

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER.

SUMER CHAND MATHUR. V. THE STATE OF RAJASTHAN
AND ANOTHER.

S.B.CIVIL WRIT PETITION NO.5760/2005,
under Articles 226 & 227 of the Constitution
of India.

DATE OF ORDER: SEPTEMBER 26, 2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Pankaj Sharma) for Petitioner.
Ms.Chetana Sharma)

BY THE COURT:

By the instant petition, the petitioner has prayed that by an appropriate writ, order or direction, the office order dated 5.11.1996 (Annexure 6) may be quashed and set aside and the respondents may be directed to reconsider the representation of the petitioner as per law and further, correct the date of birth of the petitioner in his service record from 3.1.1934 to 6.6.1936. The petitioner has also prayed that the respondents may be directed to treat the petitioner as retired in accordance with the

correct age only and further more, the respondents may be directed to give all the due benefits flowing therefrom to the petitioner.

Brief facts, giving rise to the instant petition, are that by order dated 22.8.1952 (Annexure 1), the petitioner was appointed as Assistant Teacher in the Education Department. The petitioner passed the High School Examination in the year, 1952 and the Certificate of High School issued by the Central Board of Secondary Education, Ajmer, was delivered to the petitioner on 6.7.1953. It is further averred by the petitioner in the instant petition that vide order dated 22.8.1952, the petitioner was asked to submit two certificates regarding his good moral character issued by the two Gazetted Officers and the petitioner submitted his Transfer Certificate/ Scholar's Register, containing all details. One certificate contains his date of birth as 6.6.1936 and in another certificate dated 29.8.1952, issued by the First Class Magistrate, his date of birth was shown as 3.1.1934. According to the petitioner, it was mentioned inadvertently by the First Class Magistrate and on this basis, his wrong date of birth was recorded in the service book.

It is also averred by the petitioner in the instant petition that in the year, 1959, there were certain vacancies of LDCs in the Soil Conservation Office, Agriculture Department, Jodhpur.

The petitioner submitted his application through proper channel for the same by mentioning his date of birth as 6.6.1936. Thereafter, as soon as the petitioner came to know about the said inadvertent mistake in his service record, he filed a number of representations to make good the said error. Ultimately, he filed S.B.Civil Writ Petition No.5009/1991 before this Court, which was disposed of by the Hon'ble Acting Chief Justice vide order dated 9.8.1996 with the following observations :-

"The correction of the date of birth is indeed a matter which pertains to disputed question of fact. The Apex Court has time and again by numerous decisions deprecated the practice of resorting to the correction of age at the fag end of the career in respect of a government servant, but then the writ petition has stated the circumstances under which it was not possible for him to make a representation earlier. At least his representation dated April 30, 1991 has not as yet been considered by the Director on merits. The only relief available to the present petitioner would be that his representation should be considered on merits by the Director of Agriculture within a period of three months from this date and an appropriate speaking order should be passed thereupon. In case the Director thinks that the writ petition has rightly been superannuated from service on January 31, 1992, his retiral benefits should be paid to him at least within a period of three months from the date of the passing of the order by the Director concerned.

With the above observations, the writ petition stands disposed of. There

will be no order as to costs."

In compliance with the order of this Court dated 9.8.1996 , the Department considered and rejected the representations of the petitioner vide order dated 5.11.1996 (Annexure 6) on the following three grounds :-

"(a) By virtue of Rule 8 (2) (a) which says that all those persons who were in employment of the State Government as on 1.1.1979, date of birth as recorded in service book shall be considered as correct, irrespective of any authority of which it was entered.

(b) As per Rule 8 (2) ©, age of the employees, who do their matric during service, will be considered as per the service book only.

© Every employee gets one chance in a year to assess his service book in the same manner, the present petitioner also got a chance to go through his service book, but he did not file any application for correction of his date of birth."

It is averred by the petitioner in the instant petition that the reasons given by the respondent – department for rejecting the representations of the petitioner are arbitrary and perverse to the facts and laws. The first reason assigned by the Agriculture Department was Rule 8 (2) (a) of the Rajasthan Service Rules. This rule was struck down in the year, 1985 by a Division Bench Judgment of this Court. The second reason

assigned by the Department was Rule 8 (2) © of the Rajasthan Service Rules. This rule is not applicable to the petitioner as he had already cleared his High School Examination at the time of joining the service. The third reason assigned by the Department is that every employee gets one chance in a year to assess his service book, the petitioner also got the same chance, but he did not file any application for correction of his date of birth.

