

(2020) 07 MP CK 0163
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2213 of 2019(s)

Shivcharan Jatav

APPELLANT

Vs

State of M. P. And Others

RESPONDENT

Date of Decision : 24-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 311(2)
Madhya Pradesh Financial Code, 1970 — Rule 84

Citation : (2020) 07 MP CK 0163

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : Dharmendra Nayak, Anmol Khedkar

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s):-

(i) That, the list annexure P/1 may kindly be directed to corrected with respect to the date of birth of petitioner appears at serial no. 7.

(ii) That the respondents may kindly be directed to correct the date of birth of the petitioner i.e., 01-01-1965 in the whole service record of the petitioner on the basis

of medical certificate.

(iii) That, the respondents may kindly be directed to take petitioner in service till completion age of superannuation by considering the date of birth i.e., 01-01-1965.

(iv) That, the respondents may kindly be directed not to take any coercive steps on the basis of the said false educational transfer certificate.

(v) That, the other relief doing justice including cost be awarded.

The case of the petitioner is that he is working as Regular Shramik in Govt. Sanjay Nikunj Bakaspur, Sabalgarh, Distt. Morena.

It is claimed that the petitioner is an uneducated/illiterate person and can put his thumb impression only. On 17-9-1982, he was appointed as a labourer

on daily wages. The petitioner approached this Court for regularization of services and an order was passed in favor of the petitioner. In the year

2013, the respondents issued order dated 10-9-2013 directing the petitioner to appear before the Medical Board for verification of his age and

accordingly, the Medical Board gave its report dated 18-09-2013, that the age of the petitioner appears to be in between 45 to 50 years. It is also

submitted that in the voter ID as well as in the Aadhar Card, the age of the petitioner has been shown as 1-1-1965. On 5-12-2017, the respondent

issued list for fixation of pay, but in the said list, the date of birth of the petitioner was mentioned as 7-7-1958 in place of 1-1-1965. Thereafter, the

petitioner approached the authorities for correction of his date of birth, but no heed was paid. It is further submitted that the authorities were

demanding illegal gratification for correction of date of birth. It is submitted that the authorities have claimed that his date of birth has been mentioned

as 7-7-1958 on the basis of a transfer certificate issued by the school, but it is submitted that a forged transfer certificate was got prepared by the

authorities for the reason, that the petitioner didnot fulfill their demand of illegal gratification.

Per contra, it is submitted by the Counsel for the State, that in the service book of the petitioner, his date of birth has been mentioned as 7-7-1958.

There is no clerical mistake in the recording of date of birth. The petitioner has approached this Court belatedly for correction of date of birth.

Heard the learned Counsel for the parties.

The copy of the service book of the petitioner has been placed on record by the respondents, from which it is clear that the date of birth of the

petitioner has been recorded as 7-7-1958 and there is no interpolation or overwriting.

It is the case of the petitioner that he is an illeterate person and accordingly he was directed to appear before the Medical Board who by its report

dated 18-9-2013 had specifically opined that the date of birth of the petitioner appears to be in between 45-50 years. Perused the report dated 18-9-

2013 (Annexure P/4) given by the Medical Board, and it reads as under :

His/her age is according to his/her own statement 46 years and by appearance about 45-50 years.

Thus, it is clear that the Medical Board had not assessed the age of the petitioner after conducting his oscification test, but it was based on the

statement made by the petitioner and his personal appearance. The manner in which the age was assessed by the Medical Board, cannot be said to an

authentice or scientific method of assessing the age of a person. Therefore, the certificate issued by the Medical Board cannot be relied upon.

It is next contended by the Counsel for the petitioner, that since, the petitioner didnot fulfill the demand of illegal gratification of the authorities,

therefore, a forged transfer certificate was prepared and an incorrect date of birth has been recorded in the service book.

Considered the submissions made by the Counsel for the Petitioner. The petitioner has not disclosed the name of the person, who had demanded illegal

gratification, and even that person has not been impleaded as a respondent in this petition. A vague allegation of demand of illegal gratification without

disclosing the name of the authority/person, cannot be taken note of. Further, why an authority would indulge in preparing a forged transfer

certificate? The petitioner was aware of the fact that the department is relying upon the transfer certificate issued by a School, then he could have

obtained a certificate from the concerning school to show that he had never prosecuted his studies in the said school. Except by saying that the

petitioner is an illiterate person, no attempt was made by the petitioner to dislodge the transfer certificate relied upon by the department/respondents.

So far as the date of birth mentioned in the Aadhar Card or the Voter ID is concerned, it is suffice to mention that these documents are not the

certificate of age. Aadhar Card is the biometric certificate, whereas the Voter ID is meant for preparing Voter list.

Further, this petition has been filed in the year 2019 and the petitioner had made a representation on 4-9-2018 i.e., at the fag end of the service.

The Supreme Court in the case of State of Assam v. Daksha Prasad Deka, reported in (1970) 3 SCC 624 has held as under:â?

4.....A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected he

cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation

on the footing of the date of the birth entered in the service record .

The Supreme Court in the case of State of Maharashtra v. Gorakhnath Sitaram Kamble, reported in (2010) 14 SCC 423 has held as under :

14. In State of T.N. v. T.V. Venugopalan this Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the

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 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.”

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

9. 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.

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*. 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* 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* 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*, *State of T.N. v. T.V. Venugopalan*, *Bhadrak (R&B) Division v.*

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

The Supreme Court in the case of *State of Gujarat Vs. Vali Mohamed Dosabhai Sindhi* reported in AIR 2006 SC 2735 has held as under :

10. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public 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. In many such rules a period has been prescribed within

which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole

object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of *State of Assam v. Daksha Prasad Deka* (1970 (3) SCC 624), this Court said that the date of the compulsory retirement ""must in our judgment, 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."" In the case of *Government of Andhra Pradesh v. M. Hayagreev Sarma* (1990 (2) SCC 682) the

A.P. Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of

birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative

Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by

the State Government referred to above. It was inter alia observed by this Court:

The object underlying Rule 4 is to avoid repeated applications by a Government employee for the correction of his date of birth and with that end in view it provides

that a Government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had

become final under the rules prior to the commencement of 1984 Rules, he will not be entitled for alteration of his date of birth.

In *Executive Engineer, Bhadrak (RandB) Division, Orissa and Ors. v Rangadhar Mallik* (1993 Supp.(1) SCC 763), Rule 65 of the Orissa General Finance Rules, was

examined which provides that representation made for correction of date of birth

near about the time of superannuation shall not be entertained. The respondent in

that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register.

The Tribunal issued a direction as sought for by the respondent. This Court set aside the Order of the Tribunal saying that the claim of the respondent that his date

of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on basis of the documents produced in support of the said claim,

because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the

service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor made any representation for correcting his date of birth

till September 9, 1986. In case of Union of India v. Harnam Singh (1993 (2) SCC 162) the position in law was again re-iterated and it was observed:

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

An application for correction of the date of birth should not be dealt with by the Courts, 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 the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his

immediate senior. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or

make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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 within at least a reasonable time. 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 about 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 date 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 or 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 thereby caused injustice to his immediate junior.

Rule 84 of M.P. Financial Code reads as under :

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A Division Bench of this Court in the case of in State of M.P. v. Mathura Singh reported in 2003 (1) MPHT 148 (DB), has held as under:â??

â??Rule 84 of M.P. Financial Code (Volume I) provides that date of birth once recorded must be deemed to be absolutely conclusive and except in

the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatsoever.â??

Accordingly, this Court is of the considered opinion, that no case is made out for correction of date of birth in the service book of the petitioner.

The petition fails and is hereby Dismissed.