

(1997) 03 GAU CK 0013

Gauhati High Court (Kohima Bench)

Case No: Civil Rule No. 194 (K) of 1996

M.K. Chanda

APPELLANT

Vs

State of Nagaland and  
OthersRESPONDENT

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**Date of Decision:** March 5, 1997**Acts Referred:**

- Constitution of India, 1950 - Article 226, 311(2)

**Citation:** (1997) 2 GLR 227**Hon'ble Judges:** H.K. Sema, J**Bench:** Single Bench**Advocate:** B.N. Sarma, Lmti Longchar and Apok Pongener, for the Appellant; Government Advocate, for the Respondent**Final Decision:** Dismissed

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### Judgement

H.K. Sema, J.

The question of correction of date of birth has been engaging the attention of this Court once again in this writ petition, which has been well settled by the Apex Court in a catena of decision. By this writ petition, the Petitioner claimed that his date of birth has been erroneously entered and his service record as on 1st December, 1939 instead of 1st December, 1940. In this writ petition, the Petitioner is seeking a writ of mandamus for a direction to the Respondent to correct the date of birth of the Petitioner from 1.12.1939 to 1.12.1940.

2. The facts leading to the filing of the present writ petition may be summarily recited. The Petitioner joined die service as Assistant teacher in the Education Department on 24.10.1961. Thereafter, he was appointed as Lower Division Assistant in the Office of Commissioner, Nagaland w.e.f. 16.7.62. It is stated that at the time of entering service the date of birth of the Petitioner was recorded as 1st December, 1940. It is also stated that the original service book was gutted in accidental fire in 1967 when the Civil Secretariat

was gutted by fire. Thereafter, a new service book was opened in 1969. In the new Service book the date of birth was entered as on 1st December, 1939 because of inadvertance. This statement was denied by the respondent in their counter.

3. Be that as it may, Petitioner claimed that he came to know of the mistake made in his service book when the Civil Stale list of 1985 was published and immediately thereafter, he approached the Home Department for correction of wrong entry of date of birth, and accordingly, it was corrected as on 1st December, 1940 by the Deputy Secretary to the Govt. of Nagaland, Home Department. However, some time in 1996 the department of Personal and Administrative Reforms had published an incumbency list of N.C.S. officers (Nagaland Civil Services) who are due to retire from 1996 to 2000. In the said list, the name of the Petitioner appeared in serial No. 1 showing his date of birth as on 1.12.1939 and the date of retirement on superannuation on 30.11.1996. After seeing the incumbency list, Petitioner submitted a note dated 28.2.96 (Annexure-VI) with a request to correct the date of birth recorded as on 1.12.1939. The contents of which has an important bearing which I shall discuss at the appropriate time. However, the same request has been rejected by an order dated 8th May, 1996 (Annexure-IX). There after, the Petitioner, by its petition dated 22.5.96 (Annexure-X) submitted representation to the Addl. U/L Government of Nagaland, department of P and AR for change of date of birth from 1.12.39 to 1.12.40. The aforesaid representation has been rejected by an order dated 21.6.96. Thereafter, the Petitioner filed Anr. representation before the Chief Secretary (Annexure-XI) with a request for correction of date of birth in the incumbency list by its petition dated 5.7.96 without any result. Hence the present writ petition.

4. The law on the point with regard to the correction of date of birth at belated stage and at the fag end of service of the Government servant has been well settled by a catena of decision, and they are no more res-integra. Avoiding multiplicity, I any cite few decisions of the Apex Court.

5. In [Union of India Vs. Harnam Singh](#), It was held by the Apex Court as under:

It is open to a civil servant to claim correction of his date of birth, if he is in possession of (sic)able proof relating to his date of birth as different from the one earlier recorded and even if thee is no period of limitation prescribed for seeking correction of date of birth the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigor arid the courts or tribunals cannot come to the aid of those who

sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. A public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he cannot claim to continue in service on the basis of the date of birth claimed by him.

6. In [State of Assam and Another Vs. Daksha Prasad Dea and Others](#), It was held by the Apex Court in para 4 of its judgment as under:

The date of compulsory retirement under F.R. 56(a) 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. A public servant may dispute the date of birth as entered in the service record and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 311(2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record.

