

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 5604 of 2011

Laganwati Devi @ Lagnawati Devi Petitioner
 Versus

1. The Steel Authority of India Limited through its Chairman, Ispat Bhawan, New Delhi.
2. The General Manager (Mines), Steel Authority of India Ltd., Raw Material Division, Singhbhum (West), Jharkhand.
3. The Assistant General Manager (Personnel & Administration), SAIL, RMD, Kiriburi Iron Ore Mines, Singhbhum (West), Jharkhand.
4. The Manager, Personnel (Personnel & Administration Department), SAIL, RMD, Kiriburu Iron Ore Mines,
5. The Deputy Manager, Personnel (Personnel & Administration Department), SAIL, RMD, Singhbhum (West).
6. The Principal, Project Central School, SAIL, RMD, Singhbhum (West).

.... ... Respondents

CORAM : HON'BLE DR. JUSTICE S.N. PATHAK

For the Petitioner	:	Mr. Mukesh Kumar, Advocate
For the Respondents	:	Mr. Indrajit Sinha, Advocate
		Mr. Aditee Dongrawat, Advocate

6/ 12.02.2024 Heard the learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has approached this Court with a prayer for quashing of the Notice of superannuation contained in Letter No. 453 dated 22.2.2011 (Annexure-5) whereby the respondent-Management has informed the petitioner that she shall be retired from service with effect from 30.09.2011 on attaining the age of superannuation on 02.09.2011, which is contrary to the date of birth as per educational certificate i.e. 5.9.1955. By filing I.A. No. 3555 of 2011, the petitioner has also prayed for her reinstatement in service and allow her to continued work till the actual date of superannuation on the basis of her correct date of birth as 5.9.1955. The petitioner has also prayed for consequential benefits including the arrears of salary upon her reinstatement.

3. Brief facts of the case are that the petitioner was appointed on the post of Attendant Gr-II vide appointment letter dated 25.8.1986 and accordingly, she joined the service on 4.9.1986 and was posted in

Project Central School, Kiriburu. It is the case of the petitioner that her date of birth is 5.9.1955 as per transfer certificate issued on 21.10.1989 and she has duly submitted the same before the respondent-Management. It is further case of the petitioner that the respondents have issued identity card, medical book and pay slips which mentioned the date of birth as 5.9.1955. However, all of a sudden, the respondents have issued a notice for retirement on 22.2.2011 intimating therein that she will be retired on 2.9.2011 on attaining the age of 60 years. Faced with the compelling situation, the petitioner has approached this Court.

4. Learned counsel appearing for the petitioner submits that the matriculation certificate has to be taken into consideration by the Management for the purpose of recording of the date of birth. Learned counsel submits that the petitioner has submitted the transfer certificate which mentions the date of birth of the petitioner as 5.9.1955 and considering the same, the identity card as well as medical book and other documents have been issued to the petitioner mentioning the correct date of birth as 5.9.1955. However, one fine morning, the respondents have come out with the impugned notice regarding retirement which is illegal and arbitrary. Therefore, a direction be given to the respondents to change the date of birth of the petitioner as per transfer certificate in the service excerpts and extend the benefits to the petitioner for remaining service period.

5. On the other hand, learned counsel for the respondents opposing the contention of learned counsel for the petitioner, submits that the issue involved in the writ petition is no more *res integra*. In plethora of judgments, it has been decided that no correction in the date of birth can be made at the fag end of service. The employer and employee are prohibited from making any correction in the date of birth at the fag end of service. Learned counsel further submits that the petitioner has approached the authorities only after rendering 25 years of service and as such, the writ petition deserves to be dismissed on the ground of delay and laches.

6. Having heard learned counsel for the parties and having gone through the entire records, this Court is of the considered view that

no interference is warranted in the writ petition for the following reasons:-

- (i) The petitioner has filed this writ petition regarding correction of date of birth only at the fag end of service career when she was issued the impugned notice regarding retirement. Admittedly, the petitioner was appointed on 4.9.1986 and she raised the dispute upon issuance of notice for retirement.
- (ii) The claim of the petitioner that correction should be made as per the transfer certificate is not accepted to this Court on the ground that the petitioner has failed to submit the educational certificate at the time of initial appointment. Any settlement entered into by the parties has got its statutory force and once the parties have agreed in the settlement, the same cannot be challenged by the parties.
- (iii) Had the petitioner got the transfer certificate at the time of initial appointment, there was no occasion for respondents not to enter the date of birth of the petitioner as per certificate. Since the petitioner suppressed the same at the time of joining, the request for changing the date of birth has not been acceded to by the respondents on the ground of delay and laches.
- (iv) In this context, the Hon'ble Apex Court in the case of ***Union of India Vs. Harnam Singh***, reported in (1993) 2 SCC 162 held that "*No Court or the Tribunal can come to the aid of those who sleep over their rights.*"
- (v) The Hon'ble Apex Court as well as this Court in catena of decisions has held that request for change of date of birth in service records at the fag end of service career is not sustainable. In case of State of ***Tamil Nadu Vs. T.V.Venugopalan***, reported (1994) 6 SCC 302, the Hon'ble Apex Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under:-

".....The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted

at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register”.

- (vi) The Hon’ble Apex Court in case of ***Secretary and Commissioner, Home Department & Ors. Vs. R. Kirubakaran***, reported in **1994 Suppl. (1) SCC 155**, has held as under:

“7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. 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 their promotion forever. ...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. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book.”

- (vii) Further, the Hon’ble Apex Court reiterating the same view, in case of ***State of M.P. v. Premlal Shrivastava***, reported in **(2011) 9 SCC 664** has held as under:-

“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 6 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. 12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book.”

- (viii) Hon’ble Apex Court in case of ***Nedungadi Bank Ltd. Vs. K.P. Madhavankutty & Ors.***, reported in (2000) 2 SCC 455, dealing with the issue relating to stale claim, has held that, reference of the said dispute at a belated stage is bad in eyes of law both on the grounds of delay as well as on non-existence of an industrial dispute.
- (ix) Taking into consideration the aforesaid ratio laid down by the Hon’ble Apex Court as well as by different High Courts, this Court in the case of ***Ajit Singh Vs. M/s Tata Iron & Steel Co. Ltd.***, Jamshedpur, decided in **W.P.(L) No. 1251 of 2010**, held that *“if Government servants sleep over their right and are not vigilant, the Court cannot come to their rescue / aid and grant relief only because they were ignorant of the Rules.”*

7. As a sequitur to the aforesaid observations, rules, regulations, guidelines, legal propositions and judicial pronouncements, this writ petition is devoid of any merit and the same is, hereby, dismissed.

(Dr. S.N. Pathak, J.)