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Neutral Citation No. - 2023:AHC:223211

Reserved on 28.8.2023

Delivered on 24.11.2023

Court No. - 36

Case :- WRIT - A No. - 9226 of 2023

Petitioner :- Smt. Kavita Kureel

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kailash Singh Kushwaha

Counsel for Respondent :- C.S.C., Chandrakesh Rai, Rama Nand Pandey

Hon'ble Manjive Shukla, J.

1. Heard Sri Kailash Singh Kushwaha, learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondents No.1 and 2 as well as Sri Rama Nand Pandey, learned counsel appearing for the Respondents No.3 and 4.

2. Petitioner through this writ petition has challenged the order dated 19.4.2023 passed by the District Basic Education Officer, Jhansi, whereby earlier order dated 25.3.2023 by means of which date of birth of the petitioner entered in service record was corrected, has been recalled and petitioner has been retired from service on the basis of her date of birth as 3.11.1960.

3. Facts of the case, in brief, are that petitioner in the year 1981 passed out examination of 8th Class from Jwala Devi Vidya Mandir, Kanpur and from there transfer certificate was issued wherein her date of birth finds mention as 3.11.1967. Thereafter, petitioner passed out her High School examination in the year 1983 and a provisional

certificate was issued by Madhyamik Shiksha Parishad, Uttar Pradesh, wherein her date of birth finds mention as 3.11.1967.

4. Though in the provisional certificate of the High School examination issued to the petitioner her date of birth was recorded as 3.11.1967 but when she was issued marksheet and certificate of the High School examination, then in the said documents her date of birth was recorded as 3.11.1960. Petitioner initially met the Principal of Adarsh Balika Higher Secondary School, Kanpur and requested for correction of her date of birth in the High School marksheet and certificate but when nothing was done on his part, petitioner on 8.9.1997 submitted an application to Additional Secretary, Regional Office of Madhyamik Shiksha Parishad, U.P. Allahabad and thereby she requested for correction of her date of birth in the High School marksheet and certificate by replacing incorrect date of birth i.e. 3.11.1960 by 3.11.1967. Petitioner again submitted an application to Secretary, Madhyamik Shiksha Parishad, Allahabad on prescribed proforma on 20.3.1998, whereby she again requested for correction in her date of birth.

5. While the case of petitioner for correction of her date of birth was pending before Madhyamik Shiksha Parishad, U.P. Allahabad, she applied for appointment on the post of Assistant Teacher in district Auraiya and pursuant to her application she was appointed as Assistant Teacher in Primary School Suraidha, Block Eravan Katra, District Auraiya. Petitioner submitted her joining on her post on 7.1.2006. After joining of the petitioner her service book was prepared and on the basis of her date of birth recorded in the High School marksheet and certificate date of birth of

the petitioner was recorded in her service book as 3.11.1960. Petitioner was transferred from district Auraiya to district Jhansi and service record of the petitioner was also transmitted to district Jhansi.

6. Petitioner continued to pursue her case for correction of date of birth before Madhyamik Shiksha Parishad, Uttar Pradesh, but the said case could not be finalized. Later on, Madhyamik Shiksha Parishad, Uttar Pradesh realized its mistake and corrected the date of birth of the petitioner by replacing 3.11.960 with 3.11.1967. The Madhyamik Shiksha Parishad, Uttar Pradesh issued the marksheet with correct date of birth to petitioner on 10.9.2021 and in the said marksheet correct date of birth of the petitioner finds mention i.e. her date of birth has been recorded as 3.11.967. The Madhyamik Shiksha Parishad, Uttar Pradesh also corrected the date of birth recorded in the High School certificate of the petitioner and issued fresh certificate. Petitioner after correction of her date of birth in the marksheet and certificate of the High School examination submitted an application on 25.7.2022 to the Block Education Officer, Chirgaon, Jhansi and thereby requested that her correct date of birth be recorded in her service book and in place of 3.11.1960, 3.11.1967 be mentioned. Petitioner again submitted an application to Block Education Officer, Chirgaon, District Jhansi on 28.12.2022 whereby she requested for correction of her date of birth in the service book.

