A PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

v.

MEGH RAJ GARG AND ANOTHER

(Civil Appeal No. 1591 of 2006)

MAY 20, 2010

B

[G.S. SINGHVI AND C.K. PRASAD, JJ.]

Service Law:

C *Punjab Civil Service Rules:*

Vol. I, Chapter II, Annexure-A, Para I (as it stood prior to the 1994 amendment) – Correction of date of birth – HELD: In view of the statutory provision, there being a complete bar to the making of an application by a government servant after D *two years from the date of his entry into service, the High Court or the State Government did not have the power, jurisdiction or authority to entertain the representation made by the judicial officer concerned after more than twelve years of his entering into the service – Therefore, neither of them* E *committed any illegality by refusing to accept the prayer made by the judicial officer on the basis of the change effected by the University in the date of birth recorded in the matriculation certificate.*

F **The date of birth of respondent no. 1, who joined service as Sub-Judge-cum-Judicial Magistrate, in March 1973, was recorded in the service book as 27.3.1936, in accordance with the matriculation certificate. After ten years of joining the service, he made an application for** G **correcting his date of birth in the matriculation certificate as 27.3.1938. The Syndicate of the University allowed the prayer. Accordingly, necessary changes were made in the certificate. Thereafter, respondent no.1 represented to the State Government for change of his date of birth in the**

H

service record. The State Government in consultation with the High Court rejected the prayer. Respondent no. 1 then filed a suit for declaration that the decision of the State Government and the High Court was illegal, void and ineffective, and for a mandatory injunction directing the defendants to change his date of birth in the service book from 27.3.1936 to 27.3.1938. The suit was decreed. The lower appellate court and the High Court affirmed the decree. Aggrieved, the High Court filed the appeal.

Allowing the appeal, the Court

HELD: 1.1. This Court has time and again cautioned civil courts and the High Courts against entertaining and accepting the claims made by the employees long after entering into service for correction of the recorded date of birth. [para 12] [182-H; 183-A]

Union of India v. Harnam Singh (1993) 2 SCC 162; *Secretary and Commissioner, Home Department and others v. R. Kirubakaran* 1994 Supp.(1) SCC 155 and *Union of India vs. C. Rama Swamy* (1997) 3 SCR 760, relied on.

1.2. In view of Para 1 of Annexure-A to Chapter II of the Punjab Civil Service Rules, Volume 1 (as it stood at the time respondent No.1 joined service and also on the date of his making an application for correction of the date of birth recorded in his service book), which has direct bearing on the issue relating to maintainability of the suit, there is a complete bar to the making of an application by the government servant for correction of his recorded age after two years from the date of his entry into government service. In the instant case, respondent No.1, ten years after entering into the service, submitted the application to the University for effecting change in the date of birth recorded in the matriculation certificate. It is thus evident that respondent No.1 applied for change of the date of birth recorded in his service

A book much beyond the time limit of two years specified in the rule. Therefore, the High Court or for that reason the State Government did not have the power, jurisdiction or authority to entertain the representation made by respondent No.1. Neither of them committed any illegality B by refusing to accept the prayer made by respondent No.1 on the basis of change effected by the University in the date of birth recorded in his matriculation certificate. [para 9-11] [179-G-H; 180-D-H; 181-G]

C 1.3. The decision taken by the Syndicate of the University to accept the request of respondent no. 1 did not give him any cause for filing application or making representation for change of the date of birth recorded in the service book. It is, therefore, held that the suit filed by respondent No.1 for correction of the date of birth D 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 No.1 and the lower appellate court and the High Court repeated the same error by refusing E to set aside the decree passed by the trial court. [Para 11 and 15] [181-H; 182-A; 187-E-F]

Case Law Reference:

(1993) 2 SCC 162	relied on	para 12
F (1994)Supp.1 SCC 155	relied on	para 13
(1997) 3 SCR 760	relied on	para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. G 1591 of 2006.

From the Judgment & Order dated 06.09.2002 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 901 of 1996.

H

Rajeev Sharma, Abhishek Birthray for the Appellant. A

Ajit Kumar, Shikha Roy (for S.K. Sabharwal), Ajay Pal (NP) for the Respondents.

The Judgment of the Court was delivered by B

G.S. SINGHVI, J. 1. Whether the decision taken by the Syndicate of the Panjab University to entertain and accept the application made by respondent No.1 Megh Raj Garg for changing the date of birth recorded in his matriculation certificate was binding on the State Government and the High C Court of Punjab and Haryana (hereinafter described as 'the appellant') and whether the suit filed by respondent No.1 for ordaining correction of the date of birth recorded in his service book was maintainable are the questions which arise for determination in this appeal filed by the appellant against the D judgment of the learned Single Judge of the High Court in Regular Second Appeal No.901 of 1996.

