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## HIGH COURT OF CHHATTISGARH AT BILASPUR

### WA No. 207 of 2025

**1** - Food Corporation of India Through Its Regional Manager, Divisional Officer, In Front of Krishi Mandi Dhamdha Road, Durg District Durg (C.G.) (Respondents)

**2** - The General Manager Food Corporation of India Regional Office, Raipur District- Raipur (C.G.)

... Appellants

**versus**

Laxminarayan Barman S/o Shri Tiloo Barman Aged About 56 Years Working As Assistant Labour Indian Food Corporation, Durg Depo, District-Durg (C.G.)

... Respondents

(Cause-title taken from Case Information System)

For Appellants	:	Mr. R.S. Patel, Advocate
For Respondent	:	Mr. Pankaj Singh, Advocate

**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Ravindra Kumar Agrawal, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**26.03.2025**

1. Heard Mr. R.S. Patel, learned counsel for the appellants as well as Mr. Pankaj Singh, learned counsel appearing for the respondent.

2. By way of this writ appeal, appellants have prayed for following relief(s):

*“It is therefore prayed that this Hon’ble Court may kindly be pleased to allow this appeal and set-aside the impunged order dated 03.01.2025 passed by the Hon’ble Single Bench in W.P.(S) No.1862/2022,*

*AND*

*This Honorable Court may kindly be allowed this writ appeal by modifying/setting-aside the order dated 03.01.2025 to the extent of “that the aforementioned order would not be precedent of the other cases and unmark for AFR, in the interest of justice.”*

3. The present intra Court appeal has been filed against the order dated 03.01.2025 passed by the learned Single Judge in Writ Petition (S) No.1862 of 2022 (*Laxminarayan Barman v. Food Corporation of India and another*), whereby the writ petition filed by the writ petitioner/respondent, is allowed.
4. The case projected by the writ petitioner/respondent before the learned Single Judge is that the actual date of birth of the writ petitioner/respondent was 10.12.1966, which was recorded in the school records of the writ petitioner. The date of birth of petitioner was also recorded as 10.12.1966 in Adhar Card, PAN Card as

well as in his birth certificate. He was appointed on the post of Assistant Labour in the appellants-Department, but due to mistake of the Department, the date of birth of the writ petitioner/respondent was incorrectly recorded in his service record as 10.12.1962. On the basis of request of the writ petitioner/respondent, his date of birth was corrected as 10.12.1966 in Service Proforma. As the date of birth of the writ petitioner was corrected in service book, therefor he had made an application for correction of date of birth recorded in his service record on 15.07.2009, but no such correction has been made. Thereafter, on 10.02.2012, 15.07.2012, 15.01.2013 and 18.10.2021, he has filed application for correction of his date of birth as 10.12.1966 in his service record, but the same has not been corrected in his service record.

- 5.** Being aggrieved with the action on the part of the appellants herein, the writ petitioner/respondent has preferred a writ petition being WPS No.1862/2022, which was allowed by the learned Single Judge vide impugned order dated 03.01.2025 observing that the respondent authorities were directed to give the service benefits to the writ petitioner/respondent as per order passed by this Court and the period of two years as conceded by the writ petitioner/respondent would be limited only in respect of salary and back wages of the writ petitioner/respondent, so far as seniority and other service benefits are concerned, it would remain intact.

6. Challenging the aforesaid order passed by the learned Single Judge in writ petition, the instant appeal has been filed by the appellants-Department.
7. Learned counsel for the appellants submits that the impugned orders are illegal and bad in the eyes of law. He further submits that impugned order passed by the learned Single Judge is not in accordance with law as without considering the entirety of the aspects, the same cannot be allowed. It has been contended that that the writ petitioner/respondent has not made any effort for correction of his date of birth right from the beginning, he is a qualified person and as such, he is having knowledge about the correction of his date of birth, he should have approached the authorities within three months as prescribed under the law, but he has not approached with the specific time frame. It has been further contended that learned Single Judge has committed error of law by allowing the writ petition, as such, appeal be allowed and the impugned order dated 03.01.2025 passed by the learned Single Judge, be set-aside.
8. On the other hand, learned counsel appearing for the writ petitioner/respondent opposes the submissions made by the learned State counsel for the appellants and submits that the learned Single Judge after considering all the aspects of the matter, has rightly passed the impugned order, which does not call for any interference.