7. The District Basic Education Officer, Jhansi vide letter dated 5.1.20223 directed the Block Education Officer, Chirgaon, District Jhansi for making correction in the date

of birth of the petitioner recorded in her service book. The District Basic Education Officer, Jhansi vide letter dated 4.3.2023 directed the petitioner to appear before her on 6.3.2023 at 11.00 a.m. and to submit the documents on the basis of which she is claiming correction in date of birth recorded in her service book. The District Basic Education Officer, Jhansi through letter dated 6.3.2023 requested the Secretary, Madhyamik Shiksha Parishad, Uttar Pradesh, Prayagraj for verification of the High School marksheet and certificate issued to the petitioner and in response thereof, the Secretary, Madhyamik Shiksha Parishad, Uttar Pradesh, Prayagraj vide his letter dated 21.3.2023 verified the marksheet and certificate of the High School examination submitted by the petitioner.

8. The District Basic Education Officer, Jhansi after hearing the petitioner and considering the verification report provided by the Secretary, Madhyamik Shiksha Parishad, Uttar Pradesh, Prayagraj passed an order on 25.03.2023 and directed for correction of the date of birth of the petitioner recorded in her service book by replacing 3.11.1960 with 3.11.1967.

9. Petitioner continued to work on the post of Assistant Teacher in Primary School Sultanpura Ki Mata, Block Chirgaon, District Jhansi but all of a sudden the District Basic Education Officer, Jhansi has passed order on 19.4.2023 and thereby she recalled her earlier order dated 25.3.2023 whereby direction was given for correction of date of birth recorded in the service book of the petitioner.

10. The District Basic Education Officer, Jhansi in the order dated 19.4.2023, which is impugned in the present writ petition, has recorded a finding that Rule 2 of the Uttar Pradesh Recruitment to Service (Determination of Date of Birth) Rules, 1974 (hereinafter referred to as Rules of 1974) provides that date of birth recorded in the service book at the time of entry in service shall be final and no correction can be made in the entry made in the service book and, in view of the said interpretation of Rule 2 of the Rules of 1974 she recalled her earlier order dated 25.3.2023 whereby direction was issued to correct the date of birth of the petitioner and further petitioner has been retired from service.

11. Learned counsel appearing for the petitioner has submitted that petitioner prior to her appointment on the post of Assistant Teacher submitted an application to Madhyamik Shiksha Parishad, Uttar Pradesh for correction of date of birth recorded in her High School marksheet and certificate but due to inaction on the part of the authorities of Madhyamik Shiksha Parishad, the said application was not decided for a fairly long time and ultimately Madhyamik Shiksha Parishad, U.P. Prayagraj has corrected her date of birth recorded in her High School marksheet and certificate, in the year 2021 and on the basis of corrected documents, the District Basic Education Officer, Jhansi vide her order dated 25.3.2023 took decision to correct the date of birth of the petitioner entered in her service book.

12. Learned counsel appearing for the petitioner has vehemently argued that Rule-2 of the Rules of 1974

categorically provides that if a government servant has passed out High School examination prior to his initial appointment, then the date of birth recorded in his High School certificate shall be his date of birth for the purposes of service benefits and if he has not passed out his High School examination prior to his initial appointment, then the date of birth recorded in the service book at the time of his initial appointment shall be final for all purposes and no application or representation shall be entertained for correction of such date of birth in any circumstances whatsoever.