2. Respondent No.1 joined service as Sub Judge-cum-Judicial Magistrate, II Class in March, 1973. His date of birth was recorded in the service book as 27.3.1936 because that E was the date mentioned in the matriculation certificate and the application made by him in response to the advertisement issued by the Punjab Public Service Commission. After ten years of joining the service, respondent No.1 submitted an application to the concerned authority of Punjab University for F amendment of the date of birth recorded in the matriculation certificate by asserting that his correct date of birth was 27.3.1938 but by mistake the same was recorded as 27.3.1936. In support of this assertion, respondent No.1 relied upon the certificates issued by Government High School, G Moonak and Hindu Sabha High School, Sunam. The Date of Birth Committee of the University recommended that the request made by respondent No.1 may be accepted. Thereupon, the Syndicate of the University directed that the H

A date of birth recorded in the matriculation certificate of respondent No.1 be changed from 27.3.1936 to 27.3.1938. In compliance of the decision taken by the Syndicate, necessary changes were made in the matriculation certificate of respondent No.1.

B

3. After having succeeded in persuading the University to change the date of birth recorded in his matriculation certificate, respondent No.1 represented to the State Government for making corresponding change in the date of birth recorded in the service book. The State Government, in consultation with
C the High Court, rejected the prayer of respondent No.1 and he was informed about this vide letter dated 28.1.1993.

4. Respondent No.1 challenged the decision of the State Government in Civil Suit No.417-A of 1993 and prayed for grant
D of a declaration that the decision of the State Government and the High Court not to correct the date of birth recorded in his service book is illegal, void and ineffective. He also prayed for issue of a mandatory injunction directing the defendants to change the date of birth recorded in the service book from
E 27.3.1936 to 27.3.1938.

5. In the written statement filed on behalf of defendant No.2 (appellant herein), reliance was placed on Para 1 of Annexure-A to Chapter II of the Punjab Civil Service Rules, Volume 1 and it was pleaded that the application made by respondent No.1
F for correction of date of birth recorded in his service book after twelve years of entering into service was rightly rejected. It was further pleaded that correction of the date of birth recorded in the matriculation certificate by the University was not binding on the High Court and the State Government.

G

6. On the pleadings of the parties, the trial Court framed the following issues:

"(1) Whether the order dated 28.1.1993 is illegal, null and
H void as alleged? OPP.

(2) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP. A

(3) Whether the suit is not maintainable as it is not within limitation? OPD.

(4) Whether the plaintiff has no cause of action? OPD B

(5) Whether the plaintiff is estopped from challenging the date of birth as mentioned in the office record? OPD.

(6) Relief." C

7. After considering the pleadings and evidence of the parties, the trial Court decreed the suit and declared that rejection of the representation made by respondent No.1 for correction of his date of birth was illegal and void. The trial Court also issued a mandatory direction for alteration of the date of D birth recorded in the service book of respondent No.1 from 27.3.1936 to 27.3.1938. While dealing with the issue of limitation, the learned trial Judge distinguished the judgments of this Court in *Union of India v. Harnam Singh* (1993) 2 SCC 162 and *Secretary and Commissioner, Home Department* E *and others v. R. Kirubakaran* 1994 Supp.(1) SCC 155, by making the following observations:

"In my opinion, these authorities which are based on Rules / Administrative instructions prescribing period of limitation F within which the employee can submit his application for correction of date of birth to his employer, have become redundant so far as the present suit is concerned because Punjab University has issued notification No. 11/4/93-5 PP-II/4499, dated 21.6.1994, making Rules to amend the G Punjab Civil Services Rules, Volume-I, Part-I, inter alia to the effect that employees of the Punjab Government can apply for the change of date of birth to the Government within a period of two years from the coming into force of the aforesaid Rules. Thus, the aforesaid two rulings of the H

A Hon'ble Supreme Court do not debar the plaintiff from seeking his remedy in the Civil Court and at least do not make the suit barred by limitation."

8. The lower appellate Court agreed with the trial Court on
B all the issues and dismissed the appeal preferred by the appellant. The second appeal jointly filed by the appellant and the State of Punjab was dismissed by the learned Single Judge, who held that the decree passed by the trial Court, which was confirmed by the lower appellate Court was legally correct and
C justified. The issue of limitation was decided by the learned Single Judge in the following words:

"The second contention raised by learned counsel for the appellants that the Punjab Civil Service Rules, which are applicable to the plaintiff-respondent, bar the present suit,
D as the same was not filed within two years after entry into service, is also not acceptable. Vide notification dated 21.6.1994, an amendment was made in the Punjab Civil Service Rules vide Punjab Civil Service (First Amendment) Rules, Volume-I Part- I, 1994, according to which the
E employee already in service of the Government of Punjab on the date of coming into force of the amended rules may apply for the change of date of birth within a period of two years from coming into force of these Rules on the basis of documentary evidence, such as Matriculation certificate
F or Municipal Birth Certificate etc. By this amendment, one chance was given to those employees who did not avail the opportunity to get their date of birth corrected within the stipulated period of two years from entry into the Government service and a fresh period of two years was
G provided to them which was to start from the date of amendment. The contention of counsel for the appellants, that this amendment was subsequently withdrawn by the State Government vide letter dated 13.12.1995 of the Deputy Secretary (Personnel) of the Department of

