileges bestowed by man made law. Delay and laches do always create impediment for obtaining the benefit ordinarily permissible in law because the law helps them who are vigilant to knock at the door of justice within time stipulated.

The present case depicts a situation where the petitioner has woken up after three and half decades and asked for relief which has been denied by the respondent. Heart of the matter is whether such denial requires to be lanceted in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

The essential facts :

According to the petitioner he was born on 25-6-1947. He applied for transfer certificate which was given to him on 16-7-1963 being signed by the Principal, Lahiri M.H.S. School, Chirmiri and countersigned by the Joint Director, Public Instructions, Sarguja Division, Ambikapur. A copy of the admission register has been brought on record as Annexure P-2. It is set forth in the petition that in the Primary School his date of birth was recorded as 25-6-1947 as is evidenced from Annexure P-3. It is pleaded that the petitioner appeared for Higher Secondary School Certificate Examination "A" Course in 1963. His marksheet, which was received in or about June 1963, indicated his date of birth as 25-6-1946. He brought this fact to the notice of the school authorities who took back the marksheet from him assuring that they would seek clarification from the Board of Secondary Education and get it corrected. Few months later, the marksheet was given to him showing his date of birth to be 25-4-1947. This was done on 15-5-1964. The corrected marksheet has been brought on record as Annexure P-4. It has been put forth in the writ petition that the petitioner applied for transfer certificate from Lahiri Multipurpose Higher Secondary School, Chirmiri and on that basis obtained admission for Diploma Course in Board of Technical Education, Uttar Pradesh, Lucknow. The certificate granted by the aforesaid school reflects the date of birth of the petitioner to be 25-6-1947. The Technical Board, Lucknow also gave him the marksheet on his passing the final course which bears the date of birth as 25-6-1947. It has been urged in the petition that the Board of Secondary Education vide Annexure P-4/A had communicated the Certificate to the school of the petitioner indicating his date of birth to be 25-6-1946. It is averred in the writ petition that when the petitioner found that his date of birth has been wrongly mentioned in the certificate granted by the Board he communicated with the Principal of his school endorsing a copy to the respondent-Board on 29-11-1997 for correction of his date of birth. When no action was taken he sent repeated reminders and thereafter, filed an application before the Board on 12-6-2000. The Board negatived the prayer of the petitioner on the ground that three years had expired from the date of publication of the result and refused to accede to correction sought for. It is averred in the writ petition that when the petitioner passed the Board of Secondary High School Examination he was quite young and could not know the implications relating to the date of birth. It is also averred that the earlier entries in relation to date of birth are quite clear and the same should have been followed by the Board of Secondary Education. It has been urged that the Board has no regulation providing for limitation and hence, application should have been allowed.

A counter affidavit has been filed by the answering respondent contending, inter alia, that the school of the petitioner had never made any correspondence with the Board at the relevant time. It is also put forth that the averment of the petitioner that correction made by the school authority is highly untenable inasmuch as the school authorities are not given power to make any correction in regard to the date of birth. It has been averred that the State Government has framed the Rules called the Madhya Pradesh Date of Birth (Entries in the School

Register) Rules, 1973 (hereinafter referred to as "the Rules") which provides that the guardians are required to make a declaration in respect of the date of birth of student at the time of admission in the school and the Rules make provisions for correction or change in respect of the date of birth in entries in the register. It has been stated that Rule 9 of the Rules makes a categorical provision that in the examination which is to be held by the Board no correction can be made in respect of birth by the school after sending the examination form to the Board. It has been asseverated by the answering respondent that in the marksheet, Annexure P-4, it was clearly mentioned in the note if there was any discrepancy the mark-sheet was to be returned immediately to the Board pointing out the error in a separate forwarding memo, but the same was not done in the case of the petitioner. The respondent has also referred to the instructions contained in general guide book issued by the Board, Annexure R-2, which stipulates that no application for correction of the date of birth would be entertained after lapse of three years. It has been contended that the application which was filed before the Board was quite belated and such an application cannot be entertained by the Board after such long lapse of time.

I have heard Mr. N.C. Jain, learned senior counsel along with Mr. Rakesh Jain for the petitioner and Mr. V.K. Shukla, learned counsel for the respondent. It is submitted by Mr. Jain that series of documents clearly establish that the date of birth of the petitioner is 25-6-1947 and not 25-6-1946 and the error has crept in due to clerical mistake. It is urged by him that the Rules which govern the field do not prescribe any period of limitation and in absence of such provision in the Rules the guidelines circulated by the Board cannot be allowed to govern the field. The learned senior counsel has also canvassed that if the Board would have conducted a proper enquiry it would have arrived at the conclusion that the assertion made by the petitioner is correct as an actual fact and would have granted the benefit, but the prayer of the petitioner has been negated without any enquiry and that alone vitiates the order passed by the Board. The learned counsel has proposed that the delay cannot be a factor for depriving the benefit to the petitioner. Mr. Jain has placed reliance on a Division Bench decision of this Court rendered in the case of S.C. Verma Vs. Union of India (UOI) and Another,

Combating the aforesaid submissions Mr. V.K. Shukla, learned counsel for the respondent has contended that the Rules do not deal with the correction or change in the date of birth by the Board and, therefore, the Board was competent to provide guidelines for such correction. The learned counsel has contended that the delay on the part of the petitioner is enormous and hence, no relief can be granted by the Board to the petitioner. Mr. Shukla, in his turn has placed reliance on a decision rendered in the case of Santosh Kumar Shukla v. State of M.P. and Ors., W.P. No. 4824/97, decided on 17-2-1999.

