STATE OF HARYANA

v.

SATISH KUMAR MITTAL AND ANOTHER

(Civil Appeal No. 7415 OF 2010)

SEPTEMBER 7, 2010

[R.V. RAVEENDRAN AND H.L. GOKHALE, JJ.]

Service Law:

Date of birth – Correction of – Representation made 9 years after joining the service – Suit filed five years thereafter – HELD: Application for change in date of birth causes prejudice and disturbance in the working of the Department – Courts below should not have entertained the claim beyond the period provided in the Rules, which in the instant case, required the application to be made within two years – Whether the suit was time barred or not, the claim was, in any case, belated – Punjab Civil Services Rules, 1994 – Delay/ Laches.

The date of birth of respondent no. 1 at the time of his joining the Government service on 2.4.1992 was recorded in his service book as 25.3.1962 on the basis of his matriculation certificate. On 2.7.2001 he gave a representation for correction of his date of birth as 25.11.1962. By order dated 24.9.2002 his representation was rejected on the ground that no application for correction in date of birth submitted after two years from entry into service could be entertained. Respondent no. 1 gave a notice u/s 80 CPC on 10.11.2005, and thereafter filed a suit on 16.10.2006 for a declaration that the order dated 24.9.2002 was bad in law. The suit was decreed. The decree was affirmed by the first appellate court as also by the High Court in second appeal. Aggrieved, the State Government filed the appeal.

A **Allowing the appeal, the Court**

HELD: 1.1 The relevant rule always required an application for correction of date of birth to be submitted within two years from joining the service. The amended B **rule of 20.12.2000 made a slight modification that the application filed after two years could be considered which will be only on the recommendation of the Administrative Department. This provision has now been removed after the rule was amended on 13.8.2001. [para** C **12] [1017-H; 1018-A-B]**

1.2 It has been held time and again that the application for correction of date of birth should not be dealt with keeping in view only the public servant concerned, but it is also to be looked into from the point D **of view of the department and the employees engaged therein. The other employees have expectations of promotion based on seniority and suddenly, if such change is permitted, it causes prejudice and disturbance in the working of the department. It is, therefore, quite** E **correct for the State to insist that such application must be made within the time provided in the rules, say, two years, as in the present case. [para 14] [1019-D-E]**

Secretary and Commissioner, Home Department vs. R. Kirubakaran **1993 (2) Suppl. SCR 376 =1994 Suppl. (1)** F **SCC 155;** *State of UP vs. Gulaichi* **2003 (1) Suppl. SCR 762 = 2003 (6) SCC 483;** *State of Punjab vs. S C Chadha* **2004 (2) SCR 216 = 2004 (3) SCC 394; and** *State of Gujarat vs. Vali Mohmed Dosabhai Sindhi* **2006 (3) Suppl. SCR 685 = 2006 (6) SCC 537 – relied on.**

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1.3 It is also seen that such applications are made very often, almost at the end of the service of the employee or, in any case, belatedly. In the instant case, the application was made after some nine years of

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entering into service. Even assuming that respondent no. 1 came to know in June 2001 that there was an error in his date of birth entered in the matriculation certificate, as claimed by him, he took more than three years to issue the notice u/s 80 CPC and then to file the suit. Whether the suit was time barred or not, the claim was in any case belated. It has to be filed within the time provided or within a reasonable time and it is not to be entertained merely on the basis of plausible material. [para 15] [1019-F-H; 1020-A]

State of UP vs. Shiv Narayan Upadhyay 2005 (1) Suppl. SCR 847 = 2005 (6) SCC 49 – relied on.

1.4 In the circumstances, the High Court as well as the courts below clearly erred in entertaining the claim of respondent No.1 for correction in his date of birth at a belated stage. The rules, in the instant case, all throughout required such application to be made within two years. Therefore, the courts clearly erred in finding fault with the appellant for allegedly applying the Notification of 13.8.2001 retrospectively which was not the case over here. [para 16-17] [1020-C-D; 1021-F]

Union of India vs. Harnam Singh 1993 (1) SCR 862 = 1993 (2) SCC 162 – referred to.

