

**(2012) 01 MP CK 0057**

**Madhya Pradesh High Court**

**Case No:** Writ Petition No. 11791 of 2009 (S)

Union of India and Others

APPELLANT

Vs

Bhaiya Lal Nai

RESPONDENT

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**Date of Decision:** Jan. 3, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Madhya Pradesh Financial Code - Rule 56, 84

**Citation:** (2012) ILR (MP) 453

**Hon'ble Judges:** Sanjay Yadav, J; Ajit Singh, J

**Bench:** Division Bench

**Advocate:** S.A. Dharmadhikari, for the Appellant; N.S. Ruprah, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Ajit Singh, J.

This petition, under Article 227 of the Constitution, is directed against the order dated 10.9.2009 passed by the Central Administrative Tribunal, Jabalpur Bench (in short, "the Tribunal") whereby it has allowed the respondent's Original Application No. 693/2008. On 2.5.1980 the respondent was appointed in the Grey Iron Foundry, Jabalpur, as Labour "B". At the time of appointment, the respondent produced a transfer certificate dated 15.3.1976 issued by the Government Pre-Middle School, situated at Lauri, Tahsil Sirmour, District Rewa, showing his date of birth as 20.9.1954. On the basis of this transfer certificate the date of birth of respondent was recorded as 20.9.1954 in his service book. After about 20 years, on 21.11.2001 the respondent was transferred to Ordnance Factory, Khamaria, Jabalpur, of which petitioner nos. 2 and 3 are the General Manager and Joint General Manager. At the time of verification of the respondent's date of birth by the Accounts Office, it was found that the transfer certificate dated 15.3.1976 annexed to his service book was

not legible because it was in torn condition. Therefore, an affidavit was sought from him in this regard. The respondent submitted his affidavit on 24.1.2006 and stated therein that he is class sixth pass. But his transfer certificate dated 15.3.1976 showed that he was class seventh pass. This difference created suspicion in the minds of petitioners. Hence, by letter dated 20.7.2006 they requested the Government Pre-Middle School, Lauri, to provide a duplicate of the transfer certificate dated 15.3.1976 for verification of the date of birth of respondent. The school accepted the request by sending duplicate transfer certificate of the respondent along with its letter dated 3.8.2006. The duplicate transfer certificate was identical to the transfer certificate dated 15.3.1976 in all respects but for the date of birth of respondent. In the duplicate transfer certificate the date of birth of respondent was shown as 20.9.1948 and not 20.9.1954 as mentioned in the transfer certificate dated 15.3.1976.

2. Difference in the dates of birth of respondent entered in the aforesaid two transfer certificates persuaded the petitioners to call for clarification vide letter dated 28.8.2006 from him. In the letter, the respondent was also called upon to explain why his correct date of birth be not considered as 20.9.1948 and the same be entered in the service book instead of 20.9.1954. The respondent along with his reply dated 25.9.2006 submitted a copy of the transfer certificate dated 16.9.2006 issued by another school namely Government Primary School, Mahajan Kendra, Padua, District Rewa, and also his affidavit declaring therein that his correct date of birth is 20.9.1954. Dissatisfied with the reply, the petitioners by letter dated 27.10.2006 asked the respondent to provide the details i.e. name of the school, its address, year of passing and class passed mentioned in the certificate submitted at the time of his appointment but he did not give any reply. The transfer certificate dated 30.8.2006 issued by the Government Pre-Middle School, Lauri, District Rewa, and the transfer certificate dated 16.9.2006 submitted by the respondent reflected his different dates of birth. The petitioners, therefore, requested the District Education Officer, Rewa, to investigate into the genuineness of the certificates in respect of the date of birth of respondent. The District Education Officer, after examining the records, by his letter dated 24.4.2008 informed the petitioners that the correct date of birth of respondent is 20.9.1948 and not 20.9.1954 as claimed by the latter.

