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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 8067 of 2018

Ghasiram Sahu S/o Late Shri Darasram Sahu, Aged About 61 Years, Semi Skilled Labour, Public Works Department, Sub Division Champa, Division Bilaspur, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Public Works Department Mantralaya, Mahanadi Bhawan Raipur Chhattisgarh
2. Engineer-In-Chief, Public Works Department, Sirpur Bhawan, Raipur Chhattisgarh
3. Executive Engineer, Public Works Department, National Highway, Bilaspur, Chhattisgarh
4. Sub Divisional Officer, Public Works Department, National Highway, Sub Division Champa, District - Janjgir-Champa, Chhattisgarh
5. Joint Director, Treasury, Account And Pension, Bilaspur, Chhattisgarh

---Respondents

For petitioner : Shri Ashwani Shukla, Advocate.
For State : Shri S. P. Kale, A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

07/12/2018

1. The challenge in the present writ petition is to the order Annexure P-1 dated 03.11.2017 and Annexure P-2 dated 21.05.2018. Annexure P-1 is an order passed by respondent no.3 intimating the date of retirement of the petitioner as 31.01.2018. Annexure P-2 is an order which has been passed by the respondents pursuant to an order passed by this Court in WPS No. 1130/2018 on 05.02.2018.

2. Case of the petitioner is that when the petitioner came to know about the erroneous entry of his date of birth, he made a representation to the authority concerned who also acceded his request and made necessary correction in his service book way back in the year 1992 and his date of birth was corrected as 30.06.1957 in place of 05.01.1956, yet the respondents have issued the notice of retirement to the petitioner treating his date of birth as 05.01.1956. Counsel for the petitioner submits that this Court while disposing of WPS No. 1130/2018 had directed the respondent authorities to consider the representation of the petitioner and pass an appropriate order which again has been done without proper scrutinizing of the documents and records. Therefore, both the impugned orders deserve to be set aside.

3. Perusal of the record would show that the petitioner had approached the Court at the fag end of his career for correcting his date of birth. The earlier writ petition was itself filed on 24th of January, 2018 when he was to retire on 31.01.2018. Moreover, the contention of the petitioner that the respondents had corrected his date of birth is also hard to accept for the reason that the alleged correction seems to be only on the date of birth shown in figure whereas the date of birth shown in words has not been corrected. Thus, it does not seem to be a correction made officially by the department.

4. Another aspect which cannot be lost sight is the fact that according to the petitioner, the department had corrected the date of birth in his service book in 1992 but perusal of the record particularly Annexure P-5 would show that the department, on his representation in the year 1998, had called upon the petitioner for providing authentic documents in respect of establishing his date of birth to which there

does not seem to be any proper reply/response provided by the petitioner. Thereafter, there is no further correspondence or efforts made by the petitioner for correction of his date of birth.

5. So far as the law relating to the correction of date of birth is concerned, the Supreme Court in the case of Union of India Vs. Harnam Singh reported in (1993) 2 SCC 162 in paragraph-7 & 15 has held as under:

> "7. …....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 the 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 latches 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. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age.
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> 15. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his

> superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him."

6. In the case of Burn Standard Co. Ltd. and others Vs. Dinabandhu Majumdar and another, (1995) 4 SCC 172, the Supreme Court in paragraph-10 held as under:

> "10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extra-ordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his `Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court."

7. The Supreme Court in the case of Punjab and Haryana High Court at Chandigarh Vs. Megh Raj Garg and Another reported in (2010) 6 SCC 482 in paragraph-20 held as under:

"20. By applying the ratio of the abovenoted judgments, we hold that the suit filed by Respondent 1 for correction of the date of birth recorded in his service book after twelve years of his joining the service was clearly misconceived and the trial court committed a serious error by passing a decree in favour of Respondent 1 and the lower appellate court and the High Court repeated the same error by refusing to set aside the decree passed by the trial Court."

8. In the case of State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others, (2010) 14 SCC 423, in paragraph-12 it has been held as under:

> "12.Apart from the notification and the said instruction this Court in a series of cases has categorically laid down that the employees should not be permitted to change the date of birth at the fag end of their service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty-eight years."

9. The Supreme Court again in the case of State of Madhya Pradesh & others Vs. Premlal Shrivas, (2011) 9 SCC 664, in paragraphs – 7 & 8 held as under:

> "7. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.
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> 8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he 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. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh)."

10. In view of the aforesaid legal position and the factual matrix narrated in the preceding paragraphs, this Court is of the opinion that no strong case for interfering with the two orders under challenge is made out. Thus, the writ petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola