

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 267 OF 2020**

DISTRICT : MUMBAI

Shri Baliram Sonu Gore)
Van Majoor, (Forest Labour Group-D))
R/at Room no. 2, Mali Quarters,)
Sanjay Gandhi National Park,)
Borivali [E], Mumbai 400 066.)...**Applicant**

Versus

1. The Chief Conservator of Forest &)
& Director,)
Sanjay Gandhi National Park,)
Borivali [E], Mumbai 400 066.)
2. The Gram Sevak,)
Gram Panchaya, Kayari,)
Tal-Jawhar, Dist-Palghar.)...**Respondents**

Shri K.R Jagdale learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula R. Bhatkar (Chairperson)

DATE : 22.01.2021

J U D G M E N T

1. The applicant, who started working on contractual basis as a Van Mazoor in the year 1988, at Sanjay Gandhi National Park, became regular in service on 1st November, 1994. The applicant has filed this Original Application for correction of the date of birth. The date of birth of the applicant is shown as 15.8.1960 in the official record. The applicant claims that his correct date of birth is 15.8.1969 and therefore, his date of retirement is 30.8.2029. However, pending application the applicant is retired on 30.8.2020. He moved application nine months before his retirement, i.e. on 4.12.2019 for correction of his date of birth. He has pleaded that he came to know about his date of retirement from the office of the Respondent at the time of preparation of his pension papers that the wrong date of birth as 15.8.1960 is considered by the office.

2. Respondents have filed affidavit in reply dated 11.8.2020, through Shri Sanjay Baban Kamble, Assistant Conservator of Forest. The applicant has filed rejoinder on 1st October, 2020 and the Respondents filed sur-rejoinder dated 15.12.2020 of Sanjay B. Kamble.

3. The Rule 38 (2)(f) of Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2008, states that the application for correction of the date of birth in the Government record should be made within 5 years from the date of the entry in the service book. Admittedly, the applicant did not apply for the change in date of birth in his service book within five years, but on 2nd December, 2019.

4. Learned counsel Mr. Jagdale while explaining the delay has submitted that the applicant is illiterate and he had no opportunity anytime to go through his service book. At the verge of retirement when his pension papers were prepared, he had knowledge for the first time that his date of birth written in the service book is erroneous and instead of 1969, year 1960 is mentioned. He has submitted that there is no embargo of this period of five years for correction in date of birth, if for good reasons the application is moved at a later stage. He has further pointed out that the application for correction in date of birth was rejected by the Chief Conservator of Forest, by order dated 9.3.2020, on this ground of delay only. The Learned counsel for the applicant relied on the following judgments:-

- (i) Judgment of Hon'ble Bombay High Court in the case of **Sitaram K. Jawale Vs. Mhada & Ors, reported in 2000 (4) ALLMR 331.**
- (ii) Judgment of Hon'ble Bombay High Court in the case of **Ashok Vs. Head Master, reported in (2015) 2 ALLMR 622.**
- (iii) Judgment of Bombay High Court in the case of **Smt Vasudhar G. Mandvilkar Vs. The City and Industrial Development Corporation of Maharashtra Ltd, 2008 (5) ALLMR 35.**

5. Learned counsel for the applicant has submitted that in the letter dated 9.3.2020, the Chief Conservator of Forest and the Director of Sanjay Gandhi National Park has in fact accepted that due to oversight the wrong date of birth as 15.8.1960 is mentioned instead of correct date of birth as 15.8.1969. The learned counsel further submitted that the Respondents have accepted that it is incorrect entry and the only objection raised by the Respondents is of delay in making application for correction in the date of birth. He submitted that if it is so, then the view taken by the Hon.

Bombay High Court in the case of Ashok Vs. Head Master (supra) that Rule 38 (2)(f) of Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2008, can be relaxed ought to be taken in to account.

6. The learned C.P.O has submitted that this opinion of the Chief Conservator of Forest is not a policy decision. The Respondents officially have taken a stand in the affidavit in reply that the documents which are produced before the authority are not reliable.

