

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.23169 of 2023**

(In the matter of an application under Articles 226 and 227  
of the Constitution of India, 1950)

*Meena Kumari @ Meena Kumari* .... *Petitioner(s)*  
*Rout*

*-versus-*

*State of Odisha & Ors.* .... *Opposite Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Ms. Susmita Pattnaik, Adv.*

For Opposite Parties : *Mr. D. Mund, AGA*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-11.10.2023**

**DATE OF JUDGMENT: -18.10.2023**

**Dr. S.K. Panigrahi, J.**

1. The Petitioner through this Writ Petition has challenged the order dated 27.12.2022 with respect to her retirement from the service on attaining the age of superannuation on 10.10.2023.

**I. FACTUAL MATRIX OF THE CASE:**

2. The petitioner joined in the service with effect from 15.07.2002 as "Swechhasevi Sikhya Sahayak" on ad hoc basis in

- Badabasta UGME School in Block of Bhandaripokhari District, Bhadrak. After serving a long period of 8 years in the service, the petitioner was regularized with effect from 17.07.2009 vide letter No. 47/ZP dated 15.02.2010.
3. Herein, the date of birth was entered wrongly as "10.10.1963" instead of "10.10.1965" in the service book. Hence, the service period was counted from 10.10.1963 instead of 10.10.1965 by the Opp. parties. Owing to the wrong entry, the petitioner sent six representations to the B.E.O, Bhandari Pokhari and six representations to B.E.O, Bhandari Pokhari on 10.07.2012, 23.07.2013, 17.06.2014, 16.05.2015, 13.07.2016 and 08.09.2016 for correction of date of birth. However, no action has been taken by the Opposite parties till date.
  4. Some of the important documents indicating the proof of age such as School Register of D.M. Madan Girls' High School, Jameshedpur, Bihar, Matric Certificate of Bihar Bidyalaya Parikhya Samiti, Marksheet of Teacher's Certificate Examination, Odisha, PAN Card and Aadhaar Card have been filed along with the present petition as supportive documents for the proof of age.
  5. After due verification of the date of birth of the petitioner, the Vigilance Officer of Bihar School Examination Board intimated a letter to B.E.O., Bhandarpokhari, Bhadrak, Odisha that the date of birth was verified as 10.10.1965 vide letter

- No.7728 dated 10.08.2022. The petitioner is going to retire on 10.10.2023 vide order No. 3147 dated 27.12.2022 relying on the wrong entry of DOB in the service book.
6. The petitioner approached this Court in W.P.(C) No. 15640 of 2023 for correction of DOB (Date of Birth) in service book and this Court passed the order to file a representation before the Opp. Party No.4 within a period of 7 days to take a lawful decision with respect to the date of birth issue.
  7. After receiving the representation, the B.E.O. rejected it on the ground that the petitioner had not approached the authority within 5 years of opening of service book. However, the petitioner had filed a representation to the B.E.O., Bhandaripokhari within the stipulated time for correction of a clerical error on 10.07.2012.
  8. In the meantime, the B.E.O., Bhandaripokhari took up the investigation. The Bihar Board of Secondary Education was contacted officially and all the requisite payment was made through Bank draft as per rule. All documents like matriculation certificate, extract of the school admission register verification of the matriculation certificate vide letter No. 7728 dated 10.08.2022 by vigilance officer, Bihar School Examination Board, main building, Sinha Library Road, Patna were not considered in her favour. All papers obtained by official investigation exhibited ir-rebuttable evidence showing

that date of birth recorded in the service book is correct. The head master of Kanti Government High School where the petitioner is serving gave a letter in favour of the petitioner's actual date of birth. Aggrieved by the same, the petitioner has filed this writ petition.

## **II. COURT'S REASONING AND ANALYSIS:**

9. In this aspect, a Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State, in exercise of its powers regulating conditions of service, unless the services are dispersed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that right to continue in service stands decided by its entry in the service record. 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.
10. It is open to a civil servant to claim correction of his date of birth, if he is in possession of the 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. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on the grounds of laches or stale claims, is generally applied to 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.