7. In [Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran](#), It was held by the Apex Court as under:

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. Any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as Ors. 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 forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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 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.

8. It was further pointed out by the Apex Court as under:

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, 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 underserved benefit of extended service and merely caused injustice to his immediate juniors.

9. In [Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another](#), the Supreme Court held as under:

The extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution is not meant for enabling the 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 remained 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 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. Therefore, there should be no hesitation in holding that ordinarily High Court 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.

10. It was further held in para II of its judgment reads:

Prudence on the part of every High Court should however in our considered view prevent it from granting interim relief in a petition for correction of date of birth filed under Article 226 of the Constitution by an employee in relation to his employment, because of the well-settled legal position governing such correction of date of birth.

11. From the aforesaid decision of the Supreme Court as quoted above it clearly appears that settled position of law are as under:

(a) Employer may refuse to correct the date of birth sought for by the employee at belated stage.

(b) Belated claim of the Government servant to correct the date of birth should not be entertained in exercise of our power under Article 226 of the Constitution.

(c) In a claim of correction of date of birth prudence demands, no interim order should be granted.

(d) The claim of the Petitioner can only be considered if the claim is made in accordance with the procedure prescribed.

(e) Till the record is corrected the Government servant cannot claim to continue in service on the basis of date of birth claimed by him as a matter of right.

(f) Age recorded in the service book on basis of the declaration made by the Govt. Servant duly authenticated by him by putting thumb impression and signature as correct at the time of entering into service, is not open to Govt. servant at the fag end of his service to turn back and say that date of birth recorded in his service book is not correct.

12. In the backdrop of the law settled by die Apex Court as referred to above, I shall now consider the case at hand in the facts and circumstances stated therein.

13. In para 3 of its petition, the Petitioner stated as under:

That at the time of entering service/appointment the date of birth of the Petitioner was recorded as 1st December, 1940 in the Service Book as per declaration made by the Petitioner and therefore, the original Service Book relating to the Petitioner contained the actual date of birth of the Petitioner. However, the original Services Book was gutted in accidental The in 1967 while in the custody of the Civil Secretariat. Thereafter, a new Service Book was opened in 1969. However, in the new Service book on the Petitioner the date of birth was entered as 1st December, 1939 because of inadvertise.

14. In this connection, Mr. B.N. Sarma strenuously urged that Petitioner came to know about the wrong entry in his new service book as on 1.1.1939 when 1985. Civil list was published showing the date of birth of the Petitioner as on 1st December, 1939, (after almost 16 years) and immediately thereafter, he approached the Home Department, Government of Nagaland for correction and accordingly it was corrected by the Deputy Secretary to the Government of Nagaland from 1.12.1939 to 1.12.1940. In this connection service record of the Petitioner showing the date of birth as corrected from 1st December 1939 to 1st December, 1940 under the seal of the Deputy Secretary, Home department has been annexed as Annexure-11. This correction, assuming it is correct, as admitted by the Petitioner himself was done in 1985 after lapse of 16 years from 1969. The statement made in para 3 has been answered by the Respondent in para 5 of the counter as under:

That as regard to paragraph 3 of the petition it may be stated that the thumb impressions as well as signature of the Petitioner were recorded on the reconstructed service book in which his date of birth is shown as 1st December, 1939. The Petitioner has stated that his date of birth was recorded as 1st December, 1940 in the original service which was gated by fire in 1967. And if the Petitioner still remembers his date of birth as recorded in the original service book, it cannot be said that the variance in date of birth as recorded subsequently in the reconstructed service book which bears his signature and thumb impression, was an inadvertent mistake or gross error.

15. It is further averred in para 6 of the counter that when the service book was opened in 1969 showing the date of birth of the Petitioner as on 1.12.1939, the Petitioner has seen the same, it bears his signature and thumb impression authentic acting by him as correct, and it was clearly impermissible for the Petitioner to appellate for the first time in 1985 for correction of his date of birth entered in 1969. It is also stated that the change of date of birth from 1st December, 1939 to 1st December, 1940 by the Deputy Secretary to the Government of Nagaland, Home Department was irregular because it did not have the approval of the head of the Department i.e. Secretary P and AR which is mandatory.

