

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 77 OF 2018**

DIST. : JALNA

- Manohar s/o Aabarao Gaikwad, )  
Since dead through his L.Rs., )
- A-1) Smt. Anupama w/o Manohar Gaikwad,) )  
Age : 47 years, Occu.: Household,) )  
Plot no. 24, Sterling Appt., ) )  
Jyotinagar, Dist. Aurangabad. ) )
- A-2) Ajinkya s/o Manohar Gaikwad, ) )  
Age : 30 years, Occu.: Nil, ) )  
Plot no. 24, Sterling Appt., ) )  
Jyotinagar, Dist. Aurangabad. ) )
- A-3) Miss. Asmita d/o Manohar Gaikwad,) )  
Age : 27 years, Occu.: Nil, ) )  
Plot no. 24, Sterling Appt., ) )  
Jyotinagar, Dist. Aurangabad. ) )
- A-4) Abhay s/o Manohar Gaikwad, ) )  
Age : 24 years, Occu.: Education, ) )  
Plot no. 24, Sterling Appt., ) )  
Jyotinagar, Dist. Aurangabad. )..

**APPLICANTS**

**V E R S U S**

1. The Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai. )
2. The Chief Engineer, )  
Public Works Regional Office, )  
Bandhkam Bhavan, Adalat Road, )  
Aurangabad. )
3. Executive Engineer, )  
Pradhan Mantri Gram Sadak Yojana,) )  
Maharashtra Rural Road ) )  
Development Association, (MRRDA)) )  
Jalna. )..

**RESPONDENTS**

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APPEARANCE :- Ms. Preeti Wankhade, learned Advocate for  
the applicant.  
: Shri M.P. Gude, learned Presenting Officer  
for the respondents.  
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**CORAM : Hon'ble Shri B.P. Patil, Acting Chairman**  
**RESERVED ON : 7<sup>th</sup> August, 2019**  
**PRONOUNCED ON : 9<sup>th</sup> August, 2019**  
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### **ORDER**

1. The applicants are challenging the communication dated 18.12.2017 issued by the res. no. 1 the Secretary, Public Works Department, Mantralaya, Mumbai thereby application of the deceased applicant Shri Manohar Aabarao Gaikwad for correcting the date of birth in the service record has been rejected by filing the present Original Application. They have also prayed to direct the respondents to correct the date of birth of the deceased applicant Shri Manohar Aabarao Gaikwad as 5.4.1962 instead of 5.7.1957 and to extend all consequential service benefits to him.

2. The applicants are legal heirs of deceased applicant Shri Manohar Aabarao Gaikwad. The deceased applicant Shri Manohar Aabarao Gaikwad passed Bachelor of Engineering and he was selected and appointed as a Assistant Engineer Grade-II on 15.5.1985 after undergoing through the due selection process conducted by the Public Works Department, Jalna. At the time of

joining the service he had submitted his S.S.C. certificate to the respondents, wherein his date of birth has been mentioned as 5.7.1957. On the basis of the said certificate entry regarding his date of birth has been recorded in his service record. It is contention of the applicants that thereafter deceased applicant Shri Manohar Aabarao Gaikwad came to know about his actual date of birth as 5.4.1962. He immediately submitted an application for correction of his date of birth on 27.9.1989 to res. no. 3 and mentioned that his correct date of birth is 5.4.1962 and requested to correct the same in his service record. The said application was filed within the prescribed period of limitation of five years from his entry in the Government service. In spite of filing such application by the deceased applicant Shri Manohar Aabarao Gaikwad the res. no. 1 had not taken any action.

3. It is contention of the applicants that the deceased applicant Shri Manohar Aabarao Gaikwad has elder brother namely Shri Limbraj s/o Aabarao Gaikwad and younger brother namely Shri Babaji s/o Aabarao Gaikwad. The date of birth of his elder brother Shri Limbraj is 19.4.1956, while date of birth of his younger brother Shri Babaji is 1.1.1965. It is their contention that in the year 1995 election card of the deceased applicant Shri

Manohar Aabarao Gaikwad has been prepared wherein his age has been mentioned as 33 years.