13. Learned counsel appearing for the petitioner has further argued that aforesaid Rule 2 of the Rules of 1974 mandates that if a government servant prior to entering into service has passed out his High School examination, then the date of birth recorded in the High School certificate shall be his date of birth for the purposes of service benefits and in the case of petitioner it is admitted fact that the date of birth entered in her High School certificate has already been corrected by the Madhyamik Shiksha Parishad, U.P. Prayagraj and therefore, in view of the aforesaid Rule 2 of the Rules of 1974, her date of birth for the purposes of service benefits shall be 3.11.1967.

14. Learned counsel appearing for the petitioner has emphatically argued that District Basic Education Officer, Jhansi has passed the order dated 19.4.2023 on absolutely misreading of the Rule 2 of the Rules of 1974, whereas the said Rule 2 favours the petitioner's case as there are two parts in Rule 2, in first part it is provided that if a government servant prior to entering into service has passed out High School examination, then for all

purposes his date of birth recorded in the High School certificate shall be final and in the second part it is provided that if a government servant prior to entering into the service has not passed out High School examination, then his date of birth entered in the service record at the time of his entry in service shall be final and no representation for change of date of birth will be entertained. The case of the petitioner is covered in the first part of Rule 2 as she prior to entering into service has passed out High School examination and since the date of birth recorded in her High School certificate has been corrected by the Madhyamik Shiksha Parishad, U.P. Prayagraj, then for her service purposes the date of birth recorded in the High School certificate shall be final and therefore, the District Basic Education Officer, Jhansi while correcting the date of birth of the petitioner in her service book on the basis of correction made by the Madhyamik Shiksha Parishad, U.P. Prayagraj in the certificate of petitioner's High School examination was perfectly right and as such, the impugned order dated 19.4.2023 whereby the order of correction of date of birth has been recalled, is against the provisions of Rule 2 of the Rules of 1974.

15. Learned counsel appearing for the petitioner has relied on the judgment of this court rendered in the case of **Hari Ram Gupta vs. State of U.P. and others**, reported in **2011 (6) ADJ 282** and has argued that this court in the said judgment has considered the purport of Rule 2 of the Rules of 1974 and has held that if a government servant prior to entering into service has passed out High School examination, then his date of birth entered in High School certificate shall be his date of birth for service purposes and if during service period the date of birth recorded in the High School certificate is changed, then the

changed date of birth shall be the date of birth of government servant for the purposes of service.

16. Learned counsel appearing for the petitioner has also relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Tulshi Chaudhary vs. Steel Authority of India Limited (Sail) & others**, reported in **2022 Legal Eagle (SC) 863** and has argued that the Hon'ble Supreme Court in the said decision has permitted for correction in the date of birth even at the fag end of service career of an employee. It has further been argued that the case of petitioner is squarely covered by the judgment of the Hon'ble Supreme Court rendered in the case of Tulshi Chaudhary (supra) and since the date of birth of the petitioner recorded in her High School certificate has been corrected, therefore her date of birth in service record should be corrected and she should be allowed to continue in service on the basis of her date of birth as 3.11.1967.

17. Per contra, Sri Rama Nand Pandey, learned counsel appearing for the Respondents No.3 and 4 has submitted that Rule 2 of the Rules of 1974 provides that date of birth of a government servant as recorded in the certificate of High School or in the certificate of equivalent examination at the time of his entry into government service shall be his date of birth for the purposes of service benefits and no application or representation shall be entertained for correction of the said date of birth in any circumstance whatsoever. It has further been argued that it is admitted fact that on the date of entry of the petitioner into government service her date of birth in the certificate of her High School examination was recorded as 3.11.1960, therefore in view of the provisions of the Rule 2 of Rules of 1974, the said date of birth shall be final for the purposes of service benefits.

18. Learned counsel appearing for the Respondents No.3 and 4 has further submitted that after entry into the government service if the date of birth entered in the High School certificate of the government servant is changed by the competent authority, the changed date of birth cannot be recorded in the service record of the said government servant as Rule 2 of the Rules of 1974 prohibits any application for change of date of birth.

