

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 08/DB/2015

Laxmi Devi, W/o Late Sh. Sampuran Singh, Old, Hydell Colony,
Dhakrani, Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through its Secretary, Power & Energy,
Uttarakhand Govt. Dehradun,
2. Uttarakhand Jal Vidyut Nigam Ltd. through its Managing
Director, Ujjwal, Maharani Bagh, GMS Road, Dehradun,
3. Dy. General Manager, Jal Vidyut Utpadan Mandal, Dhakrani,
Dehradun,
4. Executive Engineer, Jal Vidyut Utpadan Division, Dhakrani,
Dehradun

.....Respondents

Present: Sri R.K.Garg, Counsel
for the petitioner
Sri Umesh Dhaundiyal, P.O
for the respondent No. 1
Sri V.D.Joshi, Counsel
for the respondents No. 2 & 3

JUDGMENT

DATE: DECEMBER 23, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The present claim petition has been filed for seeking the following relief:

“(i) It is humbly prayed that the respondent be directed to rectify the already mentioned the date of birth 18.12.1955 in the Service Book of the petitioner by the date of birth 02.07.1960 as per school records and school leaving certificate. It is to say that the date of birth 02.07.1960 be re-mentioned in Service Book in place of already mentioned date of birth 18.12.1955 in Service Book at the time of joining her services in question through its amendment.

The date of birth 02.07.1960 be declared for the purpose of retirement.

(ii) The compensation for litigation charges and mental agony Rs. 20,000/-”

2. The relevant facts in brief are that the petitioner was appointed as Labourer after the death of her husband on compassionate ground in Jal Vidyut Utpadan Khand, Dhakrani office of the Executive Engineer on 07.02.2004. She joined her duties/ service on 07.02.2004.

3. The petitioner in her claim petition has stated that she has submitted the original School Leaving Certificate after passing Class-V in which her date of birth was 02.07.1960 (Annexure: A-5-Duplicate copy of the School Leaving Certificate). It has also been stated in the claim petition that the department got a

medical examination conducted by the Chief Medical Officer on 18.12.2003 and her date of birth in service book was recorded as 18.12.1955 according to this Medical Certificate (Annexure: A-6).

4. The contention of the petitioner in her claim petition is that the department should have entered 02.07.1960 as her date of birth as per the School Leaving Certificate and not 18.12.1955 as per the Medical Certificate.

5. The petitioner has stated in her claim petition that she requested many times from time to time to correct the date of birth but her all requests have gone in vain. She contends that in the series of requests, a representation was made on 22.07.2014 to record the correct date of birth as 02.07.1960 in the service book (Annexure: A-1). The representation of the petitioner was rejected on 19.08.2014 (Annexure: A-2). Hence, the petition.

6. The main grounds stated by the petitioner in her claim petition for relief sought are that the department should have recorded the date of birth as per the School Leaving Certificate and the same could not have been determined on the basis of the medical certificate as school records have more probative value than the Medical Examination Certificate and no opportunity of hearing was given to the petitioner at the time of joining the service when the date of birth was entered into the service book.

7. The respondents no. 2 and 3 have opposed the claim petition and it has been stated in their joint written statement that the petitioner did not submit the School Leaving Certificate at the time of joining and therefore, the medical examination of the petitioner was conducted in order to determine the date of birth. Since the petitioner did not submit School Leaving Certificate,

the date of birth of the petitioner was recorded as 18.12.1955 according to the medical certificate. It has further been stated in the written statement that before 22.07.2014, the petitioner had never given any application/representation for correction in the date of birth. The respondents also contended that the date of birth of the petitioner has been entered into service book according to उत्तर प्रदेश सेवा में भर्ती (जन्म दिनांक का अवधारण) नियमावली, 1974 which has been adopted by the Jal Vidyut Utpadan Nigam vide Notification dated 30.06.1975 (Annexure: A-8). It would be appropriate to reproduce the said Niyamawali below:

“परिषदीय कर्मचारियों की जन्म-तिथि की निर्धारण सम्बन्धी नियमावली

संख्या 2661-जी एम/रा0वि0प0-तीन-28 दिनांक: जून 30, 1975

परिषद ने शासकीय अधिसूचना संख्या 41/2-69-नियुक्ति-4, दिनांक 28 मई, 1974 में निहित निदेशों एवं प्रक्रियाओं को अपने अधीन क्रियान्वन हेतु ग्रहण कर लिया है।