9. We have heard learned counsel for the parties and perused the impugned orders and materials available on record.
10. Considering the matter in its entirety and after considering the submissions made by learned counsel appearing for the parties as also perusing the impugned order, we are of the considered opinion that the learned Single Judge has rightly passed the impugned order while relying upon the dictum of Hon'ble Supreme Court in the matter of **Ram Autar Singh Yadav v. The State of Uttar Pradesh** reported in **2024 LiveLaw (SC) 993**, in which, Hon'ble Supreme Court has held as follows :-

*“21. Taking a cue from the above, we can safely conclude that the foremost factor based whereon relief could be declined in a case of unexplained delay and laches is the accrual of a parallel right in favour of a third party. The other vital factor to be borne in mind is whether grant of relief in a belated claim is likely to cause confusion and public inconvenience like unsettling matters which have long settled. Relief could also be denied if by reason of the delay, the official respondents are hopelessly inconvenienced in defending their action for lack of the relevant records and to establish their defence to the full satisfaction of the court.*

*22. In the present case, neither is there accrual of any parallel right of a third party nor could grant of relief cause confusion and*

*public inconvenience. There has also been no occasion for the State authorities to claim that they are in any manner handicapped to defend their action. On the contrary, this is a case where the appellant sought to explain the belated approach by referring to his repeated unyielding persuasions, which the High Court brushed aside mechanically, without appreciating that the appellant had invoked its writ jurisdiction for enforcement of his Fundamental Rights under Articles 14 and 21 of the Constitution. When a litigant approaches a high court invoking its high prerogative writ jurisdiction with a petition under Article 226 of the Constitution alleging that the impugned State action is in breach of his Fundamental Right and claims that the breach be bridged by issuing appropriate writ/order/direction as distinguished from a claim for enforcement of a statutory right, it partakes the character of a duty on the part of such high court to enforce the right breached as the guardian of the Constitution. Law is well-settled that there is no loss of a Fundamental Right for non- exercise thereof and also that there cannot be waiver of a Fundamental Right. Hence, no argument can commend acceptance that a litigant seeking enforcement of his Fundamental Right should be declined relief in all cases of a belated approach. Notwithstanding delay, which might not have been explained to the full satisfaction of a high court, we hold that in*

*cases where a high court finds that facts, as they have been presented, are not seriously disputed, no further investigation into facts is required to be made, the relief claimed in the petition was otherwise due to the writ petitioner and the same would have followed as a matter of course and been granted had he approached the high court without delay, it would be iniquitous and inappropriate to deny relief for no better reason than that the relief has been belatedly claimed.”*

11. Taking into account the overall facts and circumstances of the case, we are of the firm view that learned Single Judge has not committed any error in observing that the delay which has been occurred is duly explained and looking to the nature of work performed by the writ petitioner/respondent, the delay as caused by him cannot be taken as a sole ground to dismiss the petition as well as further looking to the fact that the similarly situated persons whose date of birth was wrongly mentioned in the service record has been directed to be corrected, as such, the date of birth mentioned in the service record of the writ petitioner/respondent was required to be corrected as the correct date of birth was 10.12.1966, which was clearly indicated in the mark-sheet of matriculation issued by the Board of Secondary Education, Madhya Pradesh, Bhopal. However, the writ petitioner/respondent was not entitled to get service benefits of four years as he was willing to get the service benefits of only for

two years, therefore, the respondent authorities were directed to give him the service benefits as ordered by the learned Single Judge and the period of two years as conceded by the writ petitioner/respondent would be limited only in respect of salary and back wages of the writ petitioner/respondent but insofar as seniority and other service benefits are concerned, it would remain intact.

- 12.** For the foregoing reasons, we are of the view that the learned Single Judge has passed the impugned order with cogent and justifiable reasons as in a petition under Article 226 of the Constitution of India. In an intra-court appeal, no interference is usually warranted unless palpable infirmities are noticed on a plain reading of the impugned orders. In the facts and circumstances of the instant case, on a plain reading of order, we do not notice any such palpable infirmities or perversities, as such, we are not inclined to interfere with the impugned order.
- 13.** In the result, the writ appeal lacks merit substance, is liable to be and is hereby dismissed.

**Sd/-**  
**(Ravindra Kumar Agrawal)**  
**Judge**

**Sd/-**  
**(Ramesh Sinha)**  
**Chief Justice**