To appreciate the rival submissions raised at the Bar, it is apposite to refer to the relevant Rules. Rule 3 deals with declaration of age. Rule 4 deals with entry of the date of birth. Rule 7 provides for rectification of mistake. There is a postulate

for correction or change in the date of birth under Rules 8 and 9 impose restriction on entertaining the application for correction in date of birth. Rules 8 and 9 being relevant are produced below. :--

"8. Correction or change in the date of birth :-- (1) When any correction or change in the entry relating to the date of birth made in the declaration under Rule 3 or in the school register or other school documents or record is desired, the parent or the guardian shall make an application in writing to the head of the institution containing sufficient evidence as to the incorrectness of the institution containing adequate explanation and reasons for the mistake alongwith the following documents, namely :--

(i) Certified copy of an entry relating to date of birth in the register of the local authority or the Hospital or the Maternity Home or the Primary Health Centres.

(ii) Affidavit sworn by the parent or the guardian before a first class Magistrate regarding the correction, or change required and the correct date of birth of each living or dead child born of the same mother.

(iii) Any documents or evidence, showing the correct date of birth.

(2) The application shall be accompanied by a copy of Challan in proof of the payment of rupees five in the Government Treasury.

(3) The Head of the Institution shall enquire into the application personally and forward it to the competent authority concerned for disposal along with his report.

(4) On receipt of the application and report the competent authority shall after making such enquiry as it may consider necessary, shall record a finding there to and if it is satisfied that the correction or change in the entry of the date of birth should be made, he shall record an order to that effect which shall be communicated forthwith to the applicant. A copy of the order so passed shall also be sent to the Head of the institution concerned who shall accordingly correct the date of birth in the school registers and other school documents or records.

Restriction on Entertaining the Application for correction in date of birth : No application for correction in date of birth recorded in school records shall be entertained under Rules 7 and 8 after the form for the Board's examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not pursued education upto the end of secondary standard."

On a bare reading of the aforesaid rules it is absolutely clear that certain stages are provided for correction or change in the date of birth. Rule 9 makes it categorically clear that no application in regard to date of birth shall be entertained either under Rule 7 or 8 after the form for the Board's examination at the end of secondary level of education has been sent to the Board or after the student has left the school, if the student has not pursued education upto the end of secondary standard. Thus, the school authorities have no power to rectify

the mistake after the forms are sent to the Board. On a perusal of the Rules it is graphically clear that there is no provision for correction of date of birth by the Board. In absence of any provision in the Rules the Board is entitled under law to provide guidelines for correction of date of birth. The Board has framed guidelines which have been brought on record as Annexure P-2. The said guidelines provide that on compliance of certain formalities there can be rectification of the date of birth. It has been laid down therein that the prayer for rectification or correction of date of birth would not be accepted after three years. Submission of Mr. Jain, learned senior counsel is that in absence of any limitation in the Rules the Board could not have provided a period of limitation in the guidelines. In my considered opinion as the Rules do not deal with the period of limitation the Board has the authority to stipulate a time limit for correction of the date of birth and I do not perceive any error in such a provision.

The next submission of Mr. Jain is that the petitioner after coming to know about the error made a representation to the Board in quite promptitude and there is no delay and therefore, he cannot be deprived of the benefit on the ground of delay and laches. Learned counsel has drawn the inspiration from the decision rendered in the case of S.C. Verma (supra). In the aforesaid case the Division Bench has dealt with the correction of date of birth relating to a Central Government employee and has interpreted the provisions under Rule 56 of the Fundamental Rules. The Division Bench to reach its conclusions has placed reliance on the decision rendered in the case of Union of India Vs. Harnam Singh, . The learned Chief Justice speaking for the Court has come to hold that as there was discrimination in view of the law laid down in the case of Harnam Singh (supra) the order passed by the Central Administrative Tribunal was susceptible and required to be interfered with. In my considered opinion the factual matrix of the aforesaid case is quite different from the present one. In the case at hand, the Board has its own guidelines and the petitioner has approached the Board after three and a half decades. The enormous delay clearly establishes that the fault on the part of the petitioner is colossus. It is well settled in law that a litigant who is not vigilant, is not entitled to any relief. At this juncture, I think it apposite to refer to a passage from Harnam Singh (supra) wherein their Lordships expressed thus :-

".... A Government servant who has declared his age at the initial stage of 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 supplied)

From the aforesaid pronouncement of law, it is quite vivid that unless the requisite application is submitted within the prescribed period the litigant has to suffer on the ground of delay and laches. In this context, I may profitably refer to the order passed in Santosh Kumar Shukla (supra) wherein C.K. Prasad, J. has held as under :--

"In any view of the matter, petitioner has asked for correction of his date of birth by filing an application after 19 years of the issuance of the certificate, on this ground alone, I am of the opinion that the petitioner is not entitled for the relief prayed for in the writ petition."

Thus the lis buried in the coffin, cannot rise like a phoenix.

Mr. V.K. Shukla, learned counsel for the Board has also drawn the attention of this Court to the Note appended in the Annexure P-4, which reads as under :-

"In case of any discrepancy this mark-sheet should be returned immediately to the Secretary pointing out the error in a separate forwarding memo."

There is nothing on record to point out that the school authorities brought it to the notice of the Board that the date of birth of the petitioner was erroneously mentioned in the marksheet. Even if the stand of the petitioner is accepted the school authorities could not have changed the date of birth of the petitioner as the same was within the domain of the Board even before the 1973 Rules came into force. Thus, submission of Mr. Jain that when the school authorities had corrected the date of birth of the petitioner, it was incumbent on the Board to carry out the rectification, does not merit consideration.

In view of my preceding analysis, the writ petition is sans merit and the same is dismissed without any order as to costs.