संलग्नक

संख्या 41/2-69-नियुक्ति-4 दिनांक- 28 मई, 1974

संविधान के अनुच्छेद 309 के प्रतिबंधात्मक दण्ड के अधीन शक्तियों का प्रयोग करके राज्यपाल निम्नलिखित नियमावली बनाते हैं:-

1. संक्षिप्त नाम तथा प्रारम्भ :- (1) यह नियमावली उत्तर प्रदेश सेवा भर्ती (जन्म दिनांक का अवधारण) नियमावली, 1974 कहलायेगी।
- (2) यह तुरन्त प्रवृत्त होगी।
2. ठीक जन्म दिनांक या आयु का अवधारण:— किसी सरकारी सेवक का जन्म- दिनांक, जैसा कि हाई-स्कूल या समकक्ष परीक्षा में उत्तीर्ण हो जाने के प्रमाण-पत्र में अभिलिखित हो, अथवा जहाँ कोई सरकारी सेवा में प्रविष्टि होने के समय उसकी सेवा पुस्तिका में अभिलिखित जन्म दिनांक या आयु उसकी सेवा के सम्बन्ध में प्रयोजनों के लिये, जिसके अन्तर्गत पदोन्नति, अधिवार्षिकी, समय-पूर्व सेवा-निवृत्त लाभ के लिये पात्रता भी है, यथास्थिति, उसका ठीक जन्म दिनांक या आयु समझी जायेगी तथा ऐसे दिनांक या आयु को सही (करेक्शन) करने के बारे में कोई आवेदन-पत्र या अभ्यावेदन किन्ही भी परिस्थितियों में, चाहे जो भी हो, ग्रहण नहो किया जायेगा।
3. अधिभावी प्रभाव:- यह नियमावली संगत सेवा नियमों या आदेशों में अन्तर्विष्ट, किसी प्रतिकूल बात के होते हुये, प्रभावी होगी।”

8. It has further been contended in the written statement that the only representation given by the petitioner on 22.07.2014 and the same was rejected in the light of the above mentioned Niyamawali as Rule 2 of the said Niyamawali prescribes that after the entry of date of birth in the service book, no representation for making any correction in the date of birth shall be entertained.

9. The respondents have also stated that the medical certificate mentions that the petitioner herself has stated her age as 48 years on 18.12.2003, the date on which the medical certificate was issued. It has also been stated that the petitioner has herself signed the medical certificate and the Chief Medical Officer has verified her signature. This medical certificate has been submitted by the petitioner herself. It is, therefore, contention of the respondents that the petitioner submitted only medical certificate at the time of joining and she herself stated her age while undergoing medical examination.

10. The respondents have further contended that the date of birth of the petitioner recorded as 18.12.1955 in the service book with the signature of the petitioner. For keeping in the service book, the character certificate was also submitted by the petitioner mentioning her date of birth as 18.12.1955 and the character certificate has also been signed by her, which is a part of the service record of the petitioner. The copy of the service book has been enclosed as R-1 to the written statement.

11. The respondents in the end of their written statement have stated that the petition is devoid of merit and is, therefore, liable to be dismissed.

12. The petitioner has also filed a rejoinder affidavit and the same averments which were stated in the claim petition, have been reiterated and elaborated in it.

13. The respondents have also filed additional written statement and in that also the same contentions have been made which were stated in the written statement. Additionally, it has been mentioned that the petitioner did not submit any school leaving certificate and therefore, she was asked to get her medical examination conducted. The petitioner has got her medical examination conducted and with her consent, her date of birth was recorded in the medical certificate, which was also signed by the petitioner. The contention of the respondents, therefore, is that since the petitioner did not submit any proof of age, the medical examination was resorted to.

14. The counsel for the petitioner has also filed additional rejoinder. The perusal of which shows that no new averments were made by the petitioner except that she had no occasion to see her service book even once during her entire service career.

15. In spite of service and sufficient opportunity, no written statement has been filed on behalf of respondent no. 4.

16. We have heard learned counsel for the parties and perused all record carefully and also perused the written submission made by learned counsel for the petitioner.