4. It is further contention of the applicants that the deceased applicant Shri Manohar Aabarao Gaikwad made several efforts to collect the documents regarding his correct date of birth, but he was orally informed by the concerned authority that there was no entry in the Birth & Death Register of the Gram Panchayat therefore he requested to the office of Gram Panchayat, Khamaswadi to inform him in that regard in writing. Accordingly the Gram Panchayat, Khamaswadi issued a letter dated 25.8.2011 stating that entry of the date of birth of the deceased applicant was not recorded in the Birth & Death Register. Therefore, he approached to the Executive Magistrate, Osmanabad with a request to direct to the Gram Panchayat, Khamaswadi to record his date of birth in view of provisions of rule 13(3) of the Births, Deaths and Marriages Registration Act, 1969. The Executive Magistrate conducted an enquiry through the Talathi of village Khamaswadi and thereafter passed the order dated 22.12.2014 directing the Gram Panchayat, Khamaswadi to record his date of birth as 5.4.1962 in the birth register. Accordingly the Gram Panchayat, Khamaswadi has recorded his date of birth in the birth and death register. Thereafter the deceased applicant Shri

Manohar Aabarao Gaikwad has submitted an application to the res. no. 3 for correction of his date of birth in the service record along with birth certificate and copy of Gazette and also forwarded the copies thereof to the res. nos. 1 & 2. The res. no. 3 ordered to correct the take entry regarding date of birth of the deceased applicant in the service record as 5.4.1962 and accordingly he took an entry in the service record and in the statement of his General Provident Fund. After carrying out the correction in the service book of the deceased applicant, the res. no. 3 forwarded the same to the res. no. 2 on 16.2.2015 which was further forwarded by the res. no. 2 to the res. no. 1. On receipt of the proposal from the res. no. 2 the res. no. 1 issued communication to the res. no. 2 stating that the res. no. 3 has no power to correct the date of birth of a Gazetted employee and the proposal is required to be approved by the General Administration Department and the Finance Department. Not only this, but the res. no. 1 by issuing another communication sought explanation from the res. no. 3 as to how did he carried out the correction in the service record of the deceased applicant Shri Manohar Aabarao Gaikwad regarding his date of birth. Thereafter the res. no. 3 immediately forwarded a proposal to the res. no. 1 on 31.3.2015 for correction of date of birth of the deceased applicant Shri Manohar Aabarao Gaikwad and the res. no. 3 also cancelled

the entry regarding corrected date of birth recorded in the service book of the deceased applicant by order dated 9.4.2015 and also forwarded copy thereof to the res. nos. 1 & 2. The deceased applicant has made an application to the res. no. 3 on 13.4.2015 in the required format stating that he is fulfilling all the requirements for correction of entry regarding his date of birth recorded in his service record. But the respondents have not decided his application though he fulfilled all the criteria laid down in Rule 38(2) Instructions 2 (2-A) (i) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Therefore the deceased applicant Shri Manohar Aabarao Gaikwad approached the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 7102/2015 on 13.7.2015. The said writ petition was taken up for admission on 15.7.2015 and it was disposed of with liberty to the deceased applicant to avail alternate remedy by keeping all contentions open.