On 3.12.1996, the petitioner sent a representation to the Agriculture Department, requesting for review of their earlier order dated 5.11.1996. Thereafter, the petitioner filed various representations to the Authorities of the Agriculture Department, as well as the former and present Chief Ministers, but no heed was paid to his case.

Thus, being aggrieved by the order dated 5.11.1996 (Annexure 6) passed by the Agriculture Department, the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that the petitioner produced his Scholar's Register/School Leaving Certificate for the perusal of the Authorities at the time of appointment, in which his date of birth was mentioned as 6.6.1936. Notwithstanding this certificate, the Department

entered a wrong date of birth in the service book, on the basis of a character certificate. There is no rule of entering the date of birth in the service record on the basis of a character certificate.

It is further submitted by the learned counsel for the petitioner that earlier, the petitioner did not have any idea of the mistake regarding his date of birth, but as soon as he came to know about the wrong date of birth, he mentioned his correct age in various communications, but despite that, his date of birth was not corrected by the Department, for the reasons best known to them.

It is also submitted by the learned counsel for the petitioner that the Agriculture Department, while dealing with the representation of the petitioner, in pursuance to the order of this Court, adopted an arbitrary, whimsical, unfair and unjust attitude and ultimately gave three reasons for rejecting the representation of the petitioner viz; (i) by virtue of Rule 8 (2) (a) of the Rajasthan Service Rules; (ii) by virtue of Rule 8 (2) © of the Rajasthan Service Rules; and (iii) the petitioner got a chance to assess his service book, but never indicated the mistake. According to the learned counsel, the Authorities did not apply their mind, but passed the order in a capricious, arbitrary and whimsical manner which is illegal. The main ground of rejection of the prayer of the petitioner was Rule 8 (2) (a) of the

Rajasthan Service Rules. As a matter of fact, this rule was no more in existence at the time of passing of the order dated 5.11.1996 as the same was struck down by a Judgment of the Division Bench of this Court. So far as Rule 8 (2) © of the Rajasthan Service Rules is concerned, the same is not applicable in the present case as, according to the learned, the petitioner was already Matriculate at the time of joining the service. The petitioner disclosed his date of birth in 1959 at the time of seeking appointment as L.D.C. in Agriculture Department.

Heard learned counsel for the petitioner.

It is admitted position that on the basis of the Certificate given by the petitioner himself, his date of birth 3.1.1934 has been recorded in his service book. Treating his date of birth as 3.1.1934, he was retired on 31.1.1992. In compliance with the order of this Court dated 9.8.1996, his representations dated 3.4.1991/1.5.1991, were again considered by the competent authority and after giving due and proper consideration to his case, with regard to correct date of birth, his representations were rightly rejected on the ground that as per Rule 8 (2) (a), all those persons, who were in employment of the State Government as on 1.1.1979, the date of birth, as recorded in their service book/service record, shall be considered as correct. It further provides that no change in the date of birth shall be made and recorded in the service book on the basis of the date

of birth mentioned in the certificate of Secondary/Higer Secondary or any certificate issued by the Education Board, irrespective of the fact that the same is beneficial for the employee or not. According to Rule 8 (2) © of the Service Rules, date of birth recorded in the service book of the employee shall not be changed, if the employee ,during service tenure, passes the Examination of Matric or equivalent thereto and a date of birth is mentioned in his Matric or equivalent certificate. Meaning thereby, on the basis of the certificate of Matric etc., the date of birth, already recorded in the service book, shall not be changed. It may be mentioned that while considering the representations of the petitioner, it was also mentioned by the Competent Authority in his order dated 5.11.1996 that every employee gets chance once in a year to peruse his service book. The petitioner had also availed of the same chance. Apart from that the petitioner, while filling up the required columns of his Annual Confidential Report, has mentioned his date of birth as 3.1.1934. Earlier, the petitioner did not make any request to change his date of birth. Surprisingly, two years prior to his laying down the reins of office, he made a request through applications/representations to change his date of birth, which does not appear to be reasonable and genuine and in accordance with the Rules, therefore, the same was rejected by the Competent Authority vide order dated 5.11.1996 (Annexure 6). The petitioner has already retired on 31.1.1992. However, Rule

8 (2) (a) of the Rajasthan Service Rules is no more in existence and the same has been struck down by a Judgment of the Division Bench of this Court. Not only that, against the order dated 5.11.1996, the petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India on 20.9.2005, by way of filing the instant writ petition which, in any way, cannot be said to be a justified or reasonable cause of delay. It is established in the instant case that the latches is on the part of the petitioner himself. The employee seeking correction of date of birth must establish that the recorded date of birth was made due to negligence of some other person or due to clerical error. In the instant case, the character certificate, duly signed and sealed by the First Class Magistrate, showing his date of birth as 3.1.1934, was given by the petitioner himself to the Department and on the basis of that certificate, his date of birth 3.1.1934 was recorded in his service book.