Case Law Reference:

1993 (2) Suppl. SCR 376	relied on	para 13
2003 (1) Suppl. SCR 762	relied on	para 13
2004 (2) SCR 216	relied on	para 13
2006 (3) Suppl. SCR 685	relied on	para 13
2005 (1) Suppl. SCR 847	relied on	para 15
1993 (1) SCR 862	referred to	para 16

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7415 of 2010.

From the Judgment & Order dated 18.09.2007 of the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 3013 of 2007.

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Manjit Singh, Sukhda Pritam, Prashant Shukla, Kamal Mohan Gupta for the Appellant.

Manoj Swarup, Ankit Swarup, Devesh Kumar Tripathi, Ajay C Kumar, for the Respondents.

The Judgment of the Court was delivered by

GOKHALE, J. 1. Leave granted.

D 2. This appeal seeks to challenge the order passed by the High Court of Punjab and Haryana in Regular Second Appeal No.3013/2007 dated 18.9.2010 whereby the learned single judge has confirmed the judgment of the Additional District Judge and that of the Civil Judge, Senior Division, whereby he E had granted a decree in favour of the Ist respondent herein.

The short facts leading to this appeal are as follows:

3. Respondent No.1 joined the office of the Director of Prosecution, Haryana, as an Assistant District Attorney on F 2.4.1992. At that time, he got the date of his birth recorded in the service book on the basis of the Matriculation Certificate in which the date was mentioned as 25.3.1962. It is the case of the first respondent that there was a family function in June 2001 where his relatives gathered, and wherein during the G discussion he came to know that his date of birth was actually 25.11.1962, and that the one recorded in the matriculation certificate was erroneous.

4. The first respondent made a representation on 2.7.2001 for correction of the date of birth, which was rejected by the H

communication dated 24.9.2002 from the Superintendent of Jails and the Judicial and Financial Commissioner (who is also the Principal Secretary to the Administration of Judicial Department) addressed to the Director of Prosecution, State of Haryana. The representation was rejected on the basis of Finance Department's Notification dated 13.8.2001, which laid down that no application for correction in date of birth, submitted after two years from entry into service, can be entertained.

5. The first respondent gave a notice under section 80 of the Code of Civil Procedure (hereinafter referred to as the 'CPC' for short) on 10.11.2005 and thereafter filed a suit on 16.10.2006 for a declaration that the decision dated 24.9.2002 was bad in law. The second respondent herein viz. Secretary, Board of School Education, Haryana, was joined as second defendant in the suit though he was a proforma-defendant.

6. The Learned Addl. Civil Judge, Senior Division, who decided the suit, being Civil Suit No.18 of 2006 took the view that the appellant was giving a retrospective effect to the Notification dated 13.8.2001 and that was not permissible. The Learned Civil Judge held that the suit was within time and granted a decree that the order dated 24.9.2002 was illegal, null and void and that the date of birth of the first respondent was 25.11.1962.

7. The appellant filed an appeal against this judgment and order to the Court of the Additional District Judge, Karnal being Civil Appeal No.66/2007 which came to be dismissed and so also the Regular Second Appeal No.3013/2007, which was filed against that order. The Learned Single Judge dismissed the second appeal by a short order in view of the concurrence of views of the courts below.

8. Being aggrieved by all these orders, the present appeal by Special Leave has been filed. It is submitted on behalf of the appellant that the first respondent joined as the Assistant

A District Attorney on 2.4.1992 and the date of birth given by him on the basis of the matriculation certificate was recorded in his service book. Nine years later, he has sought to correct the date of birth, allegedly on the basis of the discussion at a family function and by pointing out the extracts of births of his brothers
B and sisters (though in none of them, there is any name of the child). Even after his representation was turned down on 24.9.2002 on the basis of the Government Notification dated 13.8.2001, he took more than three years to serve the notice under Section 80 of the CPC, which was served on 10.11.2005
C and the suit was filed almost one year thereafter on 16.10.2006. The appellant submitted that the action on part of the first respondent was belated. It suffers from latches and the suit was also barred by limitation. The Respondent No.1 on the other hand, defended the impugned judgments as correctly rendered.