17. Learned counsel for the petitioner has mainly argued that the date of birth was recorded in service book neither in presence of the petitioner nor her consent was taken. The petitioner came to know about the wrong entry of date of birth in the service book in the end of June, 2014 only. It has also been argued by the learned counsel for the petitioner that

according to the Rules relating to the maintenance of the service book, the petitioner has not been shown her service book every year. The service book does not contain the signature of the petitioner. The service book was always kept in the custody of the department and the petitioner was never allowed to see her service book though it was requested by her several times. It has further been argued by learned counsel for the petitioner that she could know about the entry only in June 2014 and after that she made a representation for correction of the date of birth. The contention of the learned counsel for the petitioner is that for determination of the date of birth, the school leaving certificate should prevail over the medical certificate. The medical certificate is based only on general appearance and it is not based on the examination of teeth, height, weight and ossification of bones etc. It has further been argued that no opportunity of hearing was given to her at the time of recording her date of birth in the service book and also at the time of rejection of her representation dated 22.07.2014.

18. Learned counsel for the respondents no. 2 and 3 in reply to the arguments of learned counsel for the petitioner has reiterated the contentions made in the written statement/additional written statement.

19. The question of correction in the date of birth at later point of time in the career has been dealt with by the Hon'ble Apex Court and law has been laid down by the Apex Court dealing with various situations with regard to requests of the employees for correction of the date of birth which was recorded in the service book at the initial stage of the appointment of the employee. We would like to mention the settled legal position in

regard to this with the help of some decisions of the Hon'ble Supreme Court.

20. The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India and Ors. Vs. R. Basavaraju, MANU/SC/1301/2015 (2015(12)SCALE 18, decided 06.10.2015**, has dealt with timing and the role of the court/tribunal in deciding the matter of correction in the date of birth. The Apex Court has held that the law with regard to correction of date of birth has been time and again discussed by the Hon'ble Supreme Court and it is a settled law now that once the date of birth entered in the service record and accepted by the employee, the same cannot be changed. Not only that, this is also a settled law that a claim for change in date of birth cannot be entertained at the fag end. We would like to reproduce below para 8 of this judgment:

"8. This Court in the case of State of T.N. v. T.V. Venugopalan MANU/SC/0855/1994 : (1994) 6 SCC 302, elaborately dealt with such a demand made by the employee with regard to alteration in the date of birth. This Court observed:

"7. As held by this Court in Harnam case, MANU/SC/0216/1993: (1993) 2 SCC 162, Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force, i.e., 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the Respondent entered into the service on 12-1-

1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in the GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. 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. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This

case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as `3000."

21. The Hon'ble Supreme Court in **Bharat Coking Coal ltd. And Ors Vs. Chhota Birsa Uranw, MANU/SC/0366/2014, (2014 (6) SCJ, 13)** has held in paragraph no. 9 as below:

"9. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in Secretary and Commissioner, Home Department v. R. Kirubakaran, (1994) Supp. (1) SCC, 155, which is as under:

"7. *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 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 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 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 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.”

22. Further in the case of **State of Maharashtra and Anr. Vs. Gorakhnath Sitaram Kamble and Ors, MANU/SC/1141/2010 in Civil Appeal No. 9704 of 2010, Decided on 16.09.2010**, the Hon’ble Supreme Court has held as under:

“9. The High Court, in the impugned judgment, has failed to notice the settled legal position which is crystallized by a series of judgments of this Court. All the judgments have consistently taken the view that change in the date of birth cannot be permitted at the fag end of the service career.....”

“15. In Secretary and Commissioner, Home Department and Ors. v. R. Kirubakaran, MANU/SC/0419/1993 : (1994) Supp.(1) SCC 155, the Court again reiterated the legal position that the courts have to be extremely careful when application for alteration of the date of birth is filed on

the eve of superannuation or near-about that time. The court observed as under:

... As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants to raise such a dispute without explaining as to why this question was not raised earlier....”

“16. Learned Counsel for the Respondent has placed reliance on the judgment of this Court in U.P. Madhyamik Shiksha Parishad and Ors. v. Raj Kumar Agnihotri MANU/SC/0307/2005: (2005) 11 SCC 465. In this case, this Court has considered number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.”

