



IN THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra-ordinary Jurisdiction)

Dated: 21st AUGUST, 2019

S.B. : HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.

W. P. (C) No. 75 of 2017

Shri Ravi Chandra Dhakal,
S/o Late Padam Lal Dhakal,
Aged about 56 years,
R/o Churibotey, Central Pandam,
P.O. & P.S. Singtam, East Sikkim. ... **Petitioner**

- Versus -

1. State of Sikkim,
 Through the Chief Secretary,
 Government of Sikkim.
2. The Secretary,
 Human Resource Development Department,
 Near Old Secretariat, Tashiling,
 Government of Sikkim.
3. The Secretary,
 Department of Personnel,
 Manan Kendra, Development Area,
 Government of Sikkim.

... Respondents

Appearance:

Mr. Sunil Rai, Advocate for the petitioner.

Dr. Doma T. Bhutia, Addl. Advocate General, Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates, Mr. Zigmee P. Bhutia, Standing Counsel (HRDD) for the respondents.



J U D G M E N T

Chief Justice

Petitioner has approached this Court seeking following reliefs:-

- “a) A writ of and /or in nature of mandamus directing the respondent(s) their agents, and subordinate to withdraw, rescind, cancel or quash the early retirement order dated 15.12.2014.
- b) A writ of or in the nature of mandamus commanding the Respondents to take up necessary steps to correct the date of birth of the aggrieved Petitioner;
- c) A writ of in the nature of mandamus commanding the respondent to reinstate his service for the remaining period of 5 (Five) years or pay compensation for giving early retirement;
- d) An ad interim Order directing the Respondents, to take necessary steps to make Compensation or to reinstate the aggrieved Petitioner’s service until the final disposal of the Writ Petition;
- e) An explanation from the Respondents as to the cause for their negligence or inaction on their Part form the year 2004 till date.”

2. Facts, in brief, are that the petitioner was appointed as a Primary Teacher under the Human Resource Development Department, Government of Sikkim vide Office Order No. 826/Est/Edn. dated 22.04.1981 and was posted at Khanigaon Primary School, East Sikkim. In the service book prepared at the time of entering into the service, his date of birth was recorded as 07.09.1956. It is the case of the petitioner that the same was incorrectly recorded though he had



supplied the correct date of birth, i.e. 20.09.1961 along with the supporting documents. When the petitioner came to know about the incorrect date of birth recorded in the service book, the petitioner made representation to the respondent no.2 with the plea that at the time of joining the service, his date of birth was incorrectly recorded in the service book by the concerned department. He requested for correction of date of birth recorded in his service record. The petitioner also submitted matriculation certificate bearing his correct date of birth. The first representation made by the petitioner for correction of date of birth was in the month of February, 2004. Thereafter, several representations were made by the petitioner but his date of birth was not corrected. Only reply given by the concerned department was that in his service book, his date of birth was recorded as 07.09.1956. Petitioner also served legal notice on the respondent-department but when nothing was done, the present writ petition is filed.

3. Contention of the learned counsel for the petitioner is that the respondent-department is duty bound to correct the date of birth as the petitioner had supplied the matriculation certificate issued by the Central Board of Secondary Education (for short CBSE) in time. He submitted that matriculation certificate issued by the Board cannot be questioned and that is the best document which can be relied for correction of date of birth of the petitioner.

4. Per contra, the Learned Additional Advocate General submitted that the petitioner's case deserves to be dismissed simply on the ground of delay and laches. The petitioner did not file writ



petition during his service period but he filed it after three years of his superannuation. She submitted that the petitioner could have filed writ petition in the year 2004 itself when his first representation was not considered. She submitted that the petitioner joined service in the year 1981 but he kept mum for 24 years and approached the respondent-department only in 2004 for the correction of date of birth. The department gave reply to his representation and informed him that his date of birth recorded in the service book is 07.09.1956 and the same cannot be corrected. The Learned Additional Advocate General referred letter dated 01.05.2013 written by the petitioner to the Chief Minister in which he himself has stated that at the time of joining service, he recorded his date of birth as 07.09.1956. She submitted that petitioner is not illiterate person and he consciously recorded his date of birth in his service record. Therefore, he should not be permitted to raise the issue of date of birth after a very long period. She submitted that in service record, certificate regarding date of birth of the petitioner (07.09.1956) is also mentioned as kept at CP-124 but that certificate is not found on record. She also referred the transfer certificate filed by the petitioner which was issued in the year 2000. According to her, the transfer certificate should have been issued by the school at the time of leaving the institution as every institution gives school leaving certificate/transfer certificate at the time of leaving the institution. She submitted that this is done by the petitioner to improve his case. She also referred a photocopy of one admission register submitted by the petitioner in which the name of one Mukul Balaram Dhakal has been cut and the name of the



petitioner is written. She also submitted that at the top of this paper (copy of admission register), the Darbhanga Examination Board, Rajput Colony, Laheriasarai is written whereas the petitioner passed his matriculation Examination from Central Pandam and therefore, this paper is not a genuine paper. She submitted that this document is a forged document and petition deserves to be dismissed on this count also.

