# Ram Kishore Vs Executive Engineer, Electricity Distribution Division, U.P. Power Corporation Limited and Another

**Court:** Allahabad High Court

**Date of Decision:** Nov. 17, 2003

**Acts Referred:** Constitution of India, 1950 â€" Article 162, 309
Evidence Act, 1872 â€" Section 114, 35
Uttar Pradesh Recruitment to Services (Determination of Date of Birth) Rules, 1974 â€" Rule 4

**Citation:** (2004) 1 UPLBEC 570

**Hon'ble Judges:** R.B. Misra, J

**Bench:** Single Bench

**Advocate:** G.B. Singh, for the Appellant; A.K. Mehrotra and S.C., for the Respondent

**Final Decision:** Dismissed

## Judgement

R.B. Misra, J.
Heard Sri G.B. Singh, learned Counsel for the petitioner and Sri A.K. Mehrotra, learned Counsel for the respondents.

2. In this petition prayer has been made for quashing the order/notice dated 19.8.2000 issued by the respondent No. 1 indicating that after

completing age of 58 years taking the date of birth entered into service book the petitioner was to retire on 18.1.2001 from service.

3. The petitioner has challenged the said notice in the present writ petition by saying that petitioner was appointed as a line Collie in the Electricity

Department in the office of Sub-Division Officer, Karvi, District Banda in the year 1967 and at the time of entering into service his date of birth

18.1.1943 was entered into service book and later on 2.4.1968 the petitioner also indicated that his date of birth is 18.1.1943. Since the petitioner

is not High School pass and he could not understand the importance of date of birth entered into service book, therefore, at his request a letter

dated 1.11.1995 was issued by the Executive Engineer for getting medical certificate from the Chief Medical Officer, Banda and the petitioner in

this reference approached the Chief Medical Officer, Banda, who on the physical appearance of the petitioner assessed his date of birth as 52

years and on the strength of such medical certificate issued on the physical appearance of the petitioner his date of birth would be in August, 1944.

4. Counter-affidavit has been filed, according to which the petitioner"s date of birth was entered into service book as 18.1.1943, which was duly

verified by the petitioner and Competent Authority i.e., Sub-Division Officer and the petitioner subsequently had also put thumb-impression and

had made signature and on 2.4.1968 in his own hand writing had stated that his date of birth is 18.1.1943 and in the service book also throughout

his service career the petitioner''s date of birth was recorded as 18.1.1943. The petitioner has managed to obtain the order of Executive Engineer

to get medical certificate, which on the physical appearance of the petitioner was estimated and that cannot be relied upon.

5. In the rejoinder-affidavit endeavourance has been made to controvert the contents of the counter-affidavit and to reiterate the stand taken in the

writ petition.

6. On behalf of the petitioner reliance has been placed on 1980 (Supp.) Supreme Court Cases 678, Jiwan Kishore v. Delhi Transport Corporation

and Anr., where the discrepancy regarding date of birth was arisen by two documents and difference was shown about 10 years, therefore, the

employer had appointed its Medical Board and then the age assessed by the Medical Board was accepted.

7. In Bimlesh Sharma Vs. Electricity Board and Others, , where date of birth entered in the service book was to be changed by the wife of the

deceased employee when the husband of the writ petitioner had died after retirement by disputing the change of date of birth. This Court has held

disputed question of fact cannot be investigated in the writ petition and the date of birth once entered in the service book of the petitioner under

U.P. Recruitment to Service (Determination of Date of Birth) Rules, 1974, was treated to be correct supported by the relevant documents and

supporting entries in the service book and the change of the date of birth disputing the same on the basis of fitness certificate were not treated to be

relevant proof of age and such controversy and disputed question of fact could not be resolved by investigating the authenticity of the documents

relied upon by the parties concerned in the writ proceedings.