16. A reading of paragraphs 3 and 4 of the writ petition and para 5 and 6 of the counter two things have merged for decision.

(a) Whether it was permissible for the Petitioner to raise a dispute of wrong (sic) in the service record of the Petitioner made in 1969, after almost 16 years despite to the knowledge of the Petitioner that the date of birth has been erroneously entered in 1969.

(b) Assuming, the Petitioner is entitled to raise a dispute even after lapse of 16 years, whether the alteration of the date of birth made by the Deputy Secretary, Home Department in 1985 without following the procedure is legally valid ?

17. From the averments made by the Respondent in para 5 and 6 of the counter, it clearly appear that the Respondent denied that in the original service book of the Petitioner, the date of birth is recorded as on 1st December, 1940. The Respondent, however, did not denied that the service book of the Petitioner was reconstructed in 1969 and in that the date of birth of the Petitioner has been recorded as on 1.12.1939. From the averments made in para 3 of the petition as quoted above which has been verified by the Petitioner to be true to his knowledge it clearly appear that the Petitioner knew that the service book was opened in 1969. He knew that the date of birth recorded in his service book as on 1st December, 1939, although he says that through inadvertence. The service book of the Petitioner opened in 1969 showing the date of birth of the Petitioner as on 1st December 1939 bears his signature and thumb impression of the Petitioner authenticated by him to be correct and it was accepted by employer as correct.

18. Having known that his date of birth has been recorded as on 1st December, 1939 in 1969 itself, he did not raise any dispute immediately thereafter by filing a representation

or any claim has been made in accordance with the procedure prescribed. From the conduct of the Petitioner itself as recited above, would clearly show that the claim of the Petitioner that the date of birth entered in his original service record is 1 st December, 1940 is clearly unacceptable. In the ordinary course of human conduct, it is expected that the Petitioner having seen his date of birth entered in his service record in 1969 as on 1st December 1939 he ought to have raised immediately a dispute by filing application before the competent authority and pursue the matter with right earnest to come to logical conclusion. Having not availed the earliest opportunity to raise a dispute and slumbering over his rights for 16 years would preclude the Petitioner from raising a dispute that the entry of his date of birth in 1969 service record was not correct.

19. From the conduct of the Petitioner itself and from the circumstances as recited above the claim of the Petitioner that the date of birth recorded in his original service book is 1.12.1940 is belied. Man may lie, but the circumstances does not lie. Therefore, it was clearly impermissible to raise a dispute on the date of birth entered in the service book in 1969 in 1985, after lapse of 16 years of slumbering.

20. Having resolved the aforesaid points, let me now deal to the second point as to whether the Deputy Secretary, Home, has competency to alter the date of birth of the Petitioner from 1.12.1939 to 1.12.1940 in 1985 in the way it is sought to be done, It is not the case of the Petitioner that even in 1985, he has filed a representation before the competent authority to effect the change of his date of birth. From the averments made in para 4 of the petition it clearly appear that even in 1985 he only approached the Home department orally on the basis of which the correction has been made. To say the least I am disturbed, the manner in which the Deputy Secretary, Home department has dealt the matter casually in matter of serious concern having far reaching consequences. It clearly appears that the Petitioner approached him for correction of his date of birth and the Deputy Secretary, Home has accordingly obliged him by changing his dale of birth from 1.12.1939 to 1.12.1940 even without processing in file and even without referring the matter to the Secretary or for that matter without any process. At the most, it can be termed as "secret deal". If the Petitioner obtained an order by applying backdoor method, he deserves to go back by that door. It has been settled by the Supreme Court as referred to above that the claim for change of date of birth can be only entertained if it has been made in accordance with the procedure prescribed. The procedure in the State of Nagaland is that the matter must refer to the department of P and AR and in consonance with Note-5 to F.R. 56 which is applicable in the State of Nagaland as contained in the order dated 9th April 1986 (Annexure-VIII) of the petition.