5. The Learned Counsel for the respondent referred the **Rule 96 of the Sikkim Government Establishment Rules, 1974** which is as follows:-

“96. Date of birth.-

(1) Every person newly appointed to a service or post under the Government shall at the time of appointment declare the date of birth by the Christian era with as far as possible confirmatory documentary evidence such as school leaving certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date shall be given.

(2) The actual date or the assumed date determined under rule 97 shall be recorded in the history of service, service book or any other record that may be kept in respect of the Government servant's service under the Government and once recorded, it cannot be altered, except in the case of a clerical error, without the previous orders of the Head of the Department concerned.”

6. By referring Rule 96 of the Sikkim Government Establishment Rules, 1974, the learned Additional Advocate General submitted that since at the time of joining service the petitioner himself entered his date of birth in the service record and the same is not a clerical error, the same cannot be corrected.

7. On the question of delay, the learned counsel for the respondent referred paragraph 2 of the judgment reported in **(1996) 7 SCC 421: Union of India Vs. Ram Sula Sharma** and submitted that



when a person wakes up after a long time, he cannot claim correction in his date of birth. Paragraph 2 of the judgment is quoted below:-

"2. The controversy raised in this appeal is no longer res integra. In a series of judgment, this court has held that a court or tribunal at the belated stage cannot entertain a claim for the correction of the date of birth duly entered in the service records. Admittedly, the respondent had joined the service on 16-12-1962. After 25 years, he woke up and claimed that his correct date of birth is 2-1-1939 and not 16-12-1934. That claim was accepted by the Tribunal and it directed the Government to consider the correction. The direction is per se illegal."

8. She also referred paragraph 10 and 12 of the Judgment reported in **(1955) 4 SCC 172: Burn Standard Co. Ltd. And Others**, which are quoted below:-

"10. Entertainments 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 entertainments 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. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of its discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end-of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed



object of continuing in service beyond the normal period of his retirement.

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12. When a person seeks employment, he impliedly agrees with the terms and conditions on which employment is offered. For every post in the service of the Government or any other instrumentality there is the minimum age of entry prescribed depending on the functional requirements for the post. In order to verify that the person concerned is not below that prescribed age he is required to disclose his date of birth. The date of birth is verified and if found to be correct is entered in the service record. It is ordinarily presumed that the birth date disclosed by the incumbent is accurate. The situation then is that the incumbent gives the date of birth and the employer accepts it as true and accurate before it is entered in the service record. This entry in the service record made on the basis of the employee's statement cannot be changed unilaterally at the sweet will of the employee except in the manner permitted by service conditions or the relevant rules. Here again considerations for a change in the date of birth may be diverse and the employer would be entitled to view it not merely from the angle of there being a genuine mistake but also from the point of its impact on the service in the establishment. It is common knowledge that every establishment has its own set of service conditions governed by rules. It is equally known that practically every establishment prescribes a minimum age for entry into service at different levels in the establishment. The first thing to consider is whether on the date of entry into service would the employee have been eligible for entry into service on the revised date of birth. Secondly, would revision of his date of birth after a long lapse of time upset the promotional chances of others in the establishment who may have joined on the basis that the incumbent would retire on a given date opening up promotional avenues for others. If that be so and if permitting a change in the date of birth is likely to cause frustration down the line resulting in causing an adverse effect on efficiency in functioning, the employer may refuse to permit correction in the date at a belated stage. It must be remembered that such sudden and belated change may upset the legitimate expectation of others who may have joined service hoping that on the retirement of the senior on the due date there would be an upward movement in the hierarchy. In any case in such cases Interim injunction for continuance in service should not be granted as it visits the juniors with irreparable injury, in that, they would be denied promotions a damage which cannot be repaired if the claim is ultimately found to be unacceptable. On the other hand, if no interim relief for continuance in service is granted and ultimately his claim for correction of birth date is found to be acceptable, the damage can be repaired by granting him all those monetary benefits which he would have received had he continued in service. We are, therefore, of the opinion that in such cases it would be imprudent to grant interim relief."

