

CASE NO.:
Appeal (civil) 854 of 2004

PETITIONER:
State of Punjab and Ors.

RESPONDENT:
S.C. Chadha

DATE OF JUDGMENT: 09/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
JUDGMENT

(Arising out of SLP(C) No. 23073/2003)

ARIJIT PASAYAT, J

Leave granted.

The State of Punjab questions correctness of the judgment rendered by a Division Bench of the Punjab and Haryana High Court, whereby it directed correction of date of birth of the respondent from 19.6.1944 as recorded earlier in the official documents to 13.12.1945.

Background facts giving rise to the appeal are as follows:

The respondent joined Punjab Institute of Textile Technology, Amritsar on 11.7.1983. At the time of his entry into services, his date of birth was recorded as 19.6.1944. In the certificate for Higher Secondary Examination which he passed in the year 1962, his date of birth was recorded as 19.6.1944. He graduated in Science (Textile) in the year 1967. After his initial appointment with Punjab Institute of Textile Technology he subsequently worked as a senior officer in several public sector undertakings like Government Industrial Development cum Service Centre Textile, Ludhiana, National Textile Corporation Ltd., Delhi, Punjab State Small Industries Corporation Ltd., Haryana and Punjab State Handloom and Textile Development Corporation. In the service records of all the aforesaid organizations, the date of birth was recorded as 19.6.1944. On 19.1.1993 he was absorbed as Treasury Officer in the Department of Finance (T & A), Punjab, Chandigarh which he subsequently joined. By a Notification dated 21.6.1994 an amendment was made in the Punjab Civil Services Rules Vol.I, Part I. In the amended rule it was provided that employees already in service of the Punjab Government may apply for change of date of birth, within a period of two years from coming into force of the amended rules, on the basis of confirmatory documentary evidence. It was also stated in the Notification that no request for change of date of birth was to be entertained after the expiry of two years period. The rules were further clarified on 10.5.1995 wherein it was provided that the date of birth of any government employee was not be changed without holding a special enquiry to be conducted by the concerned Deputy Commissioner. Respondent submitted his

application on 26.7.1995 for changing the date of birth as recorded. The circular dated 10.5.1995 was subsequently kept in abeyance on 5.10.1995 and finally withdrawn on 13.10.1995. On 1.10.1996 the State Government issued instructions to the effect that applications received during the period of notification dated 21.6.1994 and the last date till which it was in operation were to be disposed of on merits. The Deputy Commissioner, Jalandhar made enquiries with regard to the application of the respondent for change of date of birth. The Deputy Commissioner by his letter dated 26.3.1997 informed the Director (T & A) Department of Finance that on the basis of enquiry conducted the actual date of birth of the respondent to be 13.12.1945 and not 19.6.1944. However, the Government did not accept the request for change of date of birth and rejected the same by order dated 27.7.1999.

Initially it was challenged before the High Court by writ petition which was disposed of with the direction to the official respondents to supply a copy of the order which was the basis of the communication dated 20.7.1999. The same was supplied to the respondent, who filed a writ petition before the High Court which came to be disposed of by the impugned judgment.

Stand of the respondent-writ petitioner before the High Court was that there was no belated move to get the date of birth corrected. In fact the application was made within the period indicated in the notification dated 21.6.1994. Since the Deputy Commissioner concerned was the competent authority to make enquiry and his report was in favour of the respondent, the correction as requested should have been done. The State Government refuted the submissions and took the stand that approach was made more than 3 decades after entry into service. The respondent had served in several organizations and undertakings as noted above without even raising any shadow of dispute about the correctness of the date of birth as recorded. Even the Higher Secondary Examination Certificate on the basis of which he entered into service, indicated the date of birth to be 19.6.1944. On the basis of self-serving documents filed by the writ petitioner, the Deputy Commissioner should not have held that the correct date of birth is 13.12.1945 and not 19.6.1944. The High Court accepted the stand of the respondent-writ petitioner and held that since the report was given by the Deputy Commissioner after making enquiries, the same should have been accepted. As the request for change was made within the period permitted by the amended rules notified by the notification dated 21.6.1994, the writ petitioner was entitled to the relief claimed.

Learned senior counsel appearing for the State of Punjab submitted that the High Court has lost sight of several relevant aspects. It did not even consider the most relevant aspect about raking up a dispute about the date of birth more than three decades after entry into service. Even though in 1994 the rules were amended, no explanation whatsoever has been offered as to why no grievance was made prior to the amendment of rules. It has also not been shown as to how the entry in Higher Secondary Examination Certificate was wrong. The Deputy Commissioner relied upon some documents which came into existence much later. The certificate issued under the Birth and Death Registration Act, 1969 has no relevance as the said Act was not even in operation when the respondent was born. Certificate in Form-

9 was issued on 17.12.1997 i.e. after the application for correction of date of birth was made. The certificates given by some counsellors are really of no consequence. They were all issued in the year 1996. The respondent has also not placed any material to show as to why and under what circumstances, the Higher Secondary Examination Certificate recorded the date of birth to be 19.6.1944 if it was not the correct date. Even in the application filed by the respondent while applying for appointment as Treasury Officer, the respondent himself had indicated his date of birth to be 19.6.1944.

Learned counsel for the respondent submitted that the High Court took note of the relevant facts and, accepted the Deputy Commissioner's report as he was the competent authority. Therefore, no interference is called for.

Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

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 (R&B) 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 reiterated 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.

The position was succinctly stated by this Court in the above terms in *The Secretary and Commissioner Home Department and Ors. v. R. Kirubakaran* (JT 1993 (5) SC 404)

As observed by this Court in *State of Tamil Nadu v. T.V. Venugopalan* (1994 (6) SCC 302) and *State of Orissa and Ors. v. Ramanath Patnaik* (1997 (5) SCC 181) when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence. The view expressed in *R. Kirubakaran's* case (supra) was adopted.

In the instant case the Higher Secondary Examination Certificate was issued on 3.6.1962. If the said certificate disclosed a wrong date, it is not explained by the respondent as to why he did not make any move to get it corrected. Merely because in 1994 an opportunity was granted to the Government employees to get their date of birth corrected, that does not take away the affect of inaction

and continued silence for more than three decades. Even in the application made for employment in the year 1992-93 the date of birth was indicated, as noted above to be 19.6.1944. No contemporaneous document was produced to show that recording of the date of birth to be 19.6.1944 was wrong.

In view of the aforesaid, the inevitable conclusion is that the High Court was not justified in directing correction of the date of birth in the service records of the respondent. The appeal is allowed but without any order as to costs.

JUDIS