8. In the case of Adhishashi Abhiyanta, Electricity Board, Rihand and Hydel Civil Div., U.P. State Electricity Board, Allahabad and Anr. v. Shitla

Prasad and Anr., Special Appeal No. 383 of 1989, decided on 17.9.1993, a Division Bench of this Court has held that--

.....In our opinion, the medical fitness certificate dated 25.7.1974 could not be treated an opinion of the Doctor regarding the age of the

petitioner. The certificate has been given in the proforma prescribed under Fundamental Rules 10. The Doctor had examined the petitioner in order

to ascertain as to whether he suffered from any communicable disease or otherwise and whether he had any constitutional weakness or bodily

infirmity which would constitute disqualification for employment in the Hydel Department. The Doctor was not asked or required to give an opinion

regarding the age of the petitioner. The are well know scientific methods to ascertain the age of a person and ossification of bone gives a fairly

accurate idea regarding the age. However, for this purpose X-ray examination has to be performed in case of Doctor had been asked to give his

opinion regarding the age of the petitioner he would have performed necessary tests including X-ray examination etc and would have also given the

scientific date on the basis of which he would have formed his opinion about the age. The Doctor while giving opinion about the age of a persons is

if the..... Nature of an expert and in absence of necessary scientific date.... weight in view of Section 45 of Evidence Court. We are clearly of the

opinion that the medical fitness certificate dated 25.7.1994, could not at all be treated as an opinion of the Doctor regarding the age of the

petitioner. As a consequence the said document could not be used for the purpose of determining his age.

9. In the case of Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another, it was held that the employee of a Public Sector

Undertaking whose date of birth was entered in service book and leave record on the basis of the voluntary declaration made by the employee on

the time appointment and authenticated by him was never objected to up to the fag end of service, thereafter he sought for correction of date of

birth about two years before his superannuation, when his prayer was refused, he moved the High Court in the writ petition, where relief was

granted in his favour, however, the Supreme Court in appeal by special leave has held that ordinarily the High Court should not exercise its

discretionary in writ jurisdiction and entertain a writ petition filed by an employee of the Government or any instrumentality of State towards the

fag-end of his service seeking correction of his date of birth entered in his service record or service register with the avowed object of continuing in

service beyond the consequential period of retirement.

The Supreme Court has pointed out when an employer of the Government or its instrumentality who remained in service for over decades, with no

objection whatsoever raised as to his date of birth accepted by the employer as correct all of a sudden comes forward towards the fag-end of his

service career with writ petition before the High Court seeking correction of date of birth in his service record, the very conduct of not raising any

objection in the matter by the employee for long should be a sufficient reason for the High Court not to entertain such application on the ground of

acquiescence, undue delay and latches.

10. In the case of State of Orissa and others Vs. Ramanath Patnaik, the Supreme Court has observed in Para 4. ""When entry was made in service

record and when he was in service, he did not make any attempt to have the service record corrected, therefore, any amount of evidence

produced subsequently would be of no avail..."" The Supreme Court has held that ""an employee cannot be permitted to seek correction of his date

of birth after his retirement"".

11. In the case of Hindustan Lever Limited v. S.M. Jadhav and Anr. 2001 (2) ESC 338 (SC) : AIR 2001 SC 1665, the Supreme Court, has

elaborated its earlier view and held that ""an employee cannot be allowed to raise, at the fag-end of the career, dispute regarding correction of his

date of birth"".

12. In the case of G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, the Supreme Court has held that ""no

dispute regarding correction of date of birth shall be permitted to be raised after long time his joining service unless it is based on some

typographical or arithmetical error and the Court refused to interfere in such matter"".

13. In the matter of dispute regarding date of birth, the Government may choose one of the suggested date of birth given by the employee if some

preliminary inquiry is made to resolve the controversy of the date of birth and Inquiry Officer holds the preliminary inquiry does not disclose to the

person concerned and the decision arrived thereunder was treated to be contrary to the basis of justice and can have no value and shall be treated

against the rules of natural justice has to accept one date of birth out of the claims by the employee on the basis of the inquiry report, such inquiry

report should be passed on after informing the person concerned and after taking into the evidence in support thereof and after providing

opportunity to the persons concerned as held in the State of Orissa Vs. Dr. (Miss) Binapani Dei and Others,

14. In Bhupindra Nath Chatterjee Vs. The State of Bihar and Others, it was held that the date of birth recorded in service record is to govern the

date of superannuation of the person from service.

