

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 918 OF 2017  
(Subject – Change in Date of Birth)**

**DISTRICT : NANDED**

**Shri Shaikh Sadik s/o Shaikh Kasim,)**

Age : 58 Years, Occu. : Retired, )

R/o : Nanded Tq. & Dist. Nanded. )

.. **APPLICANT**

**V E R S U S**

1) **The State of Maharashtra,** )  
Through Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai -32. )

2) **The Executive Engineer,** )  
Urdhav Painganga Project, )  
Division No. 1, Chaitanyanagar, )  
Nanded, Tq. & Dist. Nanded. )

3) **The Deputy Executive Engineer,)**  
Urdhav Painganga Project, )  
Division No. 1, Chaitanyanagar, )  
Nanded, Tq. & Dist. Nanded. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri V.D. Patnoorkar, Advocate for the  
Applicant.

: Shri S.K. Shirse, Presenting Officer for  
Respondents.

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**CORAM** : **B.P. PATIL, MEMBER (J).**

**RESERVED ON** : **11.04.2019.**

**PRONOUNCED ON** : **12.04.2019.**  
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**O R D E R**

1. The applicant has challenged the communication dated 14.11.2017, by which his application for correction of the

date of birth recorded in the service record has been rejected by the respondents, by filing the present Original Application.

2. The applicant was appointed as Labourer w.e.f. 01.05.1986. On 09.08.2001, the respondent No. 1 issued order and regularized the services of the applicant as Labourer.

3. It is contention of the applicant that he is belonging to poor family. He born on 24.11.19960. His parents were illiterate and they were not aware about the legal provisions. Therefore, the date of birth of the applicant has not been recorded in the register maintained by the Municipal Corporation, Nanded-Waghala.

4. At the time of entry in the service, the date of birth of the applicant has been wrongly recorded as 24.11.1957 and it remained to be continued. When the applicant learned about the entry taken in the service record, he approached the Municipal Corporation, Nanded-Waghala and that time he came to know that his date has not been registered and recorded in the Birth and Death register maintained by the Municipal Corporation, Nanded-Waghala. Therefore, he filed an application bearing Misc. Application No. 19/2015 in the Court of Judicial Magistrate First Class, Nanded by seeking direction to the

Municipal Corporation, Nanded-Waghala to record his date of birth as 24.11.1960. His application was allowed by the Judicial Magistrate First Class, Nanded. Thereafter, the applicant approached the Municipal Corporation, Nanded-Waghala. The Municipal Corporation, Nanded-Waghala had recorded his date of birth in the birth and death register on the basis of the order passed by the Judicial Magistrate First Class, Nanded as 24.11.1960. The applicant had collected the birth certificate. Thereafter, he filed the application with the respondent No. 2 on 17.10.2017 along with birth certificate issued by the Municipal Corporation, Nanded-Waghala and requested to correct his date of birth recorded in the service record as '24.11.1960' instead of '24.11.1957'. The respondent No. 3 issued letter to the Sub Divisional Engineer, Urdhav Painganga, Water Resources Department, Ardhapur mentioning that in view of the Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, the entry cannot be changed and thereby refused to correct the entry regarding the date of birth recorded in the service record. The said decision was not informed by the respondents to the applicant and instead of that he has chosen to send communication to the Sub-Divisional Engineer. On the basis of earlier date of birth recorded in the service book, the

applicant came to be retired w.e.f. 30.11.2017. It is his contention that the respondents had not considered the provisions of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 properly and without considering the provisions of Rule 38(2) of the said Rules, the respondents have wrongly rejected his claim and therefore, he approached this Tribunal and prayed to quash and set aside the impugned order.

5. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the date of birth of the applicant has been mentioned in the service book as 24.11.1957 on the basis of transfer certificate/School Leaving Certificate furnished by the applicant himself. They have denied that due to illiteracy of the parents of the applicant, the date of birth of the applicant had not been recorded in the birth and Death register maintained by the Municipal Corporation, Nanded-Waghala. It is their contention that at the time of admitting the applicant in the school, his date of birth has been recorded and the same is conclusive proof regarding his date of birth. It is their contention that as per the Government Resolution, the employees, who joined the services after 16 August, 1981, is duty bound to correct his date of birth within a period of five years from the

date of appointment in his service record. But the applicant has failed to do so and therefore, he is not entitled to seek relief as prayed for. It is their contention that the request of the applicant has been rightly rejected by the respondent No. 2 in view of the provisions of Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 and there is no illegality in it. Therefore, they prayed to reject the present Original Application.

6. I have heard Shri V.D. Patnoorkar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

7. Admittedly, the applicant was initially appointed as Labourer on daily wages w.e.f. 01.05.1986. He was regularized in the service w.e.f. 09.08.2001. Admittedly, as per the service record, the date of birth of the applicant is 24.11.1957 and same has been recorded in the service book of the applicant on the basis of the Transfer Certificate/School Leaving Certificate produced by the applicant. Admittedly, the said entry has been taken on the basis of information and documents submitted by the applicant. Admittedly, since the year 1996, till filing of the application dated 17.10.2017, the applicant never made attempt

to get corrected date of birth recorded in his service record. Admittedly, for the first time i.e. on 17.10.2017 he moved an application for correction of date of birth in the service record. Admittedly, the applicant retired on attaining the age of superannuation w.e.f. 30.11.2017.

8. Learned Advocate for the applicant has submitted that the applicant is belonging to poor family. His parents were illiterate and therefore, the date of birth of the applicant has not been recorded in the concerned register. The date of birth of the applicant has been mentioned in the school record orally as 24.11.1957 and on the basis of said entry, school leaving certificate has been issued mentioning his date of birth as 24.11.1957. He has submitted that the applicant was also not knowing the legal provisions and therefore, his date of birth has been wrongly recorded as 24.11.1957 in the service record on the basis of School Leaving Certificate. He has argued that in the year 2017, he made enquiry with others and that time he learnt about the legal provisions. Thereafter, he approached the Municipal Corporation, Nanded-Waghala and made enquiry about his date of birth and that time he found that his date of birth has not been recorded in the Birth and Death register maintained by the Municipal Corporation, Nanded-Waghala.

Therefore, he approached the Judicial Magistrate First Class, Nanded seeking directions to the Municipal Corporation, Nanded-Waghala to correct his date of birth as 24.11.1960. He has argued that his application was allowed and direction has been issued by the Judicial Magistrate First Class, Nanded on 09.10.2017 to the Municipal Corporation, Nanded-Waghala to record his date of birth in the record. On the basis of directions given by the Judicial Magistrate First Class, Nanded, the Municipal Corporation, Nanded-Waghala recorded his date of birth as 24.11.1960. He has submitted that after receiving extract of birth and death register, he approached the respondents by filing an application dated 17.10.2017 and requested to correct his date of birth recorded in the service book. The said application has been rejected by the respondent No. 2 by the communication dated 14.11.2017 on the ground that the application has not been filed within five years from the date of appointment in the service in view of the provisions of Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. He has submitted that the respondents have not considered the provisions of Rule 38 of the said Rules properly and rejected the application of the applicant. He has submitted that document regarding date of birth of the

applicant i.e. extract of birth and death register is primary/material document and on the basis of said document, the respondent No. 2 ought to have corrected his date of birth in the service book. He has submitted that the extract of death and birth certificate will prevail over the School Leaving Certificate. But the respondents have not considered the said aspect and wrongly rejected his application.

9. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay in **Civil Writ Petition No. 6962 of 2006** in case of **Smt. Vasudha Gorakhnath Mandvilkar Vs. The City and Industrial Development Corporation of Maharashtra Ltd.** decided on 17.04.2008 in support of his submissions.