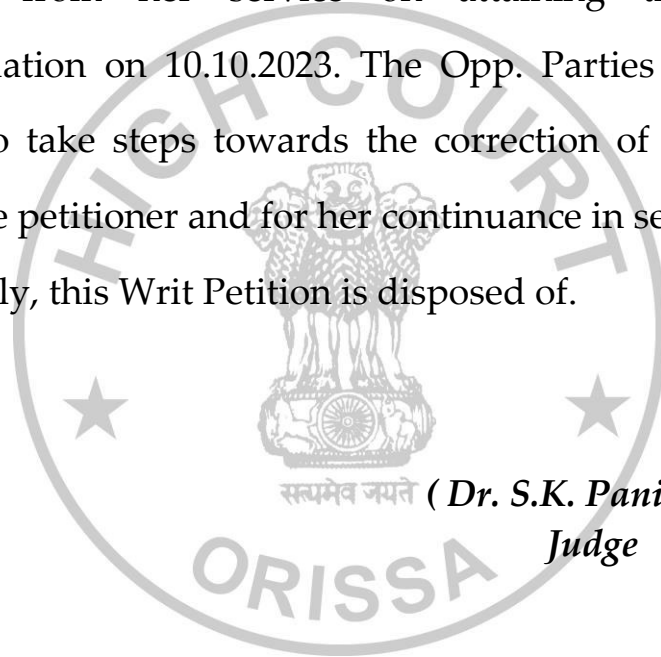
11. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and 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. Indeed, as held by the Apex Court in *State of Assam & Anr. v. Daksha Prasad Deka & Ors.*<sup>1</sup>, 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

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<sup>1</sup> [1971] 2 SCR 687

- corrected he cannot claim to continue in service on the basis of the date of birth claimed by him. In the present case, even if the Petitioner has approached several times to the authority, the said authority has given deaf ear to such representation.
12. After receiving the representation, the B.E.O. had rejected the representation on the ground that the petitioner had not approached the authority within 5 years of opening of service book. However, the petitioner had filed a representation to B.E.O., Bhandaripokhari within the stipulated time for correction of a clerical error on 10.07.2012.
  13. Herein, the date of birth was entered wrongly as "10.10.1963" instead of "10.10.1965" in the service book. Hence, the service period was counted from 10.10.1963 instead of 10.10.1965 by the Opp. Parties. Owing to the wrong entry, the petitioner sent six representations to the B.E.O, Bhandaripokhari on 10.07.2012, 23.07.2013, 17.06.2014, 16.05.2015, 13.07.2016 and 08.09.2016 for correction of date of birth. However, no action has been taken by the Opposite Parties till date.
  14. The academic records of the petitioner such as School Register of D.M. Madan Girls' High School, Jameshedpur, Bihar, Matric Certificate of Bihar Bidyalaya Parikhya Samiti, Marksheet of Teacher's Certificate Examination, Odisha, PAN Card and Aadhaar Card also provide in favour of the contention of the petitioner.

15. From the conspectus of factual matrix, this Court is inclined to accede to the submission of the petitioner. The rules of service jurisprudence cannot be given go by in such a light and casual manner, rather, those call for due compliance.
16. In light of the aforesaid discussion and having regard to the present position of law, this Court is inclined to quash the order dated 27.12.2022 with respect to the retirement of the Petitioner from her service on attaining the age of superannuation on 10.10.2023. The Opp. Parties are hereby directed to take steps towards the correction of the date of birth of the petitioner and for her continuance in service.
17. Accordingly, this Writ Petition is disposed of.



सत्यमेव जयते ( *Dr. S.K. Panigrahi* )

*Judge*

*Orissa High Court, Cuttack,  
Dated the 18<sup>th</sup> October, 2023/*