15. In the matter of correction of date of birth, an application for that purpose is to be filed, according to the procedure prescribed within the time

under rules or if no rule is prescribed, such application should be made within reasonable time. The Supreme Court has held that no interim order

on application for correction of the date of birth should be passed by the Tribunal or the High Court keeping in view only the public service,

directing the employee to be continuing in service unless there are cogent and conclusive materials produced by the employee that the date of birth

recorded in the service record was not correct. The onus is heavy on the employee to prove the authenticity of the date of birth claimed for, it was,

therefore, held that the Court or Tribunal shall be slow in granting such interim relief unless the claim is supported by prima facie evidence of

unimpeachable character, as observed in Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran,

16. The application for correction of date of birth as recorded in the service book are not permitted to be corrected by inordinate delay as held in

Union of India and others Vs. Kantilal Hematram Pandya, The Supreme Court has held that the document which came into existence subsequent

to the entrance in service but while getting the date of birth recorded in the said certificate respondents had not been involved. The Supreme Court

considered this issue in Union of India v. Kantilal Hemantram Pandiya (supra) and held that Court may not place any reliance on a document or

certificate of date of birth which had been brought into existence for the benefit of the pending proceedings as the correctness and genuineness of

such a certificate is not free from doubt. In Union of India v. Kantilal Hematram Pandiya (supra), the Supreme Court reiterated a similar view

observing as under :

He allowed the matter to rest till he neared the age of superannuation. The respondent slept over his rights to get the date of birth altered for more

than thirty years and woke up from his deep slumber on the eve of his retirement only..... State claims and belated applications for alteration of the

date of birth recorded in the Service Book at the time of initial entry, made after unexplained and inordinate delay, on the eve of retirement need to

be scrutinized carefully and interference made sparingly and with circumspection. The approach has to be cautious and not casual. On facts the

respondent was not entitled to the relief, which the Tribunal granted to him.

17. In another case when long delay was made in seeking the correction of date of birth and the application having been filed beyond the statutory

time limit (three years), it was held by the Supreme Court that Competent Authority may reject such application and the plea of the employee that

the alleged mistake was discovered at about the time when he filed the application for date of birth which was about 40 years of the date of joining

the service cannot be accepted as correct. [ Chief Medical Officer Vs. Khadeer Khadri,

18. In Union of India (UOI) Vs. Ram Suia Sharma, the Supreme Court has again reiterated that the claim for correction of the recorded date of

birth made 25 years of joining in the service could not have been entertained by the Central Administrative Tribunal and the Tribunal''s direction

allowing such a claim as per se illegal and that due to long delay and latches, such a claim should not have been entertained by the Tribunal.

19. In respect of condition precedent for correction of date of birth the Supreme Court held the employee seeking the correction of the date of

birth must show that the recorded date of birth was made due to negligence of some other person or that the same was an obvious clerical error ad

that where the employee fails to do so, such relief for correction of date of birth should not be granted by the Administrative Tribunal. In that case,

the extract from the Birth Register was produced, subsequently to the recording of date of birth on the basis of the School Leaving Certificate. The

authority refused to correct the date of birth in the service on the basis of such extract. It is held by Supreme Court that in the absence of any

material to show that the entry in the School Leaving Certificate was incorrect, the authority rightly refused to correct the date of birth, moreso

when the extract from the Birth Register even otherwise was found to be doubtful. ( The Commissioner of Police, Bombay and another Vs.

Bhagwan V. Lahane,

20. The respondent applied for correction of date of birth before the Appointing Authority on obtaining a decree from Civil Court in a civil suit filed

by the respondent against the Board/University for correction of his date of birth in the matriculation certificate issued by the Board/University. In

that suit Government was not made a party. The question arose if the Government was bound to correct the date of birth in the service record on

the basis of the said decree obtained against the Board/University in which the Government was not a party. The Supreme Court has held that as in

the suit the Government was not a party, such decree is not binding upon the Government and the Government is not obliged to correct the date of

birth on the basis of the said decree. It is also held that at best it is a piece of evidence and the Government has to look into all kinds of evidence

for determination in order to decide whether the date of birth should be correct. It is observed that what is the date of birth is undoubtedly a

question of fact and so all kinds of evidence can be looked into for such determination and if the Government on consideration of all these facts

refused to correct the date of birth, then the order cannot be interfered with by the Court or Tribunal. [ Director of Technical Education and

another Vs. Smt. K. Sitadevi,

21. The object of the rule or statutory instructions issued under the provisions to Article 309 or orders issued by the Government under Article

162 of the Constitution for the correction of date of birth entered in the service record, is that the Government employee, if he has any grievance, in

respect of any error or entry in the date of birth, will have an opportunity, at the earliest to have it corrected. Its object also is that the correction of

the date of birth beyond a reasonable time should not be encouraged. Permission to re-open accepted date of birth of an employee, specially on

the eve of or shortly before the superannuation of the Government employee would be an impetus to produce fabricated records. [ State of T.N.