19. Learned counsel appearing for the Respondents No.3 and 4 has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **U.P. Madhyamik Shiksha Parishad and others vs. Raj Kumar Agnihotri**, reported in **(2005) 11 SCC 465** and has argued that identical issue has been dealt with by the Hon'ble Supreme Court and it has been held that whatever date of birth of a government servant has been recorded in the High School certificate at the time of entry into the government service, same will be his date of birth for the purposes of service benefits and cannot be changed at subsequent stage as Rule 2 of the Rules of 1974 prohibits any application for change of date of birth.

20. Learned counsel appearing for the Respondents No.3 and 4 has also relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Bharat Coking Coal Ltd. & others vs. Shyam Kishore Singh [Civil Appeal No.1009 of 2020, arising out of SLP (Civil) No.20627 of 2010]**, wherein it has been held that application for change of date of birth by an employee at the verge of retirement cannot be considered. It has been argued by the learned counsel appearing for the Respondents No.3 and 4 that petitioner in view of her date of birth recorded in the service record was due to retire from service on 2.11.2022, whereas for the first time on 25.7.2022 she

submitted an application for correction of her date of birth and therefore, in view of the aforesaid judgment of the Hon'ble Supreme Court the said application could not have been entertained.

21. In rejoinder, learned counsel appearing for the petitioner has relied on the judgments rendered by the Hon'ble Supreme Court in the case of **Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. and others**, reported in AIR 2003 SC 511 and in the case of **Bharat Petroleum Corpn. Ltd. and another vs. N.R. Vairamani and another**, reported in (2004) 8 SCC 579 and has argued that the facts of the case decided by the Hon'ble Supreme Court in the case of U.P. Madhyamik Shiksha Parishad (supra) are different to that of the facts of the present case and therefore, the said decision cannot be applied in the present case.

22. I have considered the arguments advanced by the learned counsels appearing for the parties and have also perused the record available before this Court.

23. For dealing with the arguments advanced by the learned counsels appearing for the parties, it is necessary to have a brief look of Rule 2 of the Rules of 1974. The Uttar Pradesh Recruitment to Service (Determination of Date of Birth) Rules, 1974 came into force with effect from 28.5.1974. Rule 2 of the Rules of 1974 is extracted as under:-

"2. The date of birth of Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a Government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time of his entry into Government service, shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service including, eligibility for promotion, superannuation,

premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.”

24. The aforesaid Rule 2 of the Rules of 1974 was amended by Uttar Pradesh Recruitment to Service (Determination of Date of Birth) First Amendment Rules, 1980 and the amended Rule 2 reads as under:-

“2. The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth or the age recorded in his service book at the time of his entry into the Government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

25. This court finds that un-amended Rule 2 of the Rules of 1974 provided that the date of birth of a government servant recorded in the High School certificate shall be final for the purposes of service benefits but the legislature in the year 1980 has made amendment in Rule 2 and thereby has provided that the date of birth of a government servant as recorded in his High School certificate at the time of his entry into the government service shall be final. It appears that the legislature in its wisdom has amended Rule 2 of the Rules of 1974 and has intentionally inserted the words “at the time of his entry into the government service”. Therefore, in view of the amended Rule 2 of the Rules of 1974, the date of birth of the government servant which was recorded in the High School certificate at the time of his entry

into the government service shall be his date of birth for the purposes of service benefits.

26. This court also finds that Rule 2 of the Rules of 1974 provides that the date of birth entered in the High School certificate at the time of entry of a government servant into the government service or if he has not passed out High School examination, then the date of birth entered in the service book at the time of his entry into the government service shall be final for all service benefits and no application or representation shall be entertained for correction of said date of birth in any circumstance whatsoever. Therefore, it is patently manifest that Rule 2 of the Rules of 1974 clearly provides that the date of birth of a government servant for the purposes of service benefits has to be decided at the time of his entry into the government service i.e. either on the basis of date of birth entered in the High School certificate at the time of entry into the government service or if government servant has not passed out the High School examination, then the date of birth in his service book at the time of his entry in the government service shall be final and no application for change of date of birth in any circumstance can be entertained.