D 9. It was submitted on behalf of the appellant that the Courts below have erred in not accepting the appellant's submission on the basis of the Notification dated 13.8.2001 issued by the Finance Department, Government of Haryana, containing the amendments to the Punjab Finance Rules
E framed under Article 283(2) of the Constitution of India. It is submitted that the Courts have erred in treating this as a case of retrospective application of the relevant rule. It is pointed out that prior to the Notification dated 13.8.2001 also there was the governing rule 2.5 of the Punjab Civil Services Rules 1994
F which laid down that the date of birth of the government employees, once recorded in the service book, cannot be corrected except in case of a clerical error without previous order of the government. The rule further provided that the date of birth/declaration of age made at the time of entry into service
G shall be deemed to be conclusive as against the government servant, unless he applies for correction of his age within two years from the date of his entry into government service.

The relevant Rule contained in paragraph 1 of those rules reads as follows:-

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"ANNEXURE (A)

(Referred to in Rule 2.5 and Note 3 thereunder)

1. In regard to the date of birth a declaration of age made at the time or for the purpose of entry into Government service shall, as against the Government employee in question be deemed to be conclusive. The employee already in the service of the Government of Punjab on the date of coming into force of the Punjab Civil Services (First Amendment) Rules. Volume-I, Part-I, 1994, may apply for the change of date of birth within a period of two years from the coming into force of these rules on the basis of confirmatory documentary evidence such as Matriculation Certificate or Municipal Birth Certificate etc. No request for the change of date of birth shall be entertained after the expiry of the said period of two years. Government, however, reserves the right to make a correction in the recorded age of a Government employee at any time against the interest 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 unfair advantage therefrom."

10. This provision was later on amended and under the rules amended on 20.12.2000, it was provided that if application is made beyond two years, it must be considered on the recommendation of the Administrative Department and the Chief Secretary only in consultation with the Finance Department. It was entirely left to the discretion of the government whether to entertain any such application. The principle provision, which required that the employee must apply within two years, remained unaltered. This rule amended on 20.12.2000 reads as follows:

"*1. These rules may be called Punjab Financial*

Volume-I (Haryana First Amendment) Rules, 2000.

2. In the Punjab Financial Rules, Volume-I, in Annexure 'A' referred to in Rule 7-3 and Note 3 thereunder,-

(I) For paragraph 1, the following paragraph shall be substituted, namely:-

1. In regard to the date of birth a declaration of age made at the time of, or for the purpose of entry into Government service, shall be against the Government employee in question, be deemed to be conclusive unless he applied for correction of his age as recorded within two years from the date of his entry into Government service. Wherever, it is proposed to consider the application of the employee for correction of his age within a period of two years from the date of his entry into government service, the same would be considered by the government in consultation with the Chief Secretary to Government of Haryana. In cases where such application has been made beyond the stipulated period and is proposed to be accepted, the same shall be considered on recommendations of the Administrative Department and the Chief Secretary to Government of Haryana, in consultation with the Finance Department, Government however, reserves the right to make a correction in the recorded age of the government employee at any time against the interest of that government employee when it is satisfied that the age recorded in his service book or in the history of services of a government employee is incorrect and has been incorrectly recorded with the object that the government employee may derive some unfair advantage therefrom."