Vs. T.V. Venugopalan,

22. In reference to the decision of Supreme Court in Burn Standard Co. Ltd. (supra), where entry of date of birth noted in the Admit Card of

Matriculation Examination could not be relied upon by the employer to correct the date of birth recorded in the service and Leave Register of the

employee and authenticated by the employee himself it was the date of birth recorded at the time of joining service on the basis of the S.S.L.C.

Register was challenged by the employee 35 years later and his previous application for correction seven years earlier had already been rejected

by the authority and at the belated stage, the only evidence was his oral evidence and the horoscope evidence. Therefore, the Supreme Court held

that at the belated stage the horoscope evidence or oral statements cannot be believed. [ Collector of Madras and Another Vs. K. Rajamanickam,

23. The date of birth recorded in periodical medical inspection reports can be relied up when the employee challenged the declared date of birth as

mentioned in the notice of superannuation as incorrect as the service records were missing. The Department pleaded before the Court below that

the service record was manipulated and that the service register was removed by the employee in connivance with the Office Superintendent. The

employee sought to rely upon the periodical medical reports noting date of birth to uphold his contention that the date of birth mentioned in the

notice of superannuation was not correct. It was held that the date of birth recorded in the periodical medical inspection reports are not such

reliable piece of evidence to uphold the contention of the employee that the date of birth mentioned in the superannuation notice is incorrect. [ Sheo

Nandan Singh Vs. Union of India (UOI) and Others,

24. In respect of correction of date of birth after retirement, when claimant retired from the service on 31st December, 1978 and in 1981 he filed a

suit against the rejection of his representation for correct of his date of birth for declaration that his correct date of birth is 1st January, 1925 and

not 1st January, 1921. The trial Court dismissed the suit but the First Appellate Court decreed the suit and the Orissa High Court has dismissed

the second appeal in limine. The Supreme Court set-aside the order of the High Court and allowed the appeal and also the judgment and decree of

the First Appellate Court and restored that the trial Court. It was held that when entry was made in the service record and when he was in service,

he did not make any attempt to have the service record corrected any amount of evidence produced subsequently would be of no avail and that

the High Court has, therefore, committed the manifest error in refusing to entertain the second appeal. [ State of Orissa and others Vs. Ramanath

Patnaik,

25. In Ehtesham Ullah Khan Vs. Central Administrative Tribunal and Others, , this Court (D.B.) (Hon''ble Dr. B.S. Chauhan and Ghanshyam

Dass, JJ.) has held that once the date of birth is recorded in service record, at time of entrance in service, it can be changed only by production of

strong documentary evidence showing that it was incorrect. Any document coming into existence subsequent to entrance in service in correctness

or genuineness of entry therein is said not free from doubt. In the instant case, petitioner joined service in 1963 and got his date of birth recorded

as 17.5.1934, thereafter, he had passed High School Examination in 1965, wherein date of birth was recorded as 17.2.1943. He filed application

for change in his date of birth in 1987 i.e., after 19 years of his service on the strength of this High School Certificate, a documentary proof which

by itself was rightly not found reliable, in view of settled-law, besides it the fact about its genuineness also became doubtful as parentage of

petitioner was found recorded different than that recorded in service record as such the Tribunal, therefore, rightly held to have rejected

application.

26. Similarly as held in Rajasthan High Court in R.S. Mehrotra Vs. Central Govt. Industrial Tribunal and Another, the documents obtained

subsequent to the date of joining the service cannot be relief upon for the purpose of correcting the date of birth as it might be very easy for the

employee to mention another date in the papers while preparing the other documents, which came into existence subsequently and the Industrial

Tribunal should not have accepted the claim of the workman placing reliance on such documents.

