

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 184 OF 2019
(Subject – Correction in Date of Birth)**

DISTRICT : Hingoli

Keshav Jayawantrao Wable,)
Age : 40 years, Occu. : Service,)
R/o : Hingoli, Taluka & District : Hingoli.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through it's Desk Officer/Secretary,)
Revenue and Forest Department,)
Maharashtra State, Mantralaya,)
Madam Kama Road, Hutatma)
Rajguru Chowk, Mumbai-400032.)
- 2) **The Principal Chief Conservator
Of Forests (Head of Forests Force),)**
Maharashtra State, 3rd Floor, "A")
Wing, "Van Bhavan", Ramgiri Road)
Civil Lines, Nagpur – 440 001.)
- 3) **The Chief Conservator of Forests)
(Territorial), Yavatmal,**)
Dr. Babasaheb Ambedkar, Samajik)
Nyay Bhavan, Near Police Parade)
Ground, Yavatmal, Tq. & Dist. Yavatmal.)
- 4) **The Chief Conservator of Forests)
(Territorial), Aurangabad,**)
Van Bhavan, Osmanpura, Opp.)
S.S.C. Board, Railway Station Road,)
Aurangabad, Tq. & Dist. Aurangabad.)

.. RESPONDENTS

APPEARANCE : Shri Surnedra V. Suryawanshi, Advocate for
the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**
DATE : **25.09.2021.**

ORDER

1. This Original Application has been filed by the applicant Shri Keshav Jayawantrao Wable, R/o Hingoli, Dist. Hingoli invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, challenging the impugned decision of the Revenue and Forest Department, Government of Maharashtra dated, 09.06.2017, of rejecting claim of the applicant for correction of his date of birth in service record as requested by him.

2. The Original Application has been filed on 21.02.2019 and therefore, a Misc. Application No. 82/2019 for condonation of delay of 220 days in filing the present Original Application (St.) No. 378/2019 was filed by the applicant on 21.02.2019. The said M.A. was allowed and the delay in filing the O.A. was condoned by this Tribunal vide its order dated 27.02.2019 (Coram : Hon'ble Justice A.H. Joshi, Chairman). Thereafter, the original application was registered with O.A. No. 184/2019 and all the four respondents were issued notice, for which the service

affidavit was filed on 03.04.2019. Respondent No. 1 to 4 submitted affidavit in reply dated 08.04.2019 to the O.A. which was taken on record on 12.07.2019. As the pleadings were complete the matter was placed for final hearing vide oral order dated 26.08.2019.

3. The background facts are that the applicant was appointed as Assistant Conservator of Forest, Class- "A" (Junior Grade after selection by the Maharashtra Public Service Commission in the year 2011. As per extract of school leaving certificate of the applicant for leaving the said school on 20.06.1988, which was issued by the Head Master, Zilla Parishad Primary School, Umara, District Hingoli on 15.01.2016, his date of birth is January 14, 1978. Even in applicant's Transfer Certificate issued by Jawahar Navoday Vidyalaya, Shankarnagar, Taluka- Biloli, District- Nanded, dated June 19, 1995 his birth date has been recorded as January 14, 1978. Subsequently, at the time of joining govt. service in year 2011 too, the applicant had declared 10.01.1978 as his date of birth and signed the relevant page of his service book extract of which has been enclosed by the applicant as Annexure A-4, page 14 of the paper book of the O.A.

4. In the background of above facts, the applicant had requested the Secretary (Forest) Department of Revenue and Forest, Government of Maharashtra vide his representation dated 29.01.2016 for correction in his date of birth to 09.01.1979 for which he had submitted a copy of extract of Birth and Death Register of Municipal Council, Hingoli, claiming the same to be entry in the birth register for his correct date of birth. The applicant thereby claimed that his correct date of birth is 09.01.1979 instead of 14.01.1978.

5. Revenue and Forest Department, Government of Maharashtra vide impugned order dated 09.06.2017 rejected the representation of the applicant citing provisions of Maharashtra Civil Services (General Conditions of Services) Rules, 1981, Rule 38(2)(F) and Government Notification (Finance Department) dated 24.12.2008. Impugned order was communicated to the applicant vide letter No. कक्ष -२(२)/आस्था/प्र.क.५१(१७.१८)/१६९२/२०१७-१८ औरंगाबाद ४३१ ००५, dated 01.07.2017 (Page No. 24 of paper book).

