Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

Date :- 27-5-2019

Coram :- Hon'ble Shri P.N. Dixit VC

Adv. S.B. Talekar for the Applicant

Ms. S.P. Manchekar C.P.O for the Respondent

Adv. K.A. Jagdale for Resp. No 25, 75, 82 & 97.

order passed in tribunal Coram

S.O. to 4-6-2019

Sd/-

M.A. No.283 of 2019 in O.A. No. 45 of 2019

M.T. Metake & Ors. ..Applicants

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri S.B. Talekar, learned Advocate for the Applicants, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents and Shri K.A. Jagdale, learned Advocate for Respondents No.25, 75, 82 and 97.

2. Ld. Advocate for the applicants has made the prayer as under:

> "10(a) To allow the applicants to effect the service upon the respondent nos.5 to 826 by way of publication on the official website of the Maharashtra Public Service Commission."

3. He further clarifies that he has made no efforts to approach the respondent-MPSC with a request to furnish their email address. During hearing he states that he will make an application to the same effect.

4. Shri Jagdale, Ld. Advocate for respondents No.25, 75, 82 and 97 on instructions undertakes to furnish the email address of Respondents No.25, 75, 82 and 97 to the Ld. Advocate for the applicants.

5. Ld. Advocate for the applicants mentions that he will approach the respondent-MPSC with similar request. The respondents viz. MPSC are directed to consider the prayer, if made, on priority. Ld. Advocate for the applicant is at liberty to place copy of order dated 13.5.2019 in OA No.474 of 2019 on record.

6. S.O. to 4.6.2019.

Sd/-

(P.N. Dixit)
Vice Chairman (A)
27.5.2019

(sgj)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.471 OF 2019

Shri Trimbak R. Khairnar ..Applicant

Versus

The State of Maharashtra & Ors. ..Respondents

Shri N.L. Chaudhari – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

DATE : 27th May, 2019

ORDER

1. Heard Shri N.L. Chaudhari, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Ld. Advocate for the Applicant prays for interim relief in the following prayer:

> *"VII. Pending hearing and final disposal of this OA, this Hon'ble Tribunal may kindly direct the Respondent authorities to correct the date of birth recorded in his service book to 21.8.1964 in place of 1.6.1961 and further direct to maintain status quo till decision of present OA."*
>
> (Quoted from page 8 of OA)

3. Ld. Advocate for the Applicant relies on the judgment dated 19.9.2016 passed by this Tribunal in OA No.676 of 2015 Shri Bhagavan

Mahadeo Patil Vs. The State of Maharashtra & Ors. The relevant portion of the same reads as under:

> *"38. The result is that entry made in the birth register whenever it is proved by appropriate evidence, as well it is not disproved it will have to be acted upon."*
>
> (Quoted from page 72 of OA)

4. In the judgment referred above there was a variance in the date of birth in the School Leaving Certificate and the date of birth recorded in the birth-death record of the local authorities.

Facts of the case are as under:

5. At the time of joining the service the Applicant produced School Leaving Certificate which mentions date of birth as 1.6.1961. Admittedly, same was correctly recorded by the concerned authorities at the time of giving him appointment and there is no dispute about the same. After joining the service on 22.11.1982, the Applicant claims that he submitted an application dated 16.5.1986 (page 28A of the OA) and requested that the date of birth should be rectified as 21.8.1964. However, there is no confirmation on record. In support of the same he has produced extract from birth-death record maintained by the Tahsildar, Deola, District Nashik on 7.8.2015 (page 19 of OA). Extract from the General Register maintained by the Zilla Parishad School, Pimpalgaon, Taluka Deola, District Nashik is on record at page 24 of the OA and the same states that the date of birth of the Applicant is 1.6.1961.

6. On 16.5.1986 the Applicant submitted an application that his date of birth should be changed from 1.6.1961 to 21.8.1964. The application was submitted to the Executive Engineer, Public Works Department, Malegaon. The record does not contain any subsequent details of efforts

made by the Applicant to follow up his case till 3.10.2015 and 13.3.2019 which is at the fag end of his service as he is due to retire on 31.5.2019 and rejected by impugned order dated 6.5.2019 (Exhibit 'D' page 59 of OA).

7. Issues for consideration are as follows:

Sr. No.	Issues	Findings
1)	Whether there was any mistake in recording his date of birth correctly by the authorities?	Negative
2)	Whether the Applicant has made serious efforts to execute the necessary changes in the record as far as his date of birth is concerned?	Negative

8. As can be seen from the above, findings in both the issues are negative. In this regard the judgments given by the Hon'ble Supreme Court are relevant. As far as first issue is concerned the Head Note B in the case of Commissioner of Police, Bombay And Another Vs. Bhagwan V. Lahane, (1997) 1 SCC 247 reads as under:

> *"B. Service Law – Date of birth – Correction of – Condition precedent – Held, the employee seeking the correction, held, must show that the recorded date of birth was made due to negligence of some other person or that the same was an obvious clerical error – Where the employee fails to do so, held, relief should not be granted by the Administrative Tribunal – Maharashtra Civil Services (General Conditions of Services) Rules, 1981, R.36 – Age = Para 6."*

9. As far as second issue is concerned the Hon'ble Supreme Court in State of Maharashtra & Anr. Vs. Gorakhnath Sitaram Kamble & Ors., Civil

Appeal No.9704 of 2010 decided on 16.11.2010 observed in para 20 as under:

> *"20. ..... no application for alteration of date of birth after five years should have been entertained."*

10. Thus, as the Applicant has not demonstrated that (i) there was any mistake in recording his date of birth as per the documents furnished by him and (ii) as the Applicant has approached the concerned to modify his date of birth at the fag end of his service career without pursuing the case for more than three decades, I find that there is no reason to grant the interim relief as prayed by him to maintain the status quo and permit to continue in service. The prayer for interim relief is rejected, for above reasons.

11. It is clarified that the matter would be taken up for hearing on receipt of reply to be filed by the Ld. CPO. Ld. CPO seeks four weeks time to file reply.

12. S.O. to 28.6.2019.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
27.5.2019

Dictation taken by: S.G. Jawalkar.