It may be mentioned that in **Union of India v. Harnam Singh, 1993 (2) SLR 42 (SC)**, it was held by their Lordships of the Supreme Court that the request for correction of date of birth is required to be made by the Government servant within the five years of his entry into Government service and his date of birth may be correctly only if it is established that a genuine bona fide mistake has occurred. A Government servant, who

has declared his age at the initial stage of the employment, is of course, precluded from making a request, after five years, for correcting his age. The general principle of refusing relief with respect to date of birth should be applied by the Court on the ground of latches also. A Government servant who makes an application for correction of date of birth at the fag end of his career, i.e., at the time of retirement, 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 Court cannot come to the aid of those who sleep over their rights and allow the entire tenure of service to expire and woke up for correction in the date of birth at the time of their superannuation.

Similarly, in **Secretary and Commissioner, Home Department v. R.Kirubakaran, 1994 (1) SLJ 141 (SC)**, it was held by their Lordships of the Supreme Court that whenever an application for change in the date of birth is made on the eve of superannuation or near about that time, the Court should be more cautious because of growing tendency amongst a section of public servants to raise such a dispute without explaining as to why this question was not raised earlier.

In **Union of India v. Kantilal Hemantram Pandaya, 1995 (2) JT SC 365**, it was held by their Lordships of the

Supreme Court that claim for alteration of the date of birth after an inordinate and unexplained long delay of 25 years and on the eve of retirement must be scrutinized by the Courts carefully and interference made sparingly and with circumspection.

In **Visakhapatnam Dock Labour Board. v. E. Atchanna, 1996 (2) SCC 484**, it was held by their Lordships of the Supreme Court that where the alteration was sought at the fag end of the career and no application was made within five years of the notification prescribing the procedure to seek alteration of date of birth, the interim order allowing the employee to continue in employment till the disposal of writ petition, was held invalid. It was further held that the Court, at the belated stage, cannot entertain a claim for the correction of the date of birth duly entered in the service records.

Admittedly, in the instant case, vide order dated 22.8.1952 (Annexure 1), the petitioner was appointed in the respondent – Department. On 30.4.1991/1.5.1991, i.e., after 38 years, he made an application for making correction of date of birth in his service book, whereas his date of retirement was 31.1.1992. Thus, at the fag end of his service career, his application was rightly not entertained by the respondent – Department. After retirement, he filed S.B.Civil Writ Petition No.5009/91, which was decided by this Court on 9.8.1996 and

the respondent – Department was directed to consider his representation. In compliance with the directions of this Court, his representation was considered and rejected by the respondent – Department vide order dated 5.11.1996 (Annexure 6). It was specifically mentioned in the order dated 5.11.1996 that the petitioner was permitted to peruse his service book once in every year. He perused the same from time to time and put his signatures, after perusal. Not only this, even in his Annual Confidential Reports, he has filled up his date of birth as 3.1.1934. It may be mentioned that at the fag end of his service career, i.e., just two years prior to his retirement, he made a request to change his date of birth in the service records. Thus, the application for change in the date of birth was neither just, nor proper and nor in accordance with the Rules, therefore, the same, after due consideration, was rejected by the respondent – Department. Now, on 20.9.2005, the petitioner has again filed the writ petition with the prayer to quash and set aside the aforesaid order dated 5.11.1996 (Annexure 6) passed by the respondent – Department.

Thus, taking an overall view of the matter and keeping in view all the above facts and circumstances of the instant case, I am of the opinion that the date of birth (3.1.1934) shown in the character certificate issued by the Magistrate and given by the petitioner himself to the Department and accordingly duly

recorded in the service book is authenticated date of birth. Apart from that, the petitioner has filed this second writ petition at a very belated stage and that too, on frivolous grounds which were already considered and rejected by the respondent – Department in compliance with the order of this Court dated 9.8.1996.

In the result, I do not find any merit in this writ petition, the same is, therefore, dismissed in limine.

(R.P.VYAS), J.

scd.