
(2017) 01 MP CK 0035
In the Madhya Pradesh High Court
Case No : WP No. 6350 of 2016

Shivadan Lakha

APPELLANT

Vs

Ministry of Water Resources

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 JabLJ 380

Hon'ble Judges : Vivek Rusia, J.

Bench : Single Bench

Advocate : Shri V.K. Dubey, counsel, for the Petitioner; Shri Sudhanshu Vyas, P.L counsel, for the Respondent

Final Decision : Dismissed

Judgement

Vivek Rusia, J.—The petitioner has filed this present writ petition seeking correction of date of birth in service record as 06/08/1960 in place of 01/03/1955. With the consent of the parties, present writ petition is heard finally as the petitioner is going to retire on 28/02/2017 on the basis of date of birth recorded in service record.

2. The petitioner was appointed as helper (contingency) in the year 1978. At that time, he was not having any proof in respect of his date of birth as 01/03/1955. In the year 2015, he came to know that the department has recorded his date of birth as 01/03/1955, therefore, he immediately rushed to the Government Boys Primary School, Gandhisagar, District Mandsaur where, he took admission in Class-1. He obtained school living certificate / transfer certificate, where his date of birth was recorded as 06/08/1960. Thereafter, he submitted representation on 01/10/2015 seeking correction of date of birth as 06/08/1960. Thereafter, he submitted various representations. Meanwhile, the petitioner also got birth certificate on 16/11/2015 from the Gram-Panchayat, voter ID card, PAN card and prayed for correction of date of birth. The representations of the petitioner were forwarded by the executing engineer to the District Treasury

Officer, who is competent to take decision in respect of correction of date of birth. When the District Treasury has not considered the representation of the petitioner for correction of date of birth, he approached this Court by way of writ petition.

3. After notice, the respondent filed return, in which, it is submitted that the petition is hopelessly time barred as he prayed for correction of date of birth at the fag end of his service . At the time of entry in the service, date of birth was recorded in the service book as 01/03/1955 and which cannot be permitted to be corrected after 37 years of his service. The petitioner is going to retire on 28/02/2017 and for which, notice has also been issued to him on 28/12/2016. The Hon"ble Apex Court as well as this Court in numbers of cases has deprecated and has not permitted the correction of date of birth at the fag end of career, hence prayed for dismissal of the writ petition.

4. That, it is not disputed that the date of birth was recorded in the service record of the petitioner as 01/03/1955 at the time of entry into the service. It is own case of the petitioner that in the year 1978, at the time of appointment, he has not produced any document as a proof of his date of birth and first time, in the year 2015, he came to know that in his service book, his date of birth has wrongly been recorded as 01/03/1955. In the year 2015, he obtained school transfer certificate / school living certificate from the school. It is disputed questions of the fact that on what basis, his date of birth was recorded in the scholar register. The petitioner is required to prove the entry in the scholar register, hence the said disputed question cannot be decided in writ petition for which, the petitioner is required to file a civil suit.

5. Admittedly, the petitioner has prayed for correction of date of birth at the fag end of his service. That, the Hon"ble Apex Court in the case of Union of India v. Harnam Singh reported in 1993 (2) SCC 162 has held as under :

The application for correction of date of birth, entered in the service-book in 1956, for the first time made in September, 1991 was hopelessly belated. It had not been made even within the period of five years from the date of coming into force of Note 5 of FR 56(m) in 1979. 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. The Tribunal, therefore, fell in error in issuing the direction to correct his date of birth.

In Harnam Singh (Supra), it is further held that :

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)

6. Thereafter, in the case of State of Gujrat and others v. Vali Mohd. Dosabhai Sindhi- (2006)6 SCC 537, the Apex Court held that :

"the States have framed statutory rules or in absence of it, issued administrative instructions as to how a claim made by a Government servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. The sole object of making such provision is that any such claim regarding correction of date of birth should not be made or entertained after decades, especially on the eve of superannuation of Government servant. The Apex Court considered the judgment of State of Assam v. Daksha Prasad Deka-(1970) 3 SCC 624 wherein it was held that the date of birth must be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure."

7. Same view is taken by the Apex Court in the case of State of Maharashtra and another v. Gorakhnath Sitaram Kamble and others- (2010) 14 SCC 423. It was held that date of birth cannot be permitted to be altered at the fag-end of the career. This Court in the matter of Surendra Singh v. State of M.P and others- 2007(1) MPLJ 286, has taken the same view. Relevant portion of the M.P. Financial Code Rules reads as under:-

84- "kklu ds v/khu fdlh lsok vFkok in ij izR;sd uofu;qDr O;fDr dks HkrhZ ds le; viuh tUe frfFk dh tGkW rd gks ,sls vfHkys[kkksa ds lkFk tks ml frfFk dh iqf"V djrs gksa tSls eSV~hdqys"ku lFVZfQdsV] E;qfufliy tUe frfFk lFVZfQdsV] vkfn ds lkFk fdzf"p;u ,sjk esa] ?kks"k.kk djuk pkfg,A ;fn okLrfod tUe frfFk Kkr u gks rks yxHkx D;k frfFk gS ;g crk;k tkuk pkfg,A lsok fooj.k] lsok&iqfLrdk vFkok vU; vfHkys[k tks "kkldh; lsod ds laca/k esa j[ks tk,a muesa okLrfod tUe frfFk vFkok fu;e 85 ds varxZr fuf"pr dh xbZ frfFk vafdr dh tkuk pkfg,A bl rjg ,d ckj vafdr dh xbZ tUe frfFk vafre :i ls fu;r frfFk le>h tk;sxh vkSj dsoy fyfidh; =qfV ds ekeyksa dks NksM+dj ,slh ?kks"k.kk esa fdlh Hkh iz;kstu ds fy;s rnqijkar dksbZ la"kks/ku ekU; ugha fd;k tk;sxkA

8. The petitioner is claiming his date of birth as 06/08/1960 and he entered into service on 02/03/1978, it means, at the time of appointment, he was less than 18 years of age, which is not permissible under the Madhya Pradesh Irrigation Department Non-Gazetted Recruitment Rules, 1969 and as per Schedule-III, the minimum age limit is 18 years for Class-IV employee. Had the petitioner produced the school transfer certificate at the time of appointment, he could not have been appointed into service. This aspect has been considered in the case of Eastern Coalfields Ltd and others v. Bajrangi Rabidas reported in AIR 2014 SC (Supp) 919. Relevant para 15 is reproduced below :

15. On an apposite reading of the instructions there can be no iota of doubt that the date of birth mentioned in Matriculation or Higher Secondary certificate has to be accepted as authentic. But, a pregnant one, as has been indicated

hereinbefore, the case at hand depicts a different picture. The respondent did not produce the Matriculate Certificate, though he had passed the said examination. It is because, we are inclined to think, had he produced the said certificate, he could not have undertaken the examination and consequently could not have been appointed. To secure an appointment, as has been found in the enquiry, he made a statement that he had not obtained the certificate though he had passed the examination and the same was accepted by the Welfare Officer of the then private company

9. That during his entire service career, he had number of occasions to inspect his service book, but he never objected about wrong date of birth recorded in it. No case is made out for correction of date of birth of the petitioner.

10. In view of the above, I do not find any ground to interfere in this writ petition. Accordingly, the same is dismissed.

11. CC as per rules.