

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

W.P. (L) No. 374 of 2014

Lal Bahadur ... .. ...Petitioner

**-Versus-**

Jamshedpur Engineering & Machine Manufacture  
Company Ltd., Jamshedpur through its Managing Director.

... .. ...Respondents

**with**

W.P. (L) No. 4737 of 2012

Lal Bahadur ... .. ...Petitioner

**-Versus-**

Jamshedpur Engineering & Machine Manufacture  
Company Ltd., Jamshedpur through its Managing Director.

... .. ...Respondents

**CORAM :THE HON'BLE MR. JUSTICE DR. S.N.PATHAK**

**(Through: Video Conferencing)**

For the Petitioner : Mr. Shashank Shekhar, Advocate.

For the Respondents : Mr. Manish Kumar, Advocate

**11/ 01.03.2021** Heard the parties.

2. Since both the writ petitions are arising out of same reference case, these are heard together and are being disposed of by this common judgment.

3. In W.P.(L). No. 374 of 2014 the petitioner has prayed for quashing the Award dated 06.09.2013, passed by learned Presiding Officer, Labour Court, Jamshedpur in Ref. Case No. 04 of 2007, whereby the reference has been answered in favour of the Management and against the Workman.

In W.P.(L). No. 4737 of 2012, petitioner has prayed for quashing the order dated 07.07.2012, passed by learned Presiding Officer, Labour Court, Jamshedpur in Ref. Case No. 04 of 2007, whereby, he has rejected the application dated 04.05.2012 and 05.06.2010 for summoning the dealing clerk/ competent authority, Employee's Provident Fund Organization.

4. The facts of the case lies in a narrow compass. In the year 1983, the petitioner was appointed as Guard under respondent-Management and since then, he was working with utmost loyalty, integrity and upon the satisfaction of his superior without any stigma in his service career. While discharging his duties, he received letter dated 07.09.2004 from the respondent-management whereby it was informed to the petitioner that on completion of 60 years of age, he is going to superannuate from service w.e.f. 30.09.2004 treating his date of birth as 01.10.1944. It is the case of the petitioner that his date of birth is

28.04.1955, which was also accepted by the respondent-management and according to this, his actual date of superannuation would be 30.04.2015. Soon after he received the letter dated 07.09.2004, the workman submitted representation before the respondent-management for correction of his date of birth but no action was taken by the respondent. Hence, the petitioner was compelled to raise industrial dispute and the Govt. of Jharkhand vide notification dated 09.10.2006 referred the same to the learned Labour Court, Jamshedpur by framing following issue for adjudication:

“Whether the premature retirement of Sri Lal Bahadur, Helper, T. No. 64/50401 by the Management of M/s. Jemco Ltd., Jamshedpur is justified? If not, what relief he is entitled to?”

5. Upon receipt of the said notification, the learned Labour Court registered the case as Ref. Case No. 04 and 2007 and issued notices to both the parties for filing their respective written statements, rejoinder, etc. Both parties appeared before the Court and filed their respective written statements in support of their cases. Both parties also adduced oral as well as documentary evidences. The workman has examined himself as the sole witness whereas, the management has also examined one witness. Thereafter, after hearing the parties and perusing the evidences and documents brought on record, the learned Labour Court vide its Award dated 06.09.2013, answered the reference in favour of the Management and against the Workman.

Aggrieved by the said Award, the petitioner-workman has knocked the door of this Court.

6. Mr. Shashank Shekhar, learned counsel appearing for the petitioner vociferously argues that the Award passed by the learned Labour Court, Jamshedpur is grossly illegal and arbitrary and suffers from error apparent from the face of the record. The Award is perverse in law as well as in fact since the learned Labour Court travelled beyond the terms of reference. Learned counsel further argues that from the contents of the various documents which were exhibited before the learned Labour Court it is manifested that the concerned workman is entitled for reinstatement in services. Learned Labour Court has overlooked the fact that it is a creation of statute and it cannot be allowed to travel beyond the terms of reference. Learned counsel further argues that the learned Labour Court has failed to consider the fact that without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947, the services of the concerned workman cannot be terminated. Learned counsel submits that petitioner was under impression that his date of birth recorded in his service

record was 28.04.1955 and as such, he would be superannuated in the year 2015 and hence, he did not raise any objection for correction of his date of birth till the date when he received letter dated 07.09.2004, whereby it was informed that the petitioner is going to superannuate from the service w.e.f. 30.09.2004 and soon after receipt of the said letter, he made representation before the respondent-management for correction of his date of birth and thereafter raised industrial disputes for the said purpose. Hence, it cannot be said that demand for correction of date of birth has been raised at the fag end of service career.

Learned counsel further argues that in LIC Policy, which was opened by the respondent-management in favour of the petitioner-workman, his date of birth was mentioned as 28.04.1955 and said date of birth was also mentioned in letter dated 28.07.2005 (Annexure-5), written by Regional Provident Fund Commissioner-II, Jamshedpur to the Central Provident Fund Commissioner, Head Office, New Delhi. Learned counsel lastly submits that the petitioner is illiterate and hand to mouth and further, the report of the CMO, who has assessed the age of the petitioner, is missing which shows the callous and capricious approach of the respondent-management.