9. I have considered the submission of the learned counsel for the parties. No doubt, petition for correction of date of birth in the



service record should not be entertained at highly belated stage and in such matter discretionary jurisdiction of the High Court under Article 226 of the Constitution of India should be exercised reasonably and judiciously. Ordinarily, High Court should not exercise its discretionary jurisdiction while entertaining a writ petition filed by the government employee at belated stage or at the fag end of his service, seeking correction of his date of birth entered in his service record. But at the same time it cannot be said that a government servant who has declared his age at the time of his appointment in the service record should not be permitted to seek correction of his date of birth in the service record. It is open for a government servant to claim correction of his date of birth if he is in possession of a valid proof relating to his date of birth, which is different from the one which was recorded at the time of his entering in the service. Correction of date of birth in the service record of an employee can be made even at the fag end of his service or at highly belated stage, if proof relating to his date of birth is valid, genuine and was in existence at the time of his joining of service. But, in such matter, the Court is required to be very careful.

10. In the present case, the petitioner was appointed in the year 1981. At the time of joining, he recorded 07.09.1956 as his date of birth. The case of the petitioner is that though he submitted a correct date of birth at the time of joining but the same was recorded wrongly. When he came to know about the incorrect date of birth being recorded in his service record, he immediately approached the respondent-department. According to him, his first representation was



given in the year 2004, whereas as per the respondent-department his representation was received in the year 2000. He also submitted his matriculation certificate issued by the CBSE. The respondent-department did not consider the certificate issued by the CBSE and no change was made in his service record. In my view, the respondents should have considered the case of the petitioner and corrected his date of birth as recorded in the matriculation examination, carries a greater evidential value than other certificates or documents issued by any other authority as held by the Hon'ble Supreme Court in the matter of ***State of MP Vs. Mohanlal Sharma : (2002) 7 SCC 719.***

11. The next point to be considered by the Court is whether on the basis of matriculation certificate submitted by the petitioner, his date of birth in the service record should be corrected. Present case is not a case where the petitioner applied for correction of date of birth at the fag end of his service career. In fact, he represented 10 years before his retirement with valid documentary proof. The matriculation certificate issued by the CBSE is of the year 1980 whereas the petitioner joined the service in the year 1981. Therefore, the genuineness of the certificate issued by the CBSE cannot be doubted. Moreover, it is not the case of the respondents that the matriculation certificate issued by the CBSE and submitted by the petitioner is not a genuine certificate. Rather they admit the same. If a person is in possession of valid certificate, why will he enter wrong date of birth in his service record. In such matter, inference is to be drawn that wrong



date of birth was entered by him inadvertently. In such circumstances, in my view, the certificate issued by the CBSE should have been considered by the respondent-department for correction of date of birth. The petition filed by the petitioner cannot be dismissed on the ground of delay and laches. In case claim of the petitioner is not permitted to be allowed, which is based on valid and genuine matriculation certificate, in that event, injustice will be done to him.

12. One argument of the learned counsel for the respondent-department is that the transfer certificate filed by the petitioner was issued in the year 2000 and that should not be relied. She rightly says that generally transfer certificate/school leaving certificate is issued at the time of leaving the school by the student. But on the basis of this argument, it cannot be said that transfer certificate/school leaving certificate issued many years after leaving the school is not genuine. In fact, later on, only a copy of the same can be obtained when a student misplaces the certificate and applies for a fresh copy. Copy issued many years thereafter is also relevant document as fresh copy issued subsequently cannot change the relevant record which is in existence in the record of the school.

13. Another argument of the learned Additional Advocate General is that the correction could be made as per Rule 96 of the Sikkim Government Establishment Rules, 1974 and since the case of the petitioner cannot be said clerical error, therefore, the date of birth cannot be changed. This argument is also not correct in view of the fact that matriculation certificate submitted by the petitioner is issued



by genuine body, i.e. CBSE, and was issued prior to joining in service by the petitioner. Therefore, on the basis of that certificate the correction could be made in the service record.

14. In view of above discussion, the Writ Petition is allowed. The Office Order vide O.O. No.2870/HRDD/E dated 15.12.2014 issued by respondent no.2- Human Resource Development Department, Government of Sikkim is quashed. The respondents are directed to take necessary steps for correction of date of birth of the petitioner as prayed by him on the basis of the matriculation certificate issued by the CBSE. The petitioner shall be treated in continuous service till the date of his retirement by treating his date of birth as 20.09.1961. So far salary from 01.01.2015 is concerned, the petitioner shall not be paid salary from 01.01.2015 till he rejoins the post as he has not worked during this period. However, this period will be counted by the department for the purpose of other benefits including the pension. The department shall grant him annual increment every year from 2014 on notional basis for the purpose of fixation of pension. Respondents are further directed to permit the petitioner to join the service on or before 01.09.2019. In case he is not permitted to join the service on or before 01.09.2019, in that event the petitioner will be entitled for salary from 01.09.2019 till the date of his retirement, which according to his matriculation certificate and as per relevant rule, will be 30.09.2019.



15. No order as to costs.

Chief Justice
21.08.2019

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Internet : Yes
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