6. Reliefs prayed for by the applicant in the O.A. are as follows:-

“(A) Call for the record and proceeding of the case.

“(B) Issue an appropriate order or direction thereby to quash and set aside order/communication dated

09.06.2017 issued by the respondent No. 1, Desk Officer, Revenue and Forest Department, Maharashtra State, Mumbai bearing No. MFS – 2016/P.K. 79/F-8 (Annexed at Annexure – “A-6”) thereby denying the claim of the applicant for correction of date of birth in service record as 09.01.1979 and for that purpose issue necessary directions.

(C) Issue an appropriate order of direction thereby directing the Respondents to make necessary correction in service record of the applicant in respect of date of birth as 09.01.1979 and for that purpose issue necessary order or directions.

(D) Grant cost of this Original Application.”

7. The applicant has narrated reasons behind recording of wrong date of birth as follows-

- a. Applicant’s grandfather got wrong date of birth recorded at the time of school admission in year 1985 without verifying the same with any record of birth, he being an illiterate person.
- b. At the time of joining service, the authorities recorded his birth date based on entries in school leaving certificate without asking for birth certificate. As birth certificate was

not asked for therefore, the applicant did not submit the same. Thus, the respondent no. 3, without adhering to the procedure prescribed under Rule 38 (2) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and the government circulars dated 27.09.1994 and 03.03.1998, recorded the date of birth of the applicant as 14.01.1978. The applicant could not notice said facts at the relevant time and realized the mistake only in January 2016.

c. The applicant has approached this tribunal after the respondent no. 1 rejected his request for correction in date of birth based on municipal records.

8. The applicant has sought reliefs prayed for on following main ground-

a) The impugned order passed by the respondent no. 1 is contrary to the principles of natural justice, equity and good conscience.

b) The impugned order passed by the respondent no. 1 is contrary to the documents available on record and the law applicable to the present set of facts.

- c) The respondent no. 1 has misread and misconstrued provisions of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, more particularly the instructions added thereunder by the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2008, which are added vide notification dated 14.12.2008.
- d) The respondent no. 1 has failed to consider that Rule 38 (2) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 prescribes initial procedure to be followed while recording the date of birth in service record. In the present case, the applicant has prayed for correction of date of birth in view of instructions below Rule 38, which are issued by the Governor of Maharashtra in exercise of powers conferred by proviso to the Article 309 of the Constitution of India, 1950. As such, the case of the applicant ought to have been decided by the respondent no. 1 considering the instructions below Rule 38.
- e) The respondent no. 1 ought to have considered that the applicant has made application for correction of date of birth in prescribed period of limitation in view of

Instruction (1) of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. As such, by following procedure prescribed under Instruction (2) to (3), the respondent no. 1 ought to have made correction in service record of the applicant.

- f) The respondent no. 1 ought to have considered that the respondent no. 3 did not ask the applicant for production of 'Birth Certificate' from competent authority. As such, the respondent no. 1 has failed to follow the procedure prescribed under Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and the govt. circulars dated 27.09.1994 and 03.03.1998.
- g) The respondent no. 1 ought to have considered that the applicant has produced along with his application for correction of date of birth the 'Birth Certificate' issued by the Hingoli Municipal Council u/s 12/17 of the Registration of Births & Deaths Act, 1069 and Rules 8/13 of the Maharashtra Registration of Birth and Death Rules, 2000 which shall have to be considered as conclusive proof of the fact of the date of birth.

h) The applicant has not gained any advantage in school admission, entry into Government service etc. by representing the date of birth as 14.01.1978.

9. The applicant has During hearing of the present O.A., it was observed by the Tribunal that the birth certificate has one endorsement as – “सन १९७९ च्या जन्म रजि. अनु. क्र.-१९ वर दि. ०९.०१.१९७९ व शपथपत्रा आधारे नोंदणी”. Therefore, need was felt to get it ascertained whether the date of birth of the applicant had been recorded as on 09.01.1979 or subsequently. It is with this purpose that the learned Presenting Officer for respondents was directed to take correct information from the concerned authority (Tribunal’s oral order dated 09.11.2019). However, thereafter, the learned advocate for the applicant submitted on 12.02.2020 a photo copy of affidavit sworn by the applicant on 27.01.2016 to clarify this issue.

