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STATE OF M.P. & ORS.

v.

PREMLAL SHRIVAS  
(Civil Appeal No. 2331 of 2004)

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SEPTEMBER 19, 2011

**[D.K. JAIN AND ASOK KUMAR GANGULY, JJ.]**

*Date of birth:*

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*Correction of date of birth of a government servant entered in the service book at the time of entry into service – Jurisdiction of Tribunal and Court to direct the employer to make such correction – Held: Court or Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth recorded in the service book – 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 erroneous – No Court/ Tribunal can come to the aid of those who sleep over their rights – Delay/laches – Jurisdiction.*

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*Correction of date of birth – Application for, filed by respondent 25 years after his induction into service – Rejected by employer – Tribunal upheld the decision of employer – High Court directed the employer to correct the date of birth – On appeal, held: It cannot be said that the decision of the Tribunal, rejecting respondent's plea that it was for the first time in the year 1990 when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated – Respondent was aware ever since 1965 that his date of birth as recorded in the service book was 1st June, 1942 and not 30th June, 1945 – Delay of over two*

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decades in applying for the correction of date of birth was ex- A  
 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 – There was also no substance in the plea of the  
 respondent that since Rule 84 of the M.P. Financial Code B  
 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 – Rule 84 of the Code provides that the date of birth C  
 recorded in the service book at the time of entry into service  
 is conclusive and binding on the government servant –  
 However, an exception was carved out in the rule, permitting  
 the public servant to request later for correcting his age  
 provided that incorrect recording of age is on account of a  
 clerical error or mistake caused due to negligence – Onus is D  
 on the employee concerned to prove such negligence – No  
 evidence placed on record by the respondent to show that the  
 date of birth recorded as 1st June, 1942 was due to the  
 negligence of some other person – In this fact situation, High  
 Court ought not to have directed the appellants to correct the E  
 date of birth of the respondent under Rule 84 – Delay/laches  
 – Madhya Pradesh Financial Code – Rule 84.

The respondent was appointed to the post of a police  
 constable in 1965. In the service book, prepared at the  
 time of his entering the service, his date of birth was F  
 recorded as 1st June, 1942. His father's name was  
 recorded as Gayadin. In 1990, he made a representation  
 to the appellants seeking correction of his father's name  
 and date of birth in the service record. The representation G  
 was rejected on the ground that the service record of the  
 respondent was prepared on the instructions of his  
 maternal grandfather accompanying the respondent at  
 the time of enrolment, the same carries his finger and  
 thumb impressions and duly attested by the then  
 Superintendent of Police on 7.9.1976. Moreover at the H

A time of enrolment, the respondent was subjected to a medical examination on 27.9.1965, when the Examining Medical Authority had certified his age to be 23 years. The respondent filed an application before the Administrative Tribunal. The Tribunal dismissed the application. The  
B respondent filed a writ petition before the High Court which was allowed.

The question which arose for consideration in the instant appeal was whether the High Court was justified in directing the appellant to change date of birth of the  
C respondent in his service record on his request made after a lapse of over two decades of his joining the service.

Allowing the appeal, the Court

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HELD: 1. 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  
E 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  
F 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. If a government servant makes a  
G 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

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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. [Para 9] [452-C-G]

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*Union of India vs. Harnam Singh* (1993) 2 SCC 162: 1993 (1) SCR 862 – relied on.

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*Punjab and Haryana High Court at Chandigarh vs. Megh Raj Garg and Anr.* (2010) 6 SCC 482: 2010 (7) SCR 172 – referred to.

2. The High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book was 1st June, 1942 and not 30th June, 1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27th September, 1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1st June, 1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record was vitiated. 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

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A 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 was 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. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. The said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence. In the instant case, no evidence was placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. In this fact

situation, the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules. The decision of the High Court, holding that the respondent was entitled to get his date of birth corrected in the service record, cannot be sustained. [Paras 12, 14, 16] [454-G; 455-A-F; 456-D-F; 457-C-E]

*Secretary And Commissioner, Home Department and Ors. vs. R. Kirubakaran*. 1994 Supp (1) SCC 155 1993 (2) Suppl. SCR 376; *State of U.P. and Anr. vs. Shiv Narain Upadhyaya* (2005) 6 SCC 49; 2005 (1) Suppl. SCR 847; *Commissioner of Police, Bombay and Anr. vs. Bhagwan V. Lahane* (1997) 1 SCC 247; 1996 (9) Suppl. SCR 199; *Union of India vs. C. Rama Swamy and Ors.* (1997) 4 SCC 647; 1997 (3) SCR 760 – relied on.

**Case Law Reference:**

2010 (7) SCR 172	Referred to	Para 7	
1993 (1) SCR 862	Relied on	Para 9	
1993 (2) Suppl. SCR 376	Relied on	Para 10	E
2005 (1) Suppl. SCR 847	Relied on	Para 11	
1996 (9) Suppl. SCR 199	Relied on	Para 15	
1997 (3) SCR 760	Relied on	Para 15	F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2331 of 2004.

From the Judgment & Order dated 17.01.2002 of the High Court of Judicature at Jabalpur (M.P.) in Writ Petition No. 2561 of 2001.

Vibha Datta Makhija for the Appellants.

Mridula Ray Bharadwaj for the Respondent.

A The Judgment of the Court was delivered by

B **D.K. JAIN, J.** 1. This appeal is directed against the judgment and order dated 17th January, 2002 passed by the High Court of Madhya Pradesh, Jabalpur Bench, in Writ Petition No. 2561 of 2001. By the impugned judgment, the High Court has allowed the writ petition preferred by the respondent, directing the appellants to correct the service record of the respondent, incorporating his date of birth as 30th June, 1945 in place of 1st June, 1942, within a period of one month from the date of the impugned order.