23. In State of **Gujrat and Ors Vs. Vali Mohmed Dosabhai Sindhi**, 2006 (2) UJSC, 1065, the Hon’ble Supreme Court has held in paragraphs no.7 and 8 as under:

“7. Most of the States have framed statutory rules or in absence thereof issued administrative instructions as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. In many such rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. The sole object of such rules being that any such claim

regarding correction, of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. In the case of State of Assam v. Daksha Prasad Deka MANU/SC/0490/1970 : (1971)ILLJ554SC , this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure." In the case of Government of Andhra Pradesh v. M. Havagreev Sarma MANU/SC/0449/1990 the A.P. Public Employment (Recording and alteration of Date of Birth) Rules, 1984 were considered. The public servant concerned had claimed correction of his date of birth with reference to the births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886. The Andhra Pradesh Administrative Tribunal corrected the date of birth as claimed by the petitioner before the Tribunal, in view of the entry in the births and deaths register ignoring the rules framed by the State Government referred to above. It was inter alia observed by this Court:

“The object underlying Rule 4 is to avoid repeated applications by a government employee for the correction of his date of birth and with that end in view it provides that a government servant whose date of birth may have been recorded in the service register in accordance with the rules applicable to him and if that entry had become final under the rules prior to the commencement of 1984 Rules, he

will not be entitled for alteration of his date of birth.”

“8. In Executive Engineer, Bhadrak (R&B) Division, Orissa and Ors. v RangadharMallik MANU/SC/0646/1993 : 1992(2)SCALE481, Rule 65 of the Orissa General Finance Rules, was examined which provides that representation made for correction of date of birth near about the time of superannuation shall not be entertained. The respondent in that case was appointed on November 16, 1968. On September 9, 1986, for the first time, he made a representation for changing his date of birth in his service register. The Tribunal issued a direction as sought for by the respondent. This Court set aside the Order of the Tribunal saying that the claim of the respondent that his date of birth was November 27, 1938 instead of November 27, 1928 should not have been accepted on basis of the documents produced in support of the said claim, because the date of birth was recorded as per document produced by the said respondent at the time of his appointment and he had also put his signature in the service roll accepting his date of birth as November 27, 1928. The said respondent did not take any step nor made any representation for correcting his date of birth till September 9, 1986. In case of Union of India v. Harnam Singh MANU/SC/0216/1993 : (1994)ILLJ318SC the position in law was again reiterated and it was observed:

“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.”

24. In the case of **Burn Standard Co. Ltd. And Ors Vs. Dinabandhu Majumdar and Anr., MANU/SC/0713/1995, AIR, 1995 SC 1499, in Civil Appeal No. 4725 of 1995, Decided on 21.04.1995**, the Hon’ble Supreme Court has held in paragraphs no. 8,9 and 10 as under:

“8. The importance of the date of birth of an employee given to his employer and accepted as correct by the latter and entered in the 'Service and Leave Record' of the former, cannot be underestimated. That is so for the reason that the employee's service with the employer has to be necessarily regulated according to such date of birth. Therefore, when a person is taken into service on appointment, he would be required by his employer to declare his correct date of birth and support the same by production of appropriate certificates or documents, if any. Even where the persons so appointed fail to produce the certificates or documents in proof of their date of birth, they would be required to affix their thumb impression or signature in authentication of their declared ages or dates of birth. When, on the basis of such declaration made or certificates produced by the employee an entry is made of his date of birth in his 'Service and

Leave Record' to be opened, that will amount to acceptance by the employer of such date of birth, as correct, be it the Government or its instrumentality. When such entry is made in Service Record of the employee the only way in which the employer, Government or its instrumentality can get over such entry, because of subsequent disclosures as to its incorrectness, is to hold an inquiry into the matter by affording an opportunity to the employee concerned to have his say in the matter. But when once the employer, the Government or the instrumentality concerned accepts the date of birth of an employee as declared by him and supported by certificates or documents produced by him and allows him to enter into its service and continue on such basis, is it open to such employee to claim that the date of birth declared and authenticated by him was incorrect and, therefore, the employer, be it the Government or its instrumentality, should correct his date of birth in his 'Service and Leave Record' according to what he claims to be true and if the Government or its instrumentality concerned refuses to accept such claim, can the High Court in exercise of its discretionary extraordinary writ jurisdiction entertain a writ application, to consider the merit of such claim?

