
(2011) 02 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 8440 of 2008

Uttam Chand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Himachal Pradesh Financial Rules, 1971 — Rule 7

Citation : (2011) 02 SHI CK 0070

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner was appointed as Peon in the Office of Headmaster, Government Senior Secondary School, Kangoo, District Hamirpur, H.P. on 15.03.1995. In his service record, the date of birth entered is 12.02.1949. According to the Petitioner, he has obtained the School Leaving Certificate from Headmaster, Government Primary School, Nagrota Gazian. According to this certificate, the date of birth of the Petitioner is recorded as 12.02.1953. Petitioner has obtained the School Leaving Certificate on 13.02.1997. He has made a representation to the District Education Officer belatedly on 07.10.200 for correction of date of birth. It is settled law by now that the date of birth recorded in service record can be corrected/rectified only on the production of cogent evidence and within the period prescribed under the Rules. Petitioner has been regularized in 1995, however, he has produced the School Leaving Certificate in 1997. The plea raised by the Petitioner that he had been making oral requests, as averred in the rejoinder cannot be accepted. The application for correction of date of birth has to be filed within a period of two years after the joining of service/regularization as per Rule 7 of the Himachal Pradesh Financial Rules.

2. Their Lordships of the Hon''ble Supreme Court in State of Haryana Vs. Satish

Kumar Mittal and Another, have held that the application for correction of date of birth should be filed within the period prescribed under the Rules. Their Lordships have held as under:

13. Thus, as seen from the above position, the relevant rule always required an application for correction of the date of birth to be submitted within two years from joining the service. The amended Rule of 20.12.2000 made a slight modification that an application filed after two years could be considered which will be only on the recommendation of the Administrative Department. This provision has now been removed after the Rules was amended on 13.08.2001.

14. The import of such a provision has been clarified by this Court from time to time. Thus, in para 7 of Home Deptt. V. R. Kirubakran (SCC pp. 158-59) this Court held as follows: (SCC pp. 158-59)

7. An application for correction of date of birth should not be dealt with the tribunal or the High Court keeping in view only the 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 their promotions forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important 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, the Court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, 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 filed within the time, which can be held to be reasonable.

15. As recorded above, it has been held time and again that the application for correction of date of birth is also to be looked into from the point of view of the department concerned and the employees engaged therein. The other employees have expectations of promotion based on seniority and suddenly if such change is permitted, it causes prejudice and disturbance in the working of the department. It is, therefore, quite correct for the State to insist that such application must be made within the time provided in the rules, say, two years, as in the present case.

16. It is also seen that such applications are made very often, almost at the end of the service of the employee or in any case, belatedly. Whatever may be the reason, the fact remains that in the present case, the application was made after some nine years of joining into service. Even assuming that the first Respondent came to know in June 2001 that there was an error in his date of birth entered in the matriculation certificate, as claimed by him, he took more than three years to issue the notice u/s 80 CPC and then to file the suit. Whether the suit was time-barred or not, the claim was in any case belated. It has to be filed within the time provided or within a reasonable time and it is not to be entertained merely on the basis of plausible material as held in Kirubakaran. As observed by this Court in State of U.P. V. Shiv Narain Upadhyaya: (SCC p. 54 para 9)

9... As such, unless a clear case on the basis of clinching 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.

3. Accordingly, there is no merit in this petition and the same is dismissed.