5. Thereafter the deceased applicant Shri Manohar Aabarao Gaikwad approached this Tribunal by filing Original Application St. no. 995/2015. On 22.7.2015 without issuing notices to the respondents that too when the Original Application was not registered, this Tribunal was pleased to dismiss the said Original

Application. Therefore, the deceased applicant Shri Manohar Aabarao Gaikwad approached the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad for quashing and setting aside the order dated 22.7.2015 passed by the Tribunal in O.A. St. no. 995/2015 by filing writ petition No.9608/2015. On 23.11.2016 Hon'ble High Court was pleased to remand the matter back to this Tribunal with a liberty to the deceased applicant Shri Manohar Aabarao Gaikwad to place the application dated 27.9.2015 on record. In pursuance to the said order of the Hon'ble High Court the deceased applicant Shri Manohar Aabarao Gaikwad filed Misc. Application No. 473/2016 for amending and adding his application dated 27.9.1989 in his O.A. st. no. 995/2015 before this Tribunal. The said Misc. Application was allowed and the deceased applicant was permitted to carry out amendment in the O.A. Thereafter the O.A. st. 995/2015 came to be registered as Original Application No. 239/2017. On 15.9.2015 the said Original Application came to be disposed of with a direction to the respondents to decide the proposal, which was pending with them within a period of 3 months from the date of that order. In pursuance to the said order the res. no. 1 had asked the deceased applicant Shri Manohar Aabarao Gaikwad to submit his school leaving certificate of 4<sup>th</sup> standard for deciding the said proposal and accordingly the deceased applicant has

submitted the same. The res. no. 1 decided the proposal of the deceased applicant on 18.12.2017 and rejected the same on the count that the date of birth in the service book of the deceased applicant is recorded on the basis of his S.S.C. certificate submitted by him and it was also verified and signed by him and that it is not an error committed by negligence of any other employee. The res. no. 1 has rejected the representation of the deceased applicant on the ground that he submitted the proof regarding his date of birth after the period of 25 years after filing application for correction of his date of birth on 27.9.1989. It has been further observed by the res. no. 1 while rejecting his representation that as per the school leaving certificate of 4<sup>th</sup> standard issued by the Gram Panchayat School, Khamaswadi it reveals that the deceased applicant Shri Manohar Aabarao Gaikwad entered in the school in the year 1964 and if his age is counted considering the said date of birth i.e. 5.4.1962 then his age at the time of his entry in the School comes to just 2 years. It has been further observed that the application of the deceased applicant Shri Manohar Aabarao Gaikwad cannot be entertained in view of the decision given by the Hon'ble Supreme Court in case of **Union of India Vs. Harnamsingh [Civil Appeal No. 502/1993]**.



6. It is contention of the applicants that the res. no. 1 had not considered the case of the deceased applicant Shri Manohar Aabarao Gaikwad as per rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. It is their contention that the deceased applicant Shri Manohar Aabarao Gaikwad moved an application for correction of his date of birth within the stipulated period and he submitted the proof regarding his correct date of birth after 25 years. They have contended that the date of birth of the deceased applicant has not been recorded in the birth and death register of the Gram Panchayat, Khamaswadi and thereafter, he approached to the Executive Magistrate, Osmanabad and as per the order of the Executive Magistrate his date of birth has been recorded in the birth and death register of the Gran Pancayat, Khamaswadi and thereafter the deceased applicant Shri Manohar Aabarao Gaikwad produced the proof regarding his correct date of birth to the respondents. It is their contention that there was no delay on the part of the deceased applicant Shri Manohar s/o Aabarao Gaikwad. The respondents had not considered the said aspect while rejecting his application and therefore he challenged the impugned order by filing the present Original Application and also prayed to issue directions to the respondents to record the correct date of birth of in his service record.

During the pendency of the Original Application the original applicant Shri Manohar Aabarao Gaikwad died. His legal heirs proceeded with the Original Application.