21. The argument of Mr. B.N. Sarma that the date of birth recorded in 1969 as on 1.12.39 was not on the basis of declaration made by the Petitioner is no argument at all. Because, firstly if the declaration is not made by the Petitioner the service book of the Petitioner opened in 1969 ought not have bear the signature and thumb impression of the Petitioner. Secondly, the Petitioner ought to have agitated immediately on seeing the date of birth recorded as on 1.12.1939 by filing represanitation in 1969 itself. As already, in

para 3 of the petition, Petitioner admitted that in 1969 his date of birth has been recorded as on 1.12.1939. This all goes to show that the date of birth of the Petitioner recorded in 1969 as on 1.12.1939 is liable to be held to be on the basis of declaration made by the Petitioner.

22. There is yet, Anr. difficulty to accept the submission of the Petitioner that his date of birth has been duly stand corrected in 1985 from 1.12.1939 to 1.12.1940. In 1989, a Civil list was published by the authority in which his date of birth has been shown as on 1.12.1939. Petitioner did not raise any dispute even against the Civil list published in 1989 showing his date of birth as on 1.12.1939. This would show that the authority accepted the date of birth of the Petitioner as on dated 1.12.1939, and it is accepted position for the Petitioner as well. It is only by a Note dated 28.2.96 (Annexure-VI) the Petitioner sought to correct his date of birth according to Matriculation certificate. This note has an important bearing reads:

It is understood that the P and AR Deptt. have prepared a list of officers due to retire during 1996 wherein my name has also been shown. In this connection, I like to say that I have already sent my copy of Matriculation certificate along with other particulars some time during 1995 (10-3-95) first part in order to enable the P and AR Deptt. to correct my date of birth according to the matriculation certificate. Probably the P and AR Deptt. has collected my date of birth from the State Civil list which was incorrect.

I have shown my matriculation certificate and service book to the Supt (P and AR) and Under Secretary P and AR Deptt. personally to correct the date of birth.

It is requested that date of birth may kindly be corrected as soon as possible in the incumbency register maintained by the P and AR Deptt.

Sd/- 28/2/96

(M.K.CHANDA)

Addl. Secy (Law)

23. A reading of the note as quoted above would clearly show that for the first time the Petitioner submits matriculation certificate along with other particulars during 1995 to enable the P and AR department to correct his date of birth according to the matriculation certificate. By this note, categorically, the Petitioner accepted that the only procedure to correct date of birth is through P and AR department. It will be noticed, that in the note referred to above, Petitioner did not even mention that his date of birth was stand corrected in 1985. This would show that the Petitioner also accepted his date of birth as on 1.12.1939 throughout his service career till a note dated 28.2.96 and the representation dated 22.5.96 (Annexure-X) addressed to the Addl. Secretary, Government of Nagaland department of P and AR, and thereafter to the Chief Secretary by its petition dated 5.7.96 (Annexure-XII) which has been rightly rejected by the impugned orders.

24. It will be curious to note that in the representation dated 22.5.96, the subject is change of date of birth. This would clearly show that the Petitioner applied for change of date of birth at the fag end of his service and at belated stage which has been rightly rejected by the Respondents. As already said the Petitioner was due to retire with effect from 30.11.96 on the footing of his date of birth recorded as on 1.12.1939.

25. While issuing a notice, this Court on 26.11.96 granted an interim order directing that the Petitioner shall continue in service until further order. It is because of this interim order, Petitioner is continuing in service till today.

26. For the reasons aforestated there is no merit in this writ petition, and it is dismissed. However, without costs. Petitioner shall be ceased to be a Government servant from today. He shall also be not entitled to any service benefits for the period beyond 30.11.1996, the date on which Petitioner retired on superannuation on the footing of date of birth recorded as on 1.12.1939, other than salary already drawn by him, if any.

27. Before parting with the record, I must constrain to note that the manner in which the concerned authority sought to alter the date of birth in the service record of the Government servants unilaterally is deprecated. Such action not only dehors the prescribed procedure, but also contrary to the law settled by the Supreme Court and the High Court. It is expected that such practices are stopped forthwith by all concerned authority.

With the aforesaid directions and observations, this writ petition is accordingly dismissed.