7. On the other hand, learned counsel appearing for the respondent vehemently opposes the contention of the learned counsel for the petitioner and submits that as per the prevalent practice and rules, the employment record of petitioner was also prepared at the time of his appointment and in the said record, the date of birth of the petitioner was recorded as 01.10.1944 and as such, the management has superannuated him on 01.10.2004, on attaining the age of superannuation i.e. 60 years. Learned counsel further argues that reliance of the petitioner on documents pertaining to LIC Policy, where his date of birth is mentioned as 28.04.1955, is of no help to him as the said policy was not taken by the management and perhaps, the date of birth informed by the petitioner was filled-up by the concerned clerk of Life Insurance Corp. Ltd. and management has never submitted any proposal form for issuance of the LIC Policy in favour of petitioner. Learned counsel further argues that reliance of the petitioner on EPFO letter (Ext. W/1) is also of no help to him as after receipt of the same, the management has sent revised Form No. 3 (P.S.), wherein the date of birth of the petitioner has been shown as 01.10.1944. It has been further argued that in the year 2003, workman himself had filled-up prescribed form for Pension Scheme and endorsed the same by putting his signature wherein, his date of birth was recorded as 01.10.1944. Learned counsel further argues that in his entire service career, the petitioner never raised any dispute regarding his date of birth and

after superannuation, he is claiming that his date of birth is 28.04.1955 and as such, his date of superannuation would be 30.04.2015. Learned counsel lastly submits that the Hon'ble Apex Court as well as this Court in catena of decisions has held that no correction can be made in the date of birth at the fag end of service career and as such, this writ petition is fit to be dismissed.

8. Be that as it may, having heard the parties and upon perusal of the records, it appears that Award is fully justified and no interference is warranted in the instant writ application for the following facts and reasons:

(I) It was obligatory on the part of the petitioner to bring on record as to on what basis his date of birth was recorded as 28.04.1955 in the so-called LIC Policy but the petitioner has failed to bring on record any document on the basis of which the said date of birth was recorded in the LIC Policy.

(II) Further, the LIC Policy was taken by the petitioner on his own and the Management has no concern with the same. No proposal form whatsoever has been brought on record and it has also not been pleaded that any authorized officer of the respondent-company furnished the date of birth of the petitioner as 28.04.1955 for recording the same in the LIC Policy.

The entries made in the LIC Policy are based on the information supplied by the proposer (petitioner herein) and the proposer is solely responsible for any wrong information furnished by him, on the basis of which the same used to be entered in the LIC Policy. Further, **LIC Policy cannot be said to be a valid proof of date of birth of an employee.**

(III) For improving his case, it was incumbent upon the petitioner-workman to produce any legal documents, such as Medical Book, ID Card, etc. issued by the respondent-Management, by which it can be established that his actual date of birth is 28.04.1955 and management has wrongly recorded his date of birth as 01.10.1944 but the petitioner has failed to produce any such documents in support of his case.

(IV) In the year 2003, the petitioner himself filled-up prescribed form for pension scheme and endorsed the same by putting his signature wherein his date of birth is mentioned as 01.10.1944, however, after superannuation, he came with a lame claim that his date of birth is 28.04.1955.

- (V) Petitioner accepted the said date of birth all along his service career of more than 20 years and it was only in the year 2004 i.e. at the fag end of service career, he made an application for correction in the date of birth based on the entry made in the service excerpts and when no heed was paid to his said request, he raised an industrial dispute.
- (VI) Nothing has been brought on record to show that at the time of appointment of the petitioner what was his date of birth and petitioner has also failed to bring on record the letter of appointment showing the date of birth.

9. The Hon'ble Apex Court as well as this Court in catena of decisions has held that request for change of date of birth in service records at the fag end of service career is not sustainable.

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

*“7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ...According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is*

*on the applicant to prove the wrong recording of his date of birth, in his service book.”*

In case of *State of Tamil Nadu Vs. T.V.Venugopalan*, reported (1994) 6 SCC 302, the Hon’ble Apex Court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under:-

*“.....The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register.*

The Hon’ble Apex Court in the case of *State of Maharashtra & Anr. v. Gorakhnath Sitaram Kamble & Ors.*, reported in (2010) 14 SCC 423 has held that:

*“16. The learned counsel for the appellant has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad Vs. Raj Kumar Agnihotri [(2005) 11 SCC 465 : 2006 SCC (L&S) 96]. In this case, this Court has considered a number of judgments of this Court and observed that the grievances as to the date of birth in the service record should not be permitted at the fag end of the service career.*

*17. In another judgment in State of Uttaranchal Vs. Pitamber Dutt Semwal [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.”*

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

*“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government*

*service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights.*

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

In case of **Union of India Vs. Harnam Singh [(1993) 2 SCC 162]**, the Hon’ble Apex Court has held that, “No Court or the Tribunal can come to the aid of those who sleep over their rights”.

- 10.** Similar view has been expressed by the Hon’ble Apex Court in case of **Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh**, reported in **(2020) 2 Supreme Today 189**, wherein the Hon’ble Apex Court has held that, “request for change of the date of birth in the service records at the fag end of service is not sustainable.”

Time and again it has been held that if government servants sleep over their right and are not vigilant, the Court cannot come to their rescue/ aid and grant relief only because they were ignorant of the Rules.

These decisions lead to a different dimension of the case that correction of date of birth at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court

*II.* As a sequitur to the aforesaid observations, rules, guidelines and judicial pronouncements, no case is made out for interference in the impugned Award and hence, both writ petitions being devoid of any merit, are hereby dismissed.

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