11. Subsequently, by the notification dated 13.8.2001 amending the rules, it is once again made clear that unless the application is made within two years, no change in the date of

birth will be entertained. This new rule 1, as amended on 13.8.2001 reads as follows:

> " *1. These rules may be called Punjab Financial Volume-I (Haryana First Amendment) Rules, 2001.*
>
> 2. In the Punjab Financial Rules, Volume-I, in Annexure 'A' referred to in Rule 7.3 and Note 3 thereunder:-
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> (i) for paragraph 1, the following paragraph shall be substituted, namely:-
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> 1. In regard to the date of birth, a 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 applied for correction of his age as recorded within two years from the date of his entry into government service. No application submitted beyond the stipulated period of two years for change in date of birth will be entertained. Wherever the application for correction of his age is submitted by the employee within a period of two years from the date of his entry into government service, the same would be considered by the government in consultation with the Chief Secretary to Government of Haryana. The government, however, reserves the right to make a correction in the recorded age of government employee at any time against the interest of that government employee when it is satisfied that the age recorded in his service book or in the history of services of a government employee is incorrect and has been incorrectly recorded with the object that the government employee may derive some unfair advantage therefrom."

12. Thus, as seen from the above position, the relevant rule always required an application for correction of date of birth to be submitted within two years from joining the service. The

A amended rule of 20.12.2000 made a slight modification that application filed after two years could be considered which will be only on the recommendation of the Administrative Department. This provision has now been removed after the rule was amended on 13.8.2001.

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13. The import of such a provision has been clarified by this court from time to time. Thus, in paragraph 7 of the *Secretary and Commissioner, Home Department vs. R.Kirubakaran* [1994 (Suppl. 1) SCC 155] this Court held as follows:

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" 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
D 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
E 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
F 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
G 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
H 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." A

The Court has, thereafter stated that burden in such cases lies on the applicant and noted that in many of such cases, the employees approach the Court on the eve of retirement. The Courts and Tribunals must be slow in granting any interim relief in such cases. The same principle has been reiterated in *State of UP vs. Gulaichi* [2003 (6) SCC 483]; *State of Punjab vs. S C Chadha* [2004 (3) SCC 394]; and *State of Gujarat vs. Vali Mohmed Dosabhai Sindhi* [2006 (6) SCC 537]. B C

14. As recorded above, it has been held time and again that the application for correction of date of birth is also to be looked into from the point of view of the concerned department and the employees engaged therein. The other employees have expectations of promotion based on seniority and suddenly if such change is permitted; it causes prejudice and disturbance in the working of the department. It is, therefore, quite correct for the State to insist that such application must be made within the time provided in the rules, say, two years, as in the present case. D E

15. It is also seen that such applications are made very often, almost at the end of the service of the employee or in any case, belatedly. Whatever may be the reason, the fact remains that in the present case, the application was made after some nine years of joining into service. Even assuming that first respondent came to know in June 2001 that there was an error in his date of birth entered in the matriculation certificate, as claimed by him, he took more than three years to issue the notice under Section 80 of the CPC and then to file the suit. Whether the suit was time barred or not, the claim was in any case belated. It has to be filed within the time provided or within a reasonable time and it is not to be F G H

A entertained merely on the basis of plausible material as held in *Kirbukaran* (supra). As observed by this Court in *State of UP vs. Shiv Narayan Upadhyaya* [2005 (6) SCC 49]:

> "As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is
B made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible."

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16. In the circumstances in our view, the High Court as well as the courts below clearly erred in entertaining the claim of Respondent No.1 for correction in his date of birth at a belated stage. In such a matter, we are concerned with the correction
D in the date of birth for the purpose of service record and not for any other purpose. The observation of this Court in para 7 of the *Union of India vs. Harnam Singh* [1993 (2) SCC 162] in this behalf are quite apt.

> **"7.** A Government servant, after entry into service, acquires
E 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
F 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,
G 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
H 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, 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. ....."

17. This being so, the courts should not have entertained the claim of the first respondent belatedly and beyond the period provided in the rules. The rules, in the instant case, all throughout required such application to be made within two years. Therefore, the courts clearly erred in finding fault with the appellant for allegedly applying the Notification of 13.8.2001 retrospectively which was not the case over here.

18. In the circumstances, we allow this appeal and set aside the orders passed by the High Court as well as by the courts below. The suit filed by the first respondent will stand dismissed.

R.P. Appeal allowed.