27. I find that petitioner's date of birth in her High School certificate at the time of her entry into the service was recorded as 3.11.1960, therefore in view of the provisions of the aforesaid Rule 2 of the Rules of 1974, her date of birth for the purposes of service benefits shall be 3.11.1960 and no application for change of her date of birth can be entertained. In the case of the petitioner, her date of birth recorded in the High School certificate has been changed by the U.P. Madhyamik Shiksha Parishad, Prayagraj in the year 2021 but on the said basis her

date of birth recorded in her service record cannot be changed in view of the prohibition contained in Rule 2 of the Rules of 1974.

28. Petitioner has relied on the judgment of this court rendered in the case of **Hari Ram Gupta vs. State of U.P. and others**, reported in **2011 (6) ADJ 282**, wherein this court found that Mr. Hari Ram Gupta prior to entering into service has passed out High School examination and at the time of his entry into the service his date of birth recorded in the High School certificate was 1.1.1949, whereas in the service record the date of birth was wrongly entered as 20.8.1947, therefore this court found that in view of Rule 2 of the Rules of 1974 his date of birth entered in the High School certificate at the time of entry into the government service i.e. 1.1.1949 is final and accordingly, direction was issued to correct the date of birth by replacing 20.8.1947 by 1.1.1949. The relevant paragraphs of the judgment in the case of Hari Ram Gupta (supra) are extracted as under:-

“23. From the perusal of dictum laid down by the Apex Court it is clear that the Apex court has not totally closed the door for correction of date of birth but whatsoever has been observed by the Apex Court is that no application shall be entertained after period of limitation prescribed under the relevant rules coupled with the fact that if there is no rule it has to be filed within reasonable time. Further the correction must be sought on the basis of concrete material which is unrefutable. These are three parameters which have to be weighed while dealing with the matter of correction of date of birth in the service book. Here in the Rule of 1974 no limitation is prescribed for applying for correction of date of birth in the service book and in fact it prohibits the correction. As I have observed if the Rule 2 is read as whole then it will transpire that the date of birth recorded in the High School Certificate or equivalent examination or in absence of High School certificate before entering into service the date of birth recorded in the service book shall be deemed to be correct and the last portion of the rule provides that no application for correction of date of birth shall be entertained. Here in fact, literally the petitioner has filed an application for correction of date of birth but if one goes by the rule 2 which is relevant rule, the

correction is automatic as the petitioner has brought in the notice of the employer that he has entered in the service after passing High School Examination in the year 1967 and there his date of birth is recorded 1.1.1949 and the date of birth in the service book will only prevail when the petitioner has not passed High School Examination prior to entry into service and it will come into play in absence of the employees non passing of High School Examination before entering into service. So far as the petitioner's coming for correction at the later stage is concerned, it is known fact that service records are always kept in the custody of employer and the petitioner being Class IV employee cannot be judged on high parameter of legal mechanism.

24. Therefore I am of the opinion that the respondents were duty bound to correct the date of birth as mentioned in the High School certificate, which has not been disputed by the respondents, only on intimation of the petitioner.

25. The view taken by me also find support from the decision of this Court reported in the case of Hari Shankar Pandey Vs. U.P. Power Corporation, Lucknow and others 2006 (1) ESC 80 (All). where this Court has held that the date of birth recorded in the High School certificate if the employee has entered into service after passing High School Examination shall be deemed to be correct. On the same line, a Division Bench of this Court in the case of State of U.P. Vs. Krishna Murari Lal reported in 2008 ESC (4) 2251 has observed as under :-

(6)It is also not disputed that the petitioner had appeared in the High School examination prior to joining the service where his date of birth is also entered as 31.5.1945, therefore, the contention of the learned Standing Counsel that the petitioner is estopped from challenging his date of birth entered in the service record on the eve of his retirement, cannot be maintained. Once an incumbent had a High School certificate before joining the service, the said date of birth shall be taken to be final. The petitioner had no opportunity to challenge the entry because in all his papers including seniority list etc., the same date of birth as entered in his High School certificate was reflected and it is evident that the aforesaid anomaly has come to his notice only at the time of his retirement.