27. In Maharashtra State Electricity Board v. Sakharam Sitaram Shinde 1996 (72) FLR 562, the Bombay High Court has taken a similar view

observing that the possibilities of fabricating the documents just to support bogus claim of an employee cannot be ruled out in such circumstances.

28. The Rajasthan High Court in Nagar Mahapalika, Bareilly v. Labour Court, Bareilly and Anr. 1995 (71) FLR 950, held that the Industrial

Tribunal committed an error in placing reliance on the documents prepared by the employee subsequently.

29. In 2002 (6) ALT 46 (SC) the Supreme Court held that while examining the issue of correction of date of birth the Court must be very slow in

accepting the case of applicant if issue has been agitated at a much belated stage and it must examine the pros and cons involved, in the case even

if not raised by the parties. In the said case, the application for correcting the date of birth was rejected observing, that if it was allowed the

applicant had joined the service, when he was below 18 years of age and therefore, accepting such application would amount to sanctifying the

illegal entrance in service.

30. There is a presumption that official acts are regularly performed though such a presumption can be rebutted by adducing evidence. [Vide

Jhaman Lal v. State of Rajasthan and Ors. AIR 1965 Raj. 86 ; Somasundarshan Goud Vs. The District Collector, Hyderabad and Another,

Ganga Ram Vs. Smt. Phulwati, Ramakant Bindal Vs. State of U.P. and Another, Gopal Narain Vs. State of Uttar Pradesh and Another, Maharaja

Pratap Singh Bahadur Vs. Thakur Manmohan Deo and Others, Ajit Singh Vs. State of Punjab and Another, State of Punjab Vs. Satya Pal Dang

and Others and Baldev Parkash and Others, Sone Lal and Others Vs. The State of U.P., Municipal Board, Saharanpur Vs. Imperial Tobacco of

India Ltd. and Another Etc., K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, Sone Lal and Others Vs. The State of U.P., Kiran Gupta

and Others Vs. State of U.P. and Others Etc., Superintendent, Narcotics Central Bureau Vs. R. Paulsamy, and The State Government of NCT of

Delhi v. Sunil and Anr. (2000) 1 SCC 652].

31. In Narayan Govind Gavate and Others Vs. State of Maharashtra and Others, the Hon''ble Supreme Court observed that presumption

provided in Illustration (e) of Section 114 of the Evidence Act is based on well-known maxim if law ""omnia praesumuntur rite esse acta"" (i. e., all

acts are presumed to have been rightly and regularly done). The Court further held that this presumption is, however, one of the fact. It is an

optional presumption and can be displaced by the circumstances, indicating that the power lodged in an authority or official has not been exercised

in accordance with law.

For rebutting the long standing entry regarding the date of birth of an employee in his service record is a difficult task for the reason that the case of

applicant his to be considered in view of the provisions of Sections 35 and 114 of the Evidence Act.

32. In Harpal Singh v. State of Haryana, AIR 1981 SC 361; Brij Mohan Singh Vs. Priya Brat Narain Sinha and Others, and Ram Prasad Sharma

Vs. The State of Bihar, it has been held by the Supreme Court that unless it is proved that the entries had been recorded in exercise of the official

duties by a Government servant, the same cannot be held to be admissible u/s 35 of the Evidence Act. In case, it is proved that it got recorded by

an illiterate Chowkidar or by someone else or entries had been made without proper checking, the same requires corroboration and cannot be

assumed to be correct.

33. In Mohd. Ikram Hussain Vs. State of U.P. and Others, it was held that the age of the girl mentioned in the School Register at the time of

admission was a good evidence u/s 35 of the Evidence Act. School Register was found to be admissible on the ground that these entries were

made ante litem mortem.

34. In Updesh Kumar and Others Vs. Prithvi Singh and Others, the School Admission Register was held to be made admissible u/s 35 of the

Evidence Act. Even the age mentioned in Matriculation Certificate by the Education Board was held to be done in accordance with law as

required u/s 114, Illustration (e) of the Evidence Act.