10. The matter came on Board on 08.07.2021, after a long time gap due to prevailing pandemic situation prevailing during Covid-19 outbreak. The matter was fixed for final hearing on 22.07.2021 26.08.2021. The learned advocate for applicant cited an order passed by Maharashtra Administrative Tribunal, Bench at Aurangabad in O.A. No. 897 of 2018, dated 22.04.2019.

The two sides of the matter were given time to submit written note of arguments made.

11. The claim of the applicant have been examined in the light of provisions of Rule 38 of the Maharashtra Civil Services General Conditions of Services) Rules, 1981 and the govt. circulars dated 27.09.1994 and 03.03.1998. Accordingly, original Birth and Death register of Municipal Council, Hingoli forthe two years i.e. 1978 and 1979 were ordered to be produced before the Tribunal. It was noticed that the said original record regarding Birth and Death Register is in bad condition, entries are not legible and pasted and arranged in a way that does not give full details of all columns. There is no mention of name of the child born, only the name of mother namely Kausalya Jayawant has been recorded with reference to date of 09.01.1079 and sex of child born recorded as 'M'. Photo copy of relevant part of the birth register presented by Municipal Council, Hingoli as submitted by the learned advocate for the applicant on 22.02.2019 is enclosed in paper book and marked as 'X' for reference.

12. As the birth register which is in a very shabby condition, it has no mention of name of the child born and the

birth certificate has endorsement to the effect that the same had been issued on strength of affidavit filed by the applicant, it is inferred that the birth certificate was issued subsequently on strength of affidavit. At this stage, reference is drawn to clause 4 of the government circular dated 03.03.1998 relied upon by the applicant relevant part of which reads as follows :-

“४. नियम ३८ (२) नुसार सेवापुस्तकात जन्मतारीख नोंदविताना सूचना क्रमांक २ मध्ये उल्लेख केलेले कागदोपत्री पुरावे तपासून जन्मतारीख निश्चित न करता शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रामध्ये नोंदविलेली जन्मतारीख सेवापुस्तकात नोंदविण्यात येते व नंतर जन्मतारीख बदलण्याचे प्रस्ताव येतात असे निदर्शनास आले आहे. शासन आता असे आदेश देत आहे की, ज्यावेळी शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रात दिलेली जन्मतारीख व जन्म-मृत्यू नोंदवहीत नोंदविलेली जन्मतारीख भिन्न असेल त्यावेळी जन्म-मृत्यू नोंदवहीत नोंदविलेली जन्मतारीख नियमानुसार स्वीकारून तिची सेवा पुस्तिकेत नोंद घेणे आवश्यक आहे. परंतु हा पुरावा ज्या कर्मचाऱ्यांचे मूळ जन्म-मृत्यू नोंदवहीत नाव असेल व ही नोंद जन्माच्यावेळी घेतली असेल त्यांच्या बाबतीत ग्राह्य मानावा अन्यथा उपरोक्त नियम ३८ मधील सूचना क्रमांक २ (एक) नुसार जन्म दिनांकाची नोंद घेण्याबाबत कार्यवाही करण्यात यावी. जन्म-मृत्यू नोंदवहीतील उतारा तपासताना ही नोंद मूलतःच घेण्यात आली आहे, याची खात्री करून घेण्यात यावी. ही जन्मतारीख सेवापुस्तिकेत नोंदविल्यावर त्यामध्ये दुरुस्ती करता येणार नाही याची स्पष्ट कल्पना कर्मचाऱ्यांस देऊन त्यावर त्याची सही घ्यावी.”

13. In order to decide the claim of the applicant in the circumstance that entry in the birth register does not throw admissible evidence regarding date of birth of the applicant, supplementary evidences of the above mentioned affidavit dated 27.01.2016 filed by the applicant with the Chief Officer, Municipal Council Hingoli was taken up for examination. In the

said affidavit, the applicant had claimed that he was born in General Hospital, Hingoli. Therefore, the learned P.O. was asked to get extract of relevant part of indoor patient register of the concerned hospital to corroborate the claim of the applicant. The learned P.O. has submitted a communication dated 25.08.2021 received from the Civil Surgeon, General Hospital, Hingoli stating as follows-

“ उपरोक्त संदर्भीय विषयान्वये कळविण्यात येते की, आपल्या पत्रान्वये मागविण्यात आलेली माहिती जिल्हा रुग्णालय येथील अभिलेखे विभागामध्ये पहाणी केली असता सदर माहिती उपलब्ध नसल्याचे संबंधीत प्रभारी अभिलेखापाल यांनी कळविले आहे.