10. Learned Presenting Officer has submitted that the date of birth of the applicant has been recorded in the service book long back in the year 1986. The applicant had not moved an application for correction of date of birth in the service record within five years from the date of his appointment in the service as provided under Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Not only this, but



the applicant has slept over for about 31 years and moved an application dated 17.10.2017, when he was on the verge of retirement. He has submitted that the applicant got recorded his date birth in the record of Municipal Corporation, Nanded-Waghala in the month of August, 2017 and on the basis of said document, he has filed an application dated 17.10.2017. He has submitted that such type of birth record is not primary evidence regarding date of birth of the applicant. There was inaction on the part of the applicant for about 31 years and therefore, it precludes the applicant to take steps to correct entry of his date of birth in the service record. He has submitted that respondent No. 2 has rightly rejected the proposal regarding correction of date of birth of the applicant and request of the applicant in view of the provisions of Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. In support of his submissions, he has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Union of India Vs. Harnam Singh** reported in **1993 AIR 1367** decided on 09.02.1993, when it is observed as follows:-

*“A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating*

*conditions of service, unless the services are dispersed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of the irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied to by the courts and tribunals. It is nonetheless competent for the Government to fix a time limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour*

*and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in State of Assam & Anr. v. Daksha Prasad Deka & Ors., [1971] 2 SCR 687 a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he can not claim to continue in service on the basis of the date of birth claimed by him. This court said:*

*"The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record, and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistent with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 311 (2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record."*

The Hon'ble Apex Court has further observed in the said decision as follows:-

*" In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May*

*1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct.”*

He has submitted that in view of the principles laid down in the above cited decision the applicant is not entitled to get corrected his date of birth recorded in service book after laps of 31 years. He has submitted that the respondent No. 2 has

rightly rejected the representation of the applicant and there is no illegality in the impugned order and therefore, he prayed to dismiss the present Original Application.

11. I have gone through the documents on record. On perusal of the record, it reveals that on entering service by the applicant in the year 1986, his date of birth has been recorded as 24.11.1957 as per the information supplied by the applicant. On regularization of the services of the applicant, his service book has been prepared and date of birth of the applicant has been recorded in the service book as 24.11.1957. The concerned authority verified the date of birth of the applicant on the basis of School Leaving Certificate produced by the applicant and accordingly, entry has been recorded in the service record of the applicant by the respondents. The said entry continued in the service record of the applicant till his retirement. The applicant has not moved an application for correction of date of birth recorded in the service book within five years from the date of his joining/appointment in the service as provided under Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Had it been a fact that the correct date of birth of the applicant was 24.11.1960 and the applicant was aware about it, then he would have filed an application for correction of date

of birth recorded in the service record at earliest i.e. within five years from the date of joining the service, but the applicant had not moved the application within stipulated time and he moved the application dated 17.10.2017 after laps of 31 years. Non-action on the part of the applicant for the period of 31 years precludes him claiming the correction in the entry of date of birth recorded in the service record. An inordinate delay caused for filing application has not been satisfactorily explained by the applicant. Therefore, the respondent No. 2 has rightly rejected the application of the applicant. Therefore, I find no illegality in the impugned order.

12. I have gone through the decisions cited by the learned Advocate for the applicant and learned Presenting Officer. The principles laid down by the Hon'ble Apex Court in case of **Union of India Vs. Harnam Singh** reported in **1993 AIR 1367** decided on 09.02.1993 are most appropriately applicable in the instant case. The judgment cited by the learned Advocate for the applicant is not much useful to the applicant in the instant case. The facts in that case are not identical with the facts in the present case and therefore, I find no substance in the submissions advanced by the learned Advocate for the applicant in that regard. In view of the principles laid down by the Hon'ble

Apex Court in the case of **Union of India Vs. Harnam Singh** (*supra*), the applicant is not entitled to get his date of birth corrected after lapse of 31 years. Therefore, the application of the applicant dated 17.10.2017 has rightly been rejected by the respondent No. 2 by the communication dated 14.11.2017. As there is no illegality in the impugned order, no interference is called for in it. There is no merit in the present Original Application. Consequently, O.A. deserves to be dismissed.

13. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 12.04.2019.**

**(B.P. PATIL)**  
**MEMBER (J)**

**KPB** S.B. O.A. No. 918 of 2017 BPP 2019 Correction in Date of Birth