7. Respondent nos. 1 & 2 filed their affidavit in reply and resisted the contentions of the applicants. They have not disputed the fact regarding appointment of deceased applicant Shri Manohar s/o Aabarao Gaikwad and maintenance of his service record. They have not disputed the fact that on the basis of the S.S.C. certificate produced by the deceased applicant his date of birth has been recorded in his service record as 5.7.1957. They have admitted the fact that the deceased applicant has filed application for correction of entry regarding his date of birth recorded in his service record on 27.9.1989. They have not disputed about the fact that deceased applicant filed writ petition No. 7102/2015 on 13.7.2015 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and thereafter filed Original Application St. no. 995/2015 before this Tribunal. They have also admitted the fact that the deceased applicant filed another writ petition No.9608/2015 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and the order passed therein. They have also admitted the fact that the deceased applicant had filed O.A. st. 995/2015, which came to be

registered as Original Application No. 239/2017 and it came to be disposed of by the Tribunal with directions to the respondents to decide the proposal regarding correction of entry regarding date of birth recorded in the service record of the deceased applicant within a period of 3 months from the date of that order. They have also admitted the fact that the deceased applicant made an application on 5.11.2014 to the Tahsildar and the Tahsildar has issued the certificate on 22.12.2014 on the basis of affidavit and evidence produced by the deceased applicant.

8. It is their contention that the date of birth of the deceased applicant has been recorded on the basis of S.S.C. certificate produced by him and thereafter it was verified & signed by the deceased applicant. It is their contention that there was no fault or negligence on the part of any of the employees in recording the date of birth of the applicant in service record. It is their contention that deceased applicant has submitted a representation on 27.9.1989 for correction of entry regarding date of birth recorded in the service record, but he had not pursued the said application and submitted the proof regarding his date of birth after 25 years therefrom. It is their contention that even if it is considered that the deceased applicant was born on 5.4.1962 in that case he might have been admitted in the school at the age of

2 years but he was ineligible to admit in the school as per the rules then prevailing. It is their contention that the respondents have rejected the proposal of the deceased applicant in view of the provisions laid down by the Hon'ble Supreme Court in case of **Union of India Vs. Harnamsingh [Civil Appeal No. 502/1993]** (supra). It is their contention that the claim of the deceased applicant regarding correction of entry regarding his date of birth recorded in the service book has been rejected after detailed scrutiny of documents by the department with the concurrence of General Administration Department and the Finance Department. There is no illegality in the impugned order and therefore they supported the same. It is their contention that the impugned order has been passed by the respondents in accordance with the rules and therefore they justified the impugned order.

9. I have heard the arguments advanced by Ms. Preeti Wankhade, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

10. Learned Advocate for the applicants has submitted that the deceased applicant Shri Manohar Aabarao Gaikwad was Bachelor of Engineering and he was selected and appointed as a Assistant Engineer-II on 15.5.1985 after due selection process conducted by

the Public Works Department, Jalna. At the time of joining the service his date of birth has been recorded as 5.7.1957 on the basis of his S.S.C. certificate. She has submitted that thereafter the deceased applicant made an enquiry regarding his correct date of birth and upon enquiry it was disclosed to him that his date of birth has not been recorded in the birth and death register of Gram Panchayat, Khamaswadi. It is her submission that correct date of birth of deceased applicant is 5.4.1962 and therefore he filed an application on 27.9.1989 to the respondents and prayed to correct the entry regarding his date of birth recorded in his service record. She has submitted that the respondents have not taken any decision on the application of the deceased applicant and it was pending with them. The deceased-applicant persuaded the respondents in that regard but in spite of his persuasion no decision was taken on his application. Therefore, the deceased applicant approached this Tribunal and Hon'ble High Court and as per the directions given by this Tribunal in O.A. no. 239/2017 the res. no. 1 decided the proposal sent by the res. no. 3 and rejected the same by the impugned order. She has submitted that the deceased applicant had produced the documents showing that he was born in village Khamaswadi, but his date of birth had not been recorded in the birth & death register maintained by the Gram Panchayat. She has submitted that as the date of birth of