“9. No doubt, there may be special law or rules which permit a person appointed in the service of the Government or its instrumentality to seek correction of his date of birth which might have been accepted by the Government or its instrumentality, as the case may be, as correct at the time of his appointment. But, the special law or rules governing the service of an employee if forbids correction of such date of birth of

employee after its acceptance by the Government or its instrumentality, its subsequent correction at the instance of such employee, becomes impermissible. However, in the absence of such special law or rules it may be open to the employee concerned to seek correction from the Government or its instrumentality, of the date of birth declared by him and accepted by the Government. Even where such correction is sought, the Government or its instrumentality, as the case may be, would be entitled to refuse to correct the date of birth of its employee if the facts in the given case do not warrant such correction. If that be the legal position, can it be said that it is open to a High Court in exercise of its extraordinary writ jurisdiction to entertain a writ application of an employee of the Government or its instrumentality, as the case may be, for correction of his date of birth entered in his 'Service and Leave Record' at the time of his appointment and direct the Government or its instrumentality concerned to correct such date of his birth in his "Service and Leave Record' and continue him in service beyond the date of his normal retirement, is the question. It is true that the High Court in exercise of its discretionary jurisdiction under Article [226](#) of the Constitution can even enter upon disputed questions of fact, if the case in which the extraordinary jurisdiction is invoked warrants adoption of such inevitable course and decide upon the same for giving relief to the concerned party. But, the question is that if an employee of the Government or its instrumentality, who is at the fag end of his service and due for retirement from his service shortly, according to his date of birth found in his 'Service and

Leave Record' files a writ application before the High Court and invokes its writ jurisdiction for correction of such date of birth with a view to continue in service beyond the normal period of his retirement, will it be appropriate for the High Court to entertain such application to enquire into disputed facts pertaining to his date of birth for correcting it and extend his period of service?"

"10. Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted, it would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of his juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly found material. The fact that an employee of Government or its instrumentality who will be in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes

forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'Service and Leave Record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not in exercise of its discretionary writ jurisdiction, entertain a writ application/ petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'Service and Leave Record' or Service Register with the avowed object of continuing in service beyond the normal period of his retirement.”

25. We would like to examine the present case in hand in the light of law laid down in above judgments of the Apex Court.

26. In the case in hand, we also summoned original service book of the petitioner and perused it carefully. We find that in the service book, the date of birth of the petitioner in the relevant column has clearly been mentioned 18.12.1955 and this part of the service book which has been shown as ‘F.R.FORM NO. 13’

has been signed by the petitioner. This has also been signed by the Executive Engineer of Jal Vidyut Utpadan Nigam. It is therefore, clear that the date of birth mentioned in the service book is 18.12.1955 and signature of the petitioner on it very clearly establishes that this date of birth has been accepted by the petitioner.

27. We have also perused the medical certificate (Annexure: A-6) carefully and we find that as per the statement of the petitioner herself, the age of the petitioner is 48 years as on 18.12.2003. This medical certificate has also been signed by the petitioner herself. It also goes without saying that this medical certificate was submitted by the petitioner to the department.

28. The contention of the petitioner that the school leaving certificate which shows her date of birth as 02.07.1960 was submitted to the department at the time of joining is not supported by any document. We perused the representation of the petitioner dated 22.07.2014 (Annexure: A-1) and would like to reproduce para 2 and 3 of this representation as below:

“माननीय पति की आकस्मिक मृत्यु के आघात तथा छोटे-छोटे बच्चों के लालन पालन की चिन्ता से ग्रस्त मुझे कम शिक्षित औरत ने आवेदन पत्र भरने वाले व्यक्ति को आवेदन पत्र कॉलम 11ख में “क्षैक्षिक योग्यता प्रमाण सहित” पूछने पर-कुछ नही बताया तो मुझे विभाग ने भर्ती के लिये आवश्यक जन्म तिथि प्रमाणक के रूप में मुख्य चिकित्सा अधिकारी देहरादून के पास भेजा जहां मुख्य चिकित्सा अधिकारी ने General appearance is about 48 years डाक्टरी प्रमाण पत्र में दर्शाया जिसके आधार पर विभाग ने दिनांक 18.12.2003 (मेडिकल प्रदान करने की तिथि से) $18.12.2003-48 = 18.12.1995$ की जन्म तिथि मेरे सर्विस रिकार्ड में दर्शा दी

3. श्रीमन हाल के वर्षों में गृहस्थी के थोड़ा व्यवस्थित हो जाने पर जब मैंने इस विषय के जानकार लोगो से सलाह ली ता