(13) From the perusal of the said Rule 3, it is clear that date of birth of a government servant as recorded in the certificate of his having passed the high School or equivalent examination or where a Government servant has not passed any such examinations aforesaid, the date

of birth recorded in his service at the time of his entry into Government service shall be deemed to be his correct date of birth.

(14) The aforesaid rule clearly indicates that date of birth of a Governemnt servant as recorded in the certificate of his having passed the High School or equivalent examination or where a Government servant has not passed such examination, the date of birth recorded in his service at the time of his enry into government service has to be treated as correct date of birth of the Government servant.

26. Here in this case, the Division Bench has allwed the appeal and quashed the order passed by Hon'ble Single Judge for correcting date of birth on the basis of High School certificate only on the ground that in the year 1959 the petitioner in that case had only appeared in the High School Examination and failed whereas Rule 2 requires that the person must have passed High School Examination before entering into service. In the present case, it is not in dispute that the petitioner has entered into service after passing High School Examination in the year 1980."

29. This court finds that the facts of the case of Hari Ram Gupta (supra) decided by this court are quite different as in the said case petitioner prior to entering into government service has passed out High School examination and in the High School certificate which was available at the time of entry into government service his date of birth was recorded as 1.1.1949 and therefore, in view of the provisions of Rule 2 of the Rules of 1974 direction was given to correct his date of birth by replacing 20.8.1947 by 1.1.1949, whereas in the case of the present petitioner, it is an admitted fact that at the time of his entry into the government service her date of birth recorded in the High School certificate was 3.1.1960 and during service her date of birth was corrected in the High School certificate and therefore, in view of the provisions of Rule 2 of the Rules of 1974 her date of birth entered in the service book on the basis of date of birth mentioned in the High School certificate at the time of her entry into the government service shall be final and cannot be changed.

30. Petitioner has also relied on the judgment rendered by the Hon’ble Supreme Court in the case of **Tulshi Chaudhary vs. Steel Authority of India Limited (Sail) & others**, reported in **2022 Legal Eagle (SC) 863** but the said decision of the Hon’ble Supreme Court is not in respect of Rule 2 of the Rules of 1974 and therefore, the said decision is not applicable in the case of the present petitioner.

31. Respondents No.3 and 4 have relied on the judgment rendered by the Hon’ble Supreme Court in the case of **U.P. Madhyamik Shiksha Parishad and others vs. Raj Kumar Agnihotri**, reported in **(2005) 11 SCC 465**. The relevant paragraphs of the judgment of the Hon’ble Supreme Court rendered in the aforesaid case are extracted as under:-

“It is thus seen from the above quoted judgments that this Court has consistently taken the view that correction in entries made in Government records on the basis of which the Government servant got the service cannot be allowed to be changed just a few years before retirement or at the fag end of his retirement.

17. In the instant case, the U.P. Recruitment to Services (Determination of Date of Birth) Rules came into force w.e.f. 28.05.1974. Rule 2 of the Rule was amended by the first amendment Rules, 1980 of 07.06.1980. The existing rule and the substituted rule are extracted herein below:

<i>COLUMN 1 (Existing rule)</i>	<i>COLUMN 2 (Rule as hereby substituted)</i>
<i>“2. The date of birth of Government servant as recorded in the certificate of his having passed the High School or equivalent examination, or where a Government servant has not passed any such examination as aforesaid, the date of birth or the age recorded in his service book at the time of his entry into Government service, shall be deemed to</i>	<i>2. The date of birth of a Government servant as recorded in the certificate of his having passed the High School or equivalent examination at the time of his entry into the Government service or where a Government servant has not passed any such examination as aforesaid or has passed such examination after joining the service, the date of birth</i>