deceased-applicant had not been recorded in the record of Gram Panchayat, he approached to the Executive Magistrate, Osmanabad for issuing directions to the concerned Gram Panchayat to record his date of birth in their record. The Executive Magistrate, Osmanabad, upon enquiry conducted through the Talathi of village Khamaswadi directed the Gram Panchayat, Khamaswadi to record the date of birth of deceased applicant as 5.4.1962 in its record. She has submitted that on the basis of the same the Gram Panchayat, Khamaswadi recorded an entry regarding date of birth of the deceased applicant in the Birth & Death register. Thereafter, the deceased applicant collected the certificate from the Gram Panchayat, Khamaswadi mentioning his date of birth as 5.4.1962 and submitted the same to the respondents but the respondents had not considered the same and rejected the proposal by the impugned order. She has submitted that the deceased applicant has submitted additional evidence before the respondents, but the respondents had not considered the same. She has submitted that there was no delay on the part of the deceased applicant in making application to the respondents regarding correction of entry regarding his date of birth recorded in the service record as he moved an application dated 27.9.1989 i.e. within 5 years from the date of joining the service, but the respondents had not decided the said application

and therefore it cannot be said that there was delay on the part of the deceased applicant in filing the application. She has submitted that extract of birth & death register is primary evidence and the respondents ought to have relied on the same and corrected the entry regarding date of birth recorded in the service record of the deceased applicant. In support of it she has placed reliance on the judgment of Hon'ble Supreme Court in case of **CIDCO Vs. Vasudha Gorakhnath Mandevlekar** reported in **2010 (1) Mh LJ 41 (SC)**. She has also placed reliance on the judgment of Hon'ble Supreme Court in case of **Mohd. Yunus Khan Vs. U.P. Power Corporation Ltd. and Ors.** reported in **(2009) 1 SCC (LS) 83.**

11. Learned Advocate for the applicants has further submitted that the respondents had not considered the provisions of Rule 38(2) Instructions 2 & 2(A) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 in proper perspective while passing the impugned order. She has argued that the impugned order is not in accordance with the Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and therefore she prayed to quash the impugned order by allowing the Original Application.

12. Learned Presenting Officer has submitted that the deceased applicant moved an application on 27.9.1989 for correction of entry regarding date of birth recorded in the service book but he had not produced the documentary proof in support of his contention for the period more than 25 years. He kept mum and he obtained the certificate from the Gram Panchayat, Khamaswadi on the basis of order of the Executive Magistrate, Osmanabad when he was on the verge of retirement. He has submitted that entry regarding date of birth of the deceased applicant has been recorded in the service record on the basis S.S.C. certificate produced by him and it was verified and signed by the deceased applicant. He has submitted that there was no negligence on the part of the concerned authority while recording the date of birth of the deceased applicant in the service record. Moreover the deceased applicant had not submitted any proof as per instructions under Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 to substantiate his claim for correction of entry regarding date of birth recorded in the service book. He has submitted that it is not a clerical error in recording the date of birth of the deceased applicant. Therefore, the res. no. 1 has rightly rejected the application of the deceased applicant. He has submitted that even if it is presumed that the correct date of birth of the deceased applicant is 5.4.1962, it means that he



was admitted in the first standard at the age of 2 years considering his school leaving certificate which shows that he took admission on 7.8.1964. He has argued that as per the provisions of rule 128 of Bombay Primary Education Rules, 1949 for admitting the student in the school in the first standard he has to complete 5 years of age. In view of the said rule the deceased applicant would be ineligible for admission in any school and therefore the res. no. 1 has rightly rejected the application of the deceased applicant by recording the reasons and therefore he justified the impugned order.