उन्होंने मुझे समझाया कि जब तुमने कक्षा 5 तक स्कूल में शिक्षा ग्रहण की है तथा कक्षा 5 पास की है तो तुम्हारी जन्म तिथि का सही रिकार्ड स्कूल में उपलब्ध हो सकता है तथा डाक्टरी प्रमाण पत्र के आधार पर अंदाज से उम्र का आकलन कर जो जन्म तिथि निकाली गयी है उसमें सुधार हेतु प्रमाण पत्रों "स्कूल लीविंग सर्टीफिकेट तथा सम्बद्ध स्कूल के प्रधानाध्यापक से प्राप्त" जन्म तिथि प्रमाण की प्रतियों आपकी सेवा में प्रस्तुत कर जन्म तिथि के में डाक्टरी प्रमाण पत्र के आधार पर हुयी गलती में सुधार कर स्कूल लीविंग सर्टीफिकेट के अनुसार जन्म तिथि 18.12.1955 के स्थान पर 02.07.1960/दो जुलाई उन्नीस सौ साठ करने के लिये प्रार्थना पत्र प्रस्तुत करूँ।"

It is very clear from above that the petitioner has herself accepted that since she had no educational qualification, at the time of joining, she underwent medical examination for determination of her age. The petitioner has also accepted in her representation above that she had decided at the time of giving representation on 22.07.2014 to submit the school leaving certificate for the correction of date of birth.

29. The petitioner has therefore, given representation to correct her date of birth first time on 22.07.2014, nearly one and half year before her retirement from the service. She had joined the service in the year 2003 and therefore, her first representation to correct the date of birth is after more than 10 years of service. Therefore, we are of the opinion that the representation has been given by the petitioner on the verge of her retirement and in the light of settled law as mentioned above, the date of birth cannot be changed at the fag end of the career.

30. Though it is very clear that the date of birth of the petitioner was recorded as per information provided by her and the same was accepted by her by signing date of birth record in the service book yet any representation to correct it could be

accepted if the same would have been given within reasonable time after recording the date of birth. The date of birth with the consent and knowledge of the petitioner was recorded in the service book in 2003 and the representation given by the petitioner in 2014 cannot sustain on grounds of acquiescence, undue delay and laches.

31. The petitioner having declared her date of birth as entered in the service book to be correct, cannot be permitted at the fag end of service career to raise any dispute as regard the correctness of the entry in the service book. The Tribunal in its judicial review cannot appreciate the evidence and circumstances in regard to date of birth dispute raised by the petitioner and the Tribunal is not competent to evaluate and reach a conclusion to determine the date of birth as it is not a court of appeal.

32. In the case in hand, the correction in date of birth as recorded in the service book is governed by the Rules framed by the Government which were adopted by the Vidyut Utpadan Nigam. These Rules have already been reproduced in para 07 of this order. The perusal of the Rules reveals that the date of birth entered in the service book will be treated as final for all service matters purposes and no representation will be entertained for its correction. It is, therefore, clear that Rules also do not permit any correction in the date of birth. Moreover, in the case in hand, the correction in the date of birth was initiated after more than 10 years at the fag end of petitioner's career.

33. Learned counsel for the petitioner in support of his argument has referred the following case laws:

- i. Mohd Yunus Khan Vs. U.P. Power Corporation Ltd. And others, Civil Appeal No. 6191 of 2008, Decided on 22.10.2008,

- ii. M/s Bharat Coking Coal Ltd. and ors Vs. Chota Birsa Uranw, (2014)4,Supreme, 344,
- iii. State of Orissa vs. Binapaairi Dei (1967)0 Supreme (SC) 6772 ,
- iv. Smt. Prabha Devi Vs. State of U.P. and others, 2010(80) ALR, 2008,
- v. Surjit Kaur Snadhu Vs. Union of India & Others, O.A. No. 573 of 2008, Decided on 2.4.2008,

34. We have carefully gone through the above cited judgments and we find that the facts and circumstances of the above cited judgments are entirely different than that of the case in hand, therefore, the law laid down in the above cases are of no help to the petitioner.

35. We would like to appreciate the hard labour put by the learned counsel for the petitioner.

36. For the reasons stated above, we reach the conclusion that the claim petition is devoid of merit and is liable to be dismissed.

ORDER

The claim petition is, hereby, dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: DECEMBER 23, 2015.
DEHRADUN

KNP