<p><i>be his correct date of birth or age, as the case may be, for all purposes in relation to his service including, eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.”</i></p>	<p><i>or the age recorded in his service book at the time of his entry into the Government service shall be deemed to be his correct date of birth or age, as the case may be, for all purposes in relation to his service, including eligibility for promotion, superannuation, premature retirement or retirement benefits, and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.</i></p>
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As per the existing rule, the date of birth or the age recorded in his service book at the time of entry into the Government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever.

18. The amended rule of 1980 was deemed to have come into force w.e.f 28.05.1974 and as per the substituted Rule, the date of birth or the age recorded in the service book at the time of entry into the Government service shall be deemed to be the correct date of birth or age, as the case may be, for all purposes and that no application or representation shall be entertained for correction of date of birth or age in any circumstances whatsoever. The respondent has given his date of birth as 30.07.1941 at the time of entry into service which has also been recorded in the service records of the respondent. The above amended rule which come into force w.e.f. 28.05.1974 stipulates that no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever and that the date of birth or age recorded in the service book at the time of his entry into government service shall be deemed to be his correct date of birth or age as the case may be for all purposes.

19. In view of the above rule, we hold that the correct date of birth of the respondent is only 30.07.1941 and the claim now made by the respondent to correct his date of birth from 30.07.1941 to 16.10.1945 cannot at all be entertained or encouraged.”

32. This court finds that the Hon'ble Supreme Court in its judgment rendered in the case of U.P. Madhyamik Shiksha Parishad (supra) has considered the Rule 2 of the Uttar Pradesh Recruitment to Service (Determination of Date of Birth) Rules, 1974 and has held that Rule 2 of the Rules of 1974 was amended in the year 1980 and under the amended Rules, the date of birth recorded in the High School certificate at the time of entry into the government service or if the government servant at the time of entry into service has not passed out High School examination, then the date of birth entered in the service book at the time of entry in service shall be final and no application for correction of date of birth whatsoever shall be considered.

33. This court finds that the legislature of the State of U.P. has deliberately amended the Rule 2 of the Rules of 1974 on 7.6.1980 and thereby has provided that the date of birth of a government servant as recorded in the High School certificate at the time of his entry into the government service shall be final for the purposes of service benefits and no application for change of the said date of birth shall be entertained. In un-amended Rule 2 of the Rules of 1974, the words "at the time of his entry into the government service" were missing but while amending Rule 2 of the Rules of 1974, the said words were inserted by the legislature only with specific intention that the issue of date of birth for the purposes of service benefits has to be finalized at the time of entry into the government service and no application for change of date of birth recorded in the service record can be entertained.

34. Since it is an admitted case of the petitioner that her date of birth at the time of entry into the government service in the High School certificate was recorded as 3.11.1960 and therefore,

even if the date of birth has been subsequently corrected in the High School certificate, the date of birth entered in the service record cannot be changed in view of the prohibition contained in Rule 2 of the Rules of 1974. So far as the judgments of the Hon'ble Supreme Court relied on by the learned counsel appearing for the petitioner, wherein it has been held that the decision of each case applies to its facts, are concerned, this court finds that the Hon'ble Supreme Court in its judgment rendered in the case of U.P. Madhyamik Shiksha Parishad (supra) has interpreted the provisions of Rule 2 of the Uttar Pradesh Recruitment to Service (Determination of Date of Birth) Rules, 1974, therefore the said interpretation made by the Hon'ble Supreme Court shall apply to each and every case where Rule 2 of the Rules of 1974 is applicable.

35. In view of the aforesaid reasons, writ petition lacks merit and thus is dismissed.

Order Date :- 24.11.2023

Salim