13. On perusal of documents on record it reveals that the deceased applicant entered the service as a Assistant Engineer – II on 15.5.1985 and on joining the service his service book has been maintained. He produced his S.S.C. certificate in support of proof of his date of birth and on the basis of that certificate his date of birth has been recorded as 5.4.1962 in his service record. It was verified & signed by the deceased applicant Shri Manohar. No doubt, the deceased applicant moved an application in the year 1989 with a request to record his date of birth as 5.4.1962 in place of 5.7.1957, but he had not filed documents in support of his contentions. He kept mum for 25 years and when he was on the verge of retirement he approached the Executive Magistrate,

Osmanabad and got the order to the Gram Panchayat, Khamaswadi to record his date of birth as 5.4.1962. On the basis of said order issued by the Executive Magistrate, Osmanabad he obtained certificate regarding his date of birth as 5.4.1962 from the Gram Panchayat, Khamaswadi and produced the same before the respondents. He produced school leaving certificate of Zilla Parishad School, Khamaswadi dated 16.4.2005 (page 70), which shows that he was admitted in the school on 7.8.1964 and after passing the 4<sup>th</sup> standard he left the school on 27.7.1970. In view of rule 128 of Bombay Primary Education Rules, 1949 for admission in the school for 1<sup>st</sup> standard, the student has to complete 5 years of age. Even if it is presumed that the deceased applicant was born on 5.4.1962 as contended by him, in that event he might have been admitted in the school at the age of 2 years. But he was ineligible for admission in the school in view of the Rule 128 of Bombay Primary Education Rules, 1949. The res. no. 1 has rightly considered the said aspect while rejecting the application of the deceased applicant.

14. It is material to note here that rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 provides a procedure regarding writing the events and recording the date of birth in the service book. Rule 38 (2) provides the

procedure to be followed while recording the date of birth. In view of rule 38 (2) (a) the date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on, while Rule 38(2)(f) provides that when once entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is known that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error. In the instant case the entry regarding date of birth of the deceased applicant has been recorded on the basis of documents produced by him and it was verified with reference to the documents produced by him. There was no obvious clerical error in recording the date of birth of the deceased applicant in the service record. Moreover, it is not his case that the entry was recorded due to want of care on the part of some other person or employee. Therefore, the deceased applicant is not entitled to get corrected the entry regarding his date of birth recorded in the service record in view of provisions of rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

15. In view of the rule 38(2) instruction (2-A) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 a

provision has been made regarding what care has to be taken while scrutiny of the application. The said rule is material and therefore it is reproduced hereunder :-

**“38.** Procedure for writing the events and recording the date of birth in the service book –

(1)	--	--	--	--	--
	--	--	--	--	--
(2)	--	--	--	--	--
	--	--	--	--	--
Instruction 1	--	--	--	--	--
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(2-A) At the time of scrutiny of the application, it shall be ensured that –

(i) No advantage has been gained in school admission, entry into Government service by the said Government servant by representing a date of birth which is different than that which is later sought to be incorporated.

(ii) the date of birth so altered would not make him ineligible for admission in any school or University or for the Maharashtra Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered in the Government service.”

16. In view of the provisions of sub rule 2 instruction 2 (2-A)(ii) of rule 38 the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 the deceased applicant would be ineligible for admission in the school if his altered date of birth is

considered. Therefore, the res. no. 1 has rightly rejected his application by considering the above said provisions.

17. I have gone through the above decisions relied by the learned Advocate for the applicants. I have no dispute regarding the principles laid down therein. The facts in the present case are different than the facts in the above cited decisions and therefore the principles laid down therein are not applicable in the instant case.

18. The respondents have rightly considered the provisions of rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 while rejecting the application of the deceased applicant. The documents produced at pages 70 to 85 of the Original Application show that the matter has been referred to the General Administration Department & Finance Department and with the concurrence of the said Departments the res. no. 1 rejected the application of the deceased applicant in view of the provisions of rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. There is no illegality in the impugned order. Therefore, no interference is called for therein. There is no merit in the Original Application. Resultantly the Original Application deserves to be dismissed.

19. In view of the discussions in foregoing paragraphs, the O.A. stands dismissed. There shall be no order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 9<sup>th</sup> August, 2019**

ARJ-O.A.NO. 77-2018 BPP (CORRECTION OF DATE OF BIRTH)