7. These submissions of the learned counsel are not convincing. The Chief Conservator of Forest, has referred to the application and the documents of the affidavit made before the Judge, extract of Birth Certificate of Gram Panchayat, Dist-Palghar, the Certificate that the applicant is illiterate, Aadhar Card, Certificate of Bank of Maharashtra and Pan Card. On the basis of these documents, wherein his date of birth is shown as 15.8.1969, the Chief Conservator of Forest has stated that though the entry of date of birth as 15.8.1960 is written due to oversight, yet the representation for correction in date of birth cannot be accepted, mainly on the ground of delay.

8. Let me address the ratio laid down and applicability of the cases relied by the learned counsel for the applicant.

(i) In the case of **Sitaram K. Jawale, (supra)**, the applicant was working as Mazdoor in Mhada. The Hon'ble Bombay High Court has held that there was obvious clerical error as the applicant has produced School Leaving Certificates stating the birth date 15.5.1934. However, date of birth was wrongly written in the service book as 15.5.1930. Therefore,

the High Court has relaxed the rigor of the period of five years for moving application for correction in date of birth.

- (ii) In the case of **Ashok (supra)**, the application was moved after five years for correction of the date of birth. It was held by the High Court that nevertheless the rigor provided by instruction no. 2 of Rule 38 (2)(f) for the proof of correct date of birth cannot be dispensed with even if old rule is applied. In the said case, the 'Dakhal Kharij' Register which was made on 1.12.1967 showing the correct date of birth as 7.2.1959 in the place of 23.7.1956 was produced and the correct date was verified from the original Dakhal Kharij Register.
- (iii) In the case of **Smt Vasudhar G. Mandvilkar (supra)**, a certified copy of the public document was produced. In the present case, no certified copy of public record is produced, but the entire claim of correction of date of birth is based on the photo copies of the documents.

9. Thus in these cases, the original old documents or registers showing the correct entry of the date of birth were produced before the Courts. However, this is not the case in the present matter. If there is obvious clerical error or reliable proof of the documentary evidence showing correct date of birth is produced and the mistake is found obvious, then this rule of 5 years can be made flexible on the basis of these rulings to give justice to the litigant.

10. Learned C.P.O has submitted that since March, 2012 the office started issuing monthly salary slips at the time of payment to all the labourers in the Forest Department, wherein the date of birth as well as date of retirement is specifically mentioned. In

support of her submission, she produced salary slips of March, 2012, June, 2019 & May, 2020, of the applicant.

11. Thus, it is clear that at least from March, 2012 the applicant was given one document every month by the office wherein his date of birth and date of retirement both were mentioned. Though the applicant is illiterate, he has been working in the Government service and it is difficult to believe that the applicant since 2012 never had knowledge that incorrect date of birth is mentioned in the service book of the applicant.

12. The documents which are produced and relied on the applicant are now considered.

Photo copy of the birth certificate of village-Kayari, Tal-Jawhar, Dist-Palghar, does not show the date of issuance. It only discloses the date of birth as 15.8.1969. This photo copy thus cannot be relied. At the request of the applicant, Gram Sevak of the village where applicant took birth, was asked to produce the original birth register. The Respondent-Officer went to Kayari to obtain the Birth Certificate. However, Gram Sevak, in writing has submitted that no birth certificate of the year 1969 is available. However, in the birth certificate the entry of the date of birth was made as per the order passed by the Judicial Magistrate, Jawhar in O.M.A No.166/2019, CNR-MHTH26-000714-2019.

13. The Rule 13(3) of Birth and Death Registration Rules, 1969, gives power to the Judicial Magistrate to give direction for the correction of such entry to Gram Panchayat or other authorities. Applicant has filed application 166/2019 in the court of Judicial Magistrate, Jawhar for correction of his date of birth. He has mentioned in para 2 that his parents or other elderly persons in

his family were illiterate and nobody was aware of the procedure of registration of the birth in Gram Panchayat office.