सदरील माहिती तत्कालीन कालावधीत नगर परिषद हिंगोली या कार्यालयाकडे सुपुर्द करण्यात आली असावी अशी या कार्यालयाची धारणा आहे. तरी नगर परिषद हिंगोली या कार्यालयाकडून संबंधीत माहिती उपलब्ध करून घेण्यात यावी ही विनंती.”

It is beyond comprehension that the Civil Hospital, Hingoli does not have record of in-door patient including the particulars of women who were admitted for delivery of child in its maternity ward.

14. Though the Dy. C.E.O., Municipal Council, Hingoli also reported to the learned Presenting Officer vide his letter dated 25.08.2021 as follows:-

“ वरील विषयी व संदर्भीय पत्रकाच्या अनुषंगाने सविनय अहवाल सादर करण्यात येते की, आपण संदर्भीय पत्रका अन्वये मागितलेली माहिती या कार्यालयात उपलब्ध आहे. तसेच मा. जिल्हा शल्यचिक्सक जिल्हा रुग्णालय, हिंगोली यांनी दिलेल्या पत्रकाच्या अनुषंगाने सदर

जन्मनोंद तत्कालीन वेळी जिल्हा रुग्णालय हिंगोली यांच्या जन्मनोंद अहवाल वरून या कार्यालयात घेण्यात आली होती.”

On being asked for the copy of indoor patient register, the Dy. C.E.O., Municipal Council, Hingoli reported on telephone that the Municipal Council does not have the information asked for. As per the practice, the Municipal Council used to call information regarding birth taken place in District Hospital by sending messenger and take note in the Birth Register.

15. As has emerged so far as the extract of birth and death register for year 1979 presented the Municipal Council, Hingoli did have mention only of mother's name and no record of the admission of mother of the applicant in the indoor patient register of maternity ward is available with the Civil Hospital.

16. In absence of name of child born, it is not possible to make out whether the entry in the birth register belonged to the applicant or his younger brother. In order to ascertain that the claimed entry in Municipal register of year 1979 belonged to the applicant and not to his younger brother, the applicant was directed to submit copy of extract of Birth and Death register of Municipal Council, Hingoli pertaining to entry of birth of his

younger brother. However, the learned Advocate for the applicant has submitted on 21.09.2021 two documents as follows:-

(a) Form 10, NON-AVAILABILITY CERTIFICATE dated 20.09.2021 issued by Registrar, (Birth & Death), Municipality Hingoli.

(b) Secondary School Examination Certificate of Shri Wable Gajanan Jayantrao.

17. It is surprising that the applicant has not only failed to adduce copy of birth certificate of his younger brother in order to ascertain correctness of his claim in absence of mention of child's name on the birth register of Municipal Council Hingoli, but he is also proposing to accept Secondary School Examination Certificate of his younger brother as admissible evidence whereas, he does not consider school leaving certificate and transfer certificate as admissible evidence in his own case.

18. From above analysis of facts, it is clear that at the first place, the applicant has acquiesced with the entry of his date of birth in various documents from school level to continuing in govt. service for about five years after his selection through MPSC. Further, he has not been able to show that the entry of his date of birth in his service book is made by mistake

of person making the entry. Applicant's claims were examined in the light of provisions of Government Circular dated 03.03.1998. However, no merit is found in applicant's claim. It is also observed that the citation of order passed by this Tribunal in O.A. No. 897 of 2018, dated 22.04.2019 has different facts and ratio. Therefore, I do not find merit in claims of the applicant. Hence, I pass following order:-

ORDER

- (A) The Original Application No. 184/2019 is hereby dismissed for reasons of devoid of merit.
- (B) No order as to costs.

PLACE : AURANGABAD.
DATE : 25.09.2021.

(BIJAY KUMAR)
MEMBER (A)

KPBS.B. O.A. No. 184 of 2019 BK 2021 Correction in date of birth