

(2002) 01 MP CK 0032

Madhya Pradesh High Court

Case No: Writ Petition No. 2561 of 2001

Premal Shrivastava

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision: Jan. 17, 2002

Acts Referred:

- Madhya Pradesh Financial Code - Rule 84

Citation: (2003) ILR (MP) 1195 : (2002) 2 LJ 131 : (2002) 2 MPHT 473 : (2002) 1 MPJR 214 : (2002) 3 MPLJ 82

Hon'ble Judges: Bhawani Singh, C.J; K.K. Lahoti, J

Bench: Division Bench

Advocate: K.K. Trivedi, for the Appellant; Vivek Awasthy, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

This Judgment has been overruled by : [State of M.P. and Others Vs. Premal Shrivastava](#), AIR 2011 SC 3418 : (2011) 131 FLR 361 : (2011) 10 JT 519 : (2011) 10 SCALE 600 : (2011) 11 SCR 444 : (2012) 1 SLJ 31 : (2011) 6 UJ 3598 : (2011) AIRSCW 5398

@JUDGMENTTAG-ORDER

Bhawani Singh, J.

This writ petition is directed against the order of the M.P. Administrative Tribunal, Jabalpur, dated 18-4-2001, passed in O.A. No. 1253/1995.

The petitioner is serving in the Police Department of the State Government. He preferred representation to the respondents seeking correction of his father's name and date of birth in the service record, which was rejected by the Assistant Director General of Police (Works), Police Head Quarters, Bhopal. The petitioner was

appointed Constable in the Police Department in 1965. In the service record prepared at the time of enrolment in the service, his date of birth is 1-6-1942 and father's name is Gayadeen. This petition continued till 1990, when he came to know about incorrections as to father's name and date of birth in the service record. Accordingly, he preferred representation, which was rejected. In support of this plea, he depends on fact that he did not sign the service record at the time of entry in service nor he knew the contents thereof, otherwise he would have pointed out that the father's name was not Gayadeen nor was his date of birth 1-6-1942. The correct date of birth as per petitioner is reflected in the school leaving certificate (Annexure P-4) dated 6-6-1990 being 30-6-1945. The respondents submit that the service record was filled up on the instructions of maternal grand father accompanying the petitioner at the time of enrolment. It is signed/thumb marked by the petitioner, therefore, he cannot resile from what he had accepted at the time of enrolment in service. Another submission is that the petitioner has been shown to be 23 years old as on 27-9-1965, when he was subjected to medical test at the time of enrolment. With this background, the petitioner knew that his date of birth was 1-6-1942 and asking for correction after two decades was not justified. Reference to Rule 84 of the M.P. Financial Code is made and it is submitted that date of birth written in the service record is treated conclusive and correction of clerical mistake is permissible, if required. These submissions are accepted by the Tribunal and case of the petitioner for correction of date of birth in the service record has been rejected, though entry with regard to his father's name is liable to be corrected by the Superintendent of Police concerned.

We have considered the whole matter carefully. Shri K.K. Trivedi, learned counsel appearing for the petitioner, contended that the action of the respondents in not making correction in the service record of the petitioner as to his father's name and his date of birth, is unreasonable and arbitrary. The petitioner filed representation seeking these corrections immediately after coming to know about the same. This happened when he was promoted to the rank of Head Constable. The petitioner supported the claim on the basis of documentary evidence, which clearly points out that the correction sought was absolutely genuine and justified and the defence taken by the respondents has no merit.

Shri Vivek Awasthy, learned Government Advocate appearing for the State, submits that the record has been thumb marked by the petitioner, when he entered hi service. Seeking correction after two decades is thoroughly delayed and cannot be allowed, more so, in the light of Rule 84 of the M.P. Financial Code. So far as correction as to the name of the petitioner's father is concerned, the Tribunal has left it to the Superintendent of Police, who is competent to make the correction. Consequently, the request for correction is not justified and claim is liable to be dismissed.

From perusal of the service record placed before us by the learned counsel for the State, we find that the name of the petitioner's father is mentioned Gayadeen. The entry against the date of birth of the petitioner has been attested by the Superintendent of Police, Jabalpur, on 7-9-1976, while he entered in service on 6-10-1965. This form has been filled up on 17-10-1965 signed by the Superintendent of Police. Of course, it is thumb marked, but it is not indicated whose thumb marks they are. It is not understandable on what material the Superintendent of Police, Jabalpur, attested the date of birth of the petitioner on 7-9-1976, since there is no material to justify this attestation. Consequently, this attestation cannot be the basis for accepting the date of birth of the petitioner as 1-6-1942. Had the petitioner been confronted with this document and apprised of the contents, he would have pointed out the mistake therein as to the date of birth and the name of his father, since this form records the name of his maternal grand father and not his father whose name is Ghaseetelal. Moreover, on the record placed before us, there is no document with regard to the qualifications of the petitioner. Had it been there, date of birth of the petitioner would have been clearly found out, which happens, for the first time, when the petitioner filed representation for correction of his date of birth accompanied by the said school leaving certificate dated 6-6-1990 (Annexure P-4). Similarly, reliance cannot be placed on the date of birth mentioned in the medical report being based on estimation. The respondents could have no difficulty in correcting the record from his school certificate at the stage of enrolment, since his qualification has been mentioned upto 8th class from the Government School, where the record was available.

The irresistible conclusions, which can be drawn from the facts of the case is that the correct date of birth of the petitioner is 30-6-1945 and not 1-6-1942. The School Leaving Certificate (Annexure P-4) is a satisfactory piece of evidence, which supports the claim of the petitioner, therefore, it has to be accepted and when the entries incorporated in the service record are found to be incorrect, they cannot be conclusive as per Rule 84 of the M.P. Financial Code.

The next question is whether the petitioner should be granted relief after lapse of time. We have come to the conclusion that the petitioner did not know contents of the form (Annexure R-1), therefore, he did not know what date of birth has been recorded in that document by the respondents. He came to know when he was promoted as Head Constable. Filing of representation with School Leaving Certificate (Annexure P-4) clearly demonstrates that the petitioner did not know about incorrect date of birth recorded in the service record. Therefore, it cannot be said that correction of date of birth is belated. With this background, it would not be in the interest of justice to deny him relief. Making change in the service record would amount to correcting the error in service record after conclusiveness of entry is demonstrated to be wrong.

Consequently, the writ petition is allowed. The order of the Tribunal dated 18-4-2001 is set aside. The respondents are directed to correct the service record of the petitioner incorporating his date of birth as 30-6-1945 in place of 1-6-1942 and also record his father's name as Ghaseetelal in place of Gayadeen. This order shall be implemented within a period of one month from today. Costs on parties.