35. School should be a Government one only then it can be held that date of birth had been recorded by a public servant in exercise of his official

duty. No such presumption would be there in respect of Admission Register of the private school. Entries therein shall require corroboration. [Vide

Ram Murti Vs. State of Haryana, ; Brij Mohan Singh (supra)].

36. In Ram Deo Chauhan @ Raj Nath Vs. State of Assam, the Supreme Court, while examining the issue regarding admissibility of School

Admission Register u/s 35 of the Evidence Act, held that as it was not clear as under what provision of law, the School Register was maintained,

the entries made in such a Register cannot be taken as a proof of age of the person concerned for any purpose.

37. Date of Birth, the Secondary School Certificate is not to be taken to be correct unless corroborated by parents who got the same entries

made. [Vide Birad Mal Singhvi Vs. Anand Purohit, and Tora Devi v. Sudesh Choudhary AIR 1998 Raj 54

38. It is settled proposition of law that a party has to plead the case and produce/adduced sufficient evidence to substantiate his submissions made

in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. [Vide Bharat Singh and Others

Vs. State of Haryana and Others, M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, National Buildings Construction Corporation Vs.

S. Raghunathan and Others, Ram Narain Arora v. Asha Rani and Ors. (1999) SCC 141 ; M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh,

the Supreme Court observed as under :--

The findings, in the absence of necessary pleadings and supporting evidence cannot be sustained in law.

39. Similar view has been reiterated in Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors. (2003) 1 SCC 18.

40. In State of U.P. and Others Vs. Smt. Gulaichi, the Supreme Court has held in Paras 8 and 9 as below :--

8. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also

fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice

prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records.

But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking

the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative

Tribunals, on even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

9. Most of the States have framed statutory rules for 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 and

Another Vs. Daksha Prasad Deka and Others, 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 and Another Vs. M. Hayagreev Sarma, 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.

41. In Executive Engineer, Bhadrak (R&B) Division, Orissa and Ors, v. Rangadhar Mallik 1993 (1) SCC 763, 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.

42. It is settled proposition of law that the date of birth entered in the Service Book cannot be corrected at a belated stage. Where the date of

birth entry remains in existence for a long time, the same does not require to be disturbed.

43. In case of Union of India Vs. Harnam Singh, , 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.

An application for correction of the date of birth should not be dealt with by the Courts, 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 the promotion for ever. Cases are not

unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and

relevant 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 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. Before any such direction is issued or declaration

made, 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 within at least a reasonable

time. The applicant has to produce the evidence in support of such claim, which may amount to irreuftable proof relating to his date of birth.

Whenever any such question arises, the onus is on the applicant, to prove about 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 date 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 order, they continue for months after the date of

superannuation. The Courts or the Tribunal must, therefore, be slow in granting an interim relief or 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 thereby caused injustice to this immediate junior.

44. In general, a disputed question of fact is not investigated in a proceeding under Article 226, particularly where an alternative remedy is

available, e.g., the merits of rival claims to property or a disputed question of title; State of Rajasthan v. Bhawani (1993) (1) SCC 306, Paragraph

7.

45. The High Court may interfere with a finding of fact, if it is shown that the finding is not supported by any evidence or that the finding is

''perverse'' or based upon a view of facts which could never be reasonably entertained; Arjun v. Jamnadas (1990) 1 SCJ 59, Paragraph 15.

46. A finding based on no evidence constitutes an error of law, but an error in appreciation of evidence or in drawing inferences is not, except

where it is perverse, that is to say, such a conclusion as no person properly instructed is law could have reached or it is based on evidence which is

legally inadmissible TVL. Ramco Cement Distribution Co. Pvt. Ltd., Tamil Nadu Vs. State of Tamil Nadu,

47. If the conclusion of facts is supported by evidence on record, no interference is called for even though the Court considers that another view is

possible; Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others,

48. I have heard learned Counsel for the parties. I find that petitioner''s date of birth entered into service book was duly verified by him and

petitioner had never bothered in his whole service career for correction of his date of birth and at the fag-end of the career has started dispute

relying on the medical certificate issued by the Chief Medical Officer, Banda on the physical appearance of the petitioner, which cannot be taken

as correct date of birth of the petitioner, therefore, the prayer of the petitioner for alteration of the date of birth cannot be allowed, and as such the

writ petition is dismissed.