3. The petitioners thereupon issued a show cause notice dated 2.5.2008 to the respondent seeking an explanation as to why disciplinary action may not be initiated against him for submitting a false affidavit and an incorrect transfer certificate regarding his date of birth. The respondent, in his reply dated 15.5.2008, requested the petitioners not to initiate disciplinary action against him and that he had no objection if his date of birth was altered in the service book on the basis of documents available with the department. The petitioners, after considering the reply of respondent, by order dated 10.6.2008 altered his date of birth in the service book from 20.9.1948 to 20.9.1954. In the result the respondent, on attaining the age

of superannuation, retired from service on 30.9.2008.

4. Aggrieved, the respondent challenged the order dated 10.6.2008 in Original Application No. 693/2008 before the Tribunal on the ground that the petitioners had no authority to alter his date of birth in the service book. He, in support of his submission, referred to Fundamental Rule 56 Note 6. The Tribunal agreed with the contention of respondent and by order dated 10.9.2009 quashed the order dated 10.6.2008. It is in this background, the petitioners have filed the present petition for quashing of order dated 10.9.2009.

5. It is argued on behalf of the petitioners that the Tribunal committed an illegality in allowing the respondent's original application by wrongly applying Fundamental Rule 56 Note 6 in his favour. It has also been argued that the Fundamental Rule 56 Note 6 does not in any manner curtail the power of petitioners in correcting an entry in the service book pertaining to the date of birth of a Government servant on the discovery of fraud committed by such Government servant regarding his date of birth. The petitioners, in support of their submission, placed reliance on a decision of this High Court rendered in Mahendra Kumar Soni v. State of M.P. 2003 (3) M.P.H.T. 22 (DB). The learned counsel for respondent, on the other hand, defended the order passed by the Tribunal.

6. Fundamental Rule 56 Note 6, on which the Tribunal has relied for allowing the original application of respondent and quashing the order dated 10.6.2008 passed by the petitioners altering his date of birth in the service book from 20.9.1954 to 20.9.1948, reads as under:

"Note 6 - The date on which a Government servant attains the age of fifty eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government, or the Comptroller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if -

(a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine bona fide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had

appeared, or for entry into Government service on the date on which he entered Government service."

7. The Tribunal has taken the view that at the time of appointment, the respondent declared his date of birth as 20.9.1954 which was accepted by the petitioners and, therefore, the same cannot be altered after 28 years of service unless an exception stated in the Fundamental Rule 56 Note 6 existed. But we are unable to agree with the Tribunal. The transfer certificate dated 15.3.1976 issued by the Government Pre-Middle School situated at Lauri, District Rewa, was relied by the respondent at the time of appointment that his date of birth was 20.9.1954. However, in an inquiry held later it was found that the transfer certificate issued by the same school contained the date of birth of respondent as 20.9.1948. During the course of hearing, we also examined the original service book of the respondents produced by the petitioners. On examining the same we find that in the transfer certificate dated 15.3.1976 the year of birth of respondent is not legible at all. It is, therefore, clear that at the time of appointment there was a deliberate attempt on the part of respondent to show his incorrect date of birth for unfairly obtaining service benefits. This conduct of the respondent apparently amounts to fraud. The difference in the two dates is of six years and it is not possible to infer that the respondent was mistaken about his date of birth when he joined the service. Fundamental Rule 56 Note 6 does not in any manner restrict the right of the Government in altering the date of birth even on the discovery of fraud committed by the Government employee at the time of his appointment. The fraud played by the respondent relating to the entry of his date of birth in the service book vitiates the entry. Fraud, as is well-known, vitiates all solemn acts (See [Ram Chandra Singh Vs. Savitri Devi and Others](#), . [State of Chhatisgarh and Others Vs. Dhirjo Kumar Sengar](#), . In such cases, the petitioners are not debarred under Fundamental Rule 56 Note 6 in correcting the date of birth. In Mahendra Kumar Soni (Supra) a Division Bench of this High Court had also taken a similar view while interpreting an identical Rule 84 of the Madhya Pradesh Financial Code. For these reasons, we allow the petition and quash the order dated 10.9.2009 passed by the Tribunal in Original Application No. 693/2008.