H

Personnel and Administrative Reforms of Government of Punjab, was rightly not accepted by the Courts below in view of Division Bench decision of this Court in Civil Writ Petition No.1476 of 1996, titled as Daljit Singh v. State of Punjab and others, wherein it was held that simply on the basis of the letter dated 13.12.1995, issued by the Deputy Secretary, the operation of the rules cannot come to a stand still. Thus, in view of the said amendment, the suit filed by the plaintiff-respondent cannot be said to be barred by limitation and the contention of the appellants that the date of birth of an employee can only be corrected within two years of entry into service cannot be accepted. The first appellate court has also examined this aspect of the matter and discussed the same in detail in paras 37 to 42 of its judgment. I find no infirmity or illegality in the findings recorded by the Courts below in this regard. Even otherwise, it has been held by a Division Bench of this Court in *Jiwan Dass v. State of Haryana and another,* 1989(2) I.L.R. Punjab 110, that if a Government employee did not get his date of birth altered under the service rules within a stipulated period, then his remedy to get the same altered under the civil law will not be barred because the administrative law do not bar jurisdiction of Civil Court and the decision of the administrative authorities allowing or rejecting the requests for alteration in date of birth is open to judicial scrutiny when challenged before a court of competent jurisdiction."

9. We have heard learned counsel for the parties and carefully scrutinized the records. Para 1 of Annexure-A to Chapter II of the Punjab Civil Service Rules, Volume 1 (as it stood at the time respondent No.1 joined service and also on the date of his making an application for correction of the date of birth recorded in his service book), which has direct bearing on the issue relating to maintainability of the suit filed by respondent No.1 reads as under:

A "In regard to the date of birth declaration of age made at the time of or for the purpose of entry into Government service shall, as against the Government employee in question, be deemed to be conclusive unless, he applies for correction of his age recorded within two years from
B the date of his entry into Government service. The Administrative Department in consultation with the Department of Personnel & Administrative Reforms, however, reserves the right to make a correction in the recorded age of a Government employee at any time
C against the interests of the Government employee when it is satisfied that the age recorded in his service book or in the history of service of a Gazetted Government employee is incorrect and has been incorrectly recorded with the object that the Government employee may derive some
D unfair advantage therefrom."

10. An analysis of the above reproduced rule makes it clear that the declaration of age made at the time of or for the purpose of entry into government service is conclusive and binding on the government servant. The only exception to this
E is that the government servant can make an application for correction of age within two years from the date of entry into service. This necessarily implies that an application made by a government servant for correction of age after two years of his entry into service cannot be entertained by the competent
F authority. However, the competent authority can, at any time, correct the age recorded in the service book or in the history service of a gazetted government employee if it is satisfied that the age has been so recorded with a view tc give undue benefit to the employee / officer like continuance in service beyond the
G age of superannuation. Of course, while undertaking this exercise, the competent authority is bound to comply with the rule of audi alteram partem and give a reasonable opportunity to the concerned employee/officer to represent his cause against the proposed change in the recorded age/date of birth.

H

In other words, while there is a complete bar to the making of an application by the government servant for correction of his recorded age after two years from the date of his entry into government service, the competent authority can make correction at any time if it is found that the age recorded in the service book is incorrect and has been so recorded with a view to enable the concerned employee to continue in service beyond the age of superannuation or gain any other advantage.

11. Undisputedly, the date of birth of respondent No.1, who joined service in March 1973 was recorded in his service book as 27.3.1936. This was done keeping in view the declaration made by him in the application form submitted for the purpose of recruitment to the service and his matriculation certificate. Being a law graduate, respondent No.1 must have been aware of the date of birth i.e., 27.3.1936 recorded in his matriculation certificate and this must be the reason why he mentioned that date in the application form submitted to the Public Service Commission. If the correct date of birth of respondent No.1 was 27.3.1938 and this was supported by the certificates issued by the schools in which he had studied before appearing in the matriculation examination, then he would have immediately after joining the service made an application to the University for change of date of birth recorded in the matriculation certificate and persuaded the concerned authority to decide the same so as to enable him to move the State Government and the High Court for making corresponding change in the date of birth recorded in his service book in terms of Para 1 of Annexure-A to Chapter II of the Punjab Civil Service Rules, Volume I. However, respondent No.1 waited for more than ten years after entering into service and submitted an application dated 27.10.1983 to the University for effecting change in the date of birth recorded in the matriculation certificate by citing the school certificates as the basis for his claim. The Syndicate of the University took about one year and three months to decide the matter in favour of respondent No.1 and the date of birth