C 2. To appreciate the controversy involved, a brief reference to the facts, as stated in the impugned judgment, would suffice. These are:

D The respondent was appointed to the post of a Police Constable in the year 1965. In the service book, prepared at the time of his entering the service, his date of birth was recorded as 1st June, 1942. His father's name was recorded as Gayadin. This position continued till 1990, when he made a representation to the appellants seeking correction of his father's name and date of birth in the service record. The plea of the respondent was that at the time of joining the service, his date of birth as also the name of his father was wrongly recorded on the basis of the information furnished by his maternal grandfather, who was accompanying him at that point of time as he was living with him after the death of his father. According to the respondent, he came to know about the mistake when he was promoted as Head Constable. In support of his application, the respondent submitted his class IV marksheet, transfer certificate of class VIII and a certificate from a local MLA.

H 3. By order dated 8th March 1995, the representation came to be rejected, *inter-alia*, on the ground that the service record of the respondent was prepared on the instructions of his maternal grandfather, accompanying the respondent at the

time of enrolment, the same carries his finger and thumb impressions and was duly attested by the then Superintendent of Police on 7th September, 1976. Moreover, at the time of enrolment, the respondent had been subjected to a medical examination on 27th September 1965, when the Examining Medical Authority had certified his age to be 23 years.

4. Being dissatisfied, the respondent preferred an application before the M.P. Administrative Tribunal (hereinafter referred to as "the Tribunal"). Referring to several documents brought on record by the appellants, which included some documents which had been filled up by the respondent himself and showing the date of his birth as 1st June, 1942 and father's name as Gayadin, the Tribunal dismissed the application vide order dated 18th April, 2001.

5. Having failed before the Tribunal, the respondent filed a writ petition before the High Court which set aside the order of the Tribunal and allowed the writ petition. Being aggrieved, the State of Madhya Pradesh and two of its functionaries are before us in this appeal.

6. Despite service of notice, the respondent remains unrepresented. Accordingly, we have heard learned counsel for the appellants.

7. The learned counsel, appearing on behalf of the appellants, strenuously urged that the High Court ought not to have directed a change in date of birth of the respondent, on his request, made after a lapse of over two decades of his joining the service. It was asserted that some of the documents in which his father's name was shown as Gayadin, bore his signatures and, therefore, the plea of the respondent that he was not aware of the contents of his service record cannot be accepted. It was also submitted that as per Rule 84 of the M.P. Financial Code, the date of birth recorded in the service record is conclusive and only a bonafide clerical mistake in the said record can be corrected. To bolster his submission, learned

A counsel commended us to a recent decision of this Court in *Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg & Anr.*<sup>1</sup>, wherein it has been held 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.

8. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

9. 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 (See: *Union of India Vs. Harnam Singh*<sup>2</sup>).

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1. (2010) 6 SCC 482.

H 2. (1993) 2 SCC 162

10. In *Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran*<sup>3</sup>, indicating the factors relevant in disposal of an application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus :

“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*

3. 1994 Supp (1) SCC 155.

A *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 in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such

B 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 such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the

C 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 applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation.

D 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 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

E injustice to his immediate junior.”

(Emphasis supplied)

F 11. In *State of U.P. & Anr. Vs. Shiv Narain Upadhyaya*<sup>4</sup>, while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

G 12. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the

H 4. (2005) 6 SCC 49.

respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1st June, 1942 and not 30th June, 1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27th September, 1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1st June, 1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record was vitiated. 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.

13. Rule 84 of the M.P. Financial Code, heavily relied upon by the respondent reads as under :

"Rule 84. Every person newly appointed to a service or a post under Government should at the time of the

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A appointment declare the date of his birth by the Christian  
 era with as far as possible confirmatory documentary  
 evidence such as a matriculation certificate, municipal birth  
 certificate and so on. If the exact date is not known, an  
 approximate date may be given. The actual date or the  
 B assumed date determined under Rule 85 should 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 Government. The date of birth,  
 once recorded in this manner, must be deemed to be  
 C absolutely conclusive, and except in the case of a clerical  
 error no revision of such a declaration shall be allowed to  
 be made at a later period for any purpose whatever."

14. It is manifest from a bare reading of Rule 84 of the M.P.  
 Financial Code that the date of birth recorded in the service  
 D book at the time of entry into service is conclusive and binding  
 on the government servant. It is clear that the said rule has been  
 made in order to limit the scope of correction of date of birth  
 in the service record. However, an exception has been carved  
 out in the rule, permitting the public servant to request later for  
 E correcting his age provided that incorrect recording of age is  
 on account of a clerical error or mistake. This is a salutary rule,  
 which was, perhaps, inserted with a view to safeguard the  
 interest of employees so that they do not suffer because of the  
 mistakes committed by the official staff. Obviously, only that  
 F clerical error or mistake would fall within the ambit of the said  
 rule which is caused due to the negligence or want of proper  
 care on the part of some person other than the employee  
 seeking correction. Onus is on the employee concerned to  
 prove such negligence.

G 15. In *Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane*<sup>5</sup>, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the

H <sup>5</sup>. (1997) 1 SCC 247.

date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him. Again, in *Union of India Vs. C. Rama Swamy & Ors.*<sup>6</sup>, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

16. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules.

17. In view of the foregoing discussion, the decision of the High Court, holding that the respondent was entitled to get his date of birth corrected in the service record, cannot be sustained. Resultantly, the appeal is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs throughout.

D.G.

Appeal allowed.

6. (1997) 4 SCC 647.