recorded in the matriculation certificate was changed from 27.3.1936 to 27.3.1938 sometime in January/February 1985. Thereafter, respondent No.1 submitted representation dated 22.2.1985 to the Registrar of the High Court seeking correction in the date of birth recorded in the service book. His plea was finally rejected in January 1993. It is thus evident that respondent No.1 applied for change of the date of birth recorded in his service book much beyond the time limit of two years specified in the rule. The High Court or for that reason the State Government did not have the power, jurisdiction or authority to entertain the representation made by respondent No.1 after more than twelve years of his entering into service. Therefore, neither of them committed any illegality by refusing to accept the prayer made by respondent No.1 on the basis of change effected by the University in the date of birth recorded in his matriculation certificate. Unfortunately, the trial Court, the lower appellate Court and the learned Single Judge of the High Court totally misdirected themselves in appreciating the true scope of the embargo contained in the relevant rule against the entertaining of an application for correction of date of birth after two years of the government servant's entry into service and all of them committed grave error by nullifying the decision taken by the State Government in consultation with the High Court not to accept the representation made by respondent No.1 for change of date of birth recorded in his service book. All the courts overlooked the stark reality that respondent No.1 had made application for change of date of birth recorded in the matriculation certificate after more than ten years of his entry into government service and the decision taken by the Syndicate to accept his request did not give him any cause for filing application or making representation for change of the date of birth recorded in the service book.

12. This Court has time and again cautioned civil courts and the High Courts against entertaining and accepting the claim made by the employees long after entering into service

for correction of the recorded date of birth. In *Union of India v. Harnam Singh* (supra), this Court considered the question whether the employer was justified in declining the respondent's request for correction of date of birth made after thirty five years of his induction into the service and whether the Central Administrative Tribunal was justified in allowing the original application filed by him. While reversing the order of the Tribunal, this Court observed:

> "A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. 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. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied 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,

A 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 B 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 C of his actual age. Indeed, as held by this Court in *State of Assam v. Daksha Prasad Deka* a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the D date of birth claimed by him. This Court said: (SCC pp. 625-26, para 4)

"... The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record, and not on what the respondent claimed to be his E date of birth, unless the service record is first corrected consistently with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected, he cannot claim that he F has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record."

G (emphasis supplied)

13. In *Secretary and Commissioner, Home Department and others v. R. Kirubakaran* (supra), this Court considered the question whether the Tamil Nadu Administrative Tribunal had H the jurisdiction to entertain an application made by the

respondent for correction of his date of birth just before superannuation. While answering the question in negative, the Court observed:

> "An application for correction of the date of birth should not be dealt with by the 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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. *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 filed within the time, which can be held to be reasonable. The applicant has to produce the evidence*

A *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 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*
B *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 dates 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
C 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 for continuation in service, unless prima facie evidence of unimpeachable character is produced
D 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 merely caused injustice to his immediate junior."

(emphasis supplied)

E

14. In *Union of India v. C. Rama Swamy* (supra), this Court, after an in depth analysis of Rule 16-A of All India Services (Death-cum-Retirement Benefits) Rules, 1958, reversed the order passed by Hyderabad Bench of the Central
F Administrative Tribunal which had directed alteration of the date of birth of the respondent and observed:

"In matters relating to appointment to service various factors are taken into consideration before making a
G selection or an appointment. One of the relevant circumstances is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to

H

be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth there is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change to enable longer benefit to the person concerned. This being so, we find it difficult to accept the broad proposition that the principle of estoppel would not apply in such a case where the age of a person who is sought to be appointed may be a relevant consideration to assess his suitability."

15. By applying the ratio of the above noted judgments, we hold that the suit filed by respondent No.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 No.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. The learned lower appellate Court and the High Court also committed an error by relying upon the amendment made in the rule by notification dated 21.6.1994 which enabled the government servant to seek correction of date of birth within next two years. It is neither the pleaded case of respondent No.1 nor it was argued by the learned counsel appearing on his behalf that the amendment made in 1994 was retrospective or that his client had applied for correction of date of birth after 21.6.1994. Rather, in response to the Court's query, the learned counsel candidly

A stated that his client had applied for correction of the date of birth recorded in the service book for the first and last time in 1985 after the University entertained and accepted his application for correction of his date of birth recorded in the matriculation certificate.

B

16. In the result, the appeal is allowed. The impugned judgment is set aside. The judgments and decrees passed by the trial Court and lower appellate Court are also set aside and the suit filed by respondent No.1 is dismissed. Ordinarily, we C would have saddled respondent No.1 with costs but keeping in view the fact that he has already retired from service, we have refrained from doing so.

R.P. Appeal allowed.