14. Learned counsel for the applicant has submitted that the Judicial Magistrate has corrected the date of birth and therefore, that date of birth cannot be challenged as it is the final proof and order. This submission of learned counsel for the applicant cannot be accepted because in the court of Judicial Magistrate the application was filed against Gram Panchayat Kayiri and was relief was sought against Gram Panchaya, Kayiri, the Respondents were not made party. I had perused the order wherein Judicial Magistrate First Class, Jawhar has mentioned the document on which he has relied on. He has considered ration card, aadhar card and the affidavit of the applicant and on the basis of these documents, the learned Judicial Magistrate, First Class, has given directions to Gram Panchayat to record the entry of birth of the applicant that he was born on 15.8.1969. It is true that if the order of the court is not challenged before the Appellate Court, then it is final. The order of the Court was definitely binding on the Respondent Gram Sevak, Kayari who accordingly had corrected date of birth in the register.

15. However, at the time of passing the order, the Respondent, i.e. Chief Conservator of Forest & Director, was not made party but Gram Panchayat, Kayari, only was made party. The present Respondent with whom the applicant was working was in possession of important documents like salary slip disclosing his date of birth and service record. Thus, the Judicial Magistrate at the relevant time has considered whatever documents placed before him and evidence of sole witness, i.e. of the applicant was not subjected to cross examination. Thus, the real dispute was not adjudicated by the Judicial Magistrate, First Class, Jawhar. Moreover, the grievance was against the Respondents. The Gram

Sevak of Kayari, the Respondent before the Judicial Magistrate was a passive party.

16. In the present case, the contesting party is the authority of the applicant where he is working and is mainly concerned with his date of birth, as the issue is directly related with his retirement and so the date of birth. It is true that on Aadhar Card and Pan Card the date of birth mentioned is 15.8.1969. However, when these documents were issued is not mentioned. He moved application before Judicial Magistrate, Jawhar and got order of correction of the date of birth. Thereafter after direction of the court, he got his birth date corrected from the Gram Panchayat.

17. Learned counsel for the applicant has also produced list which is called Annexure 17 and argued that the list is furnished by his office, where at serial no. 23 his name is appearing and his date of birth is written as 15.8.1969. He also produced the identity card issued by Shri Anwar Ahmed, i.e Chief Conservator of the Forest. In the said Identity Card, date of birth is mentioned as 15.8.1969. In the sur-rejoinder of Shri Sanjay Kamble, the Respondents have clarified that both the documents, the said Annexure-17 was not issued by the authority and it is not signed by any officer. No stamp of office is shown and on enquiry with the division staff it is submitted that no such document is maintained by the said office. Thus these documents are doubtful and cannot be a proof of the date of birth. In respect of Identity Card, the Respondents have stated that Mr. Anwar Ahmed, the Chief Conservator of Forest was having a tenure from 2016 to 31.3.2020. Thus, the identity card was not issued to the applicant at any time of joining service on 17.2.1985, as claimed. At that time no I.D with birth date of 1969 was ever issued. It is also made clear that the Respondent authority, i.e. Sanjay Gandhi National Park was then headed by Divisional Forest officer and not Chief Conservator

of Forest. This explanation throws light that these two documents are afterthought and procured by the applicant with having ulterior motive of creating evidence of his date of birth.

18. These documents cannot satisfy judicial conscience to hold that the date of birth of the applicant was wrongly mentioned in his service book instead of correct date of birth as 15.8.1969. I am convinced that the claim of the applicant is false and mischievous. The applicant has very methodically created evidence even by suppressing the true material from the court. This kind of practice and such application is deprecated.

19. On the point of delayed submission of application for the correction of date of birth, learned C.P.O has relied on the judgment of the Hon'ble Supreme Court dated 5th February, 2020 in the case of **Bharat Coking Coal Ltd & Ors Vs. Shyam Kishore Singh, Civil Appeal No. 1009 of 2020 (Arising out of SLP (Civil) No. 20627/2019)**. It is stated that the supreme Court has consistently held that the request for change in date of birth in service record at the fag end of service is not sustainable. In the said judgment the Hon'ble Supreme court has relied on the judgment of **State of M.P Vs. Premlal Shrivasa, reported in (2011) 9 SCC 664**, wherein it is held as under:-

8. It needs to be emphasized that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for

correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he 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. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh (1993) 2 SCC 162 : 1993 SCC(l&s) 375 ©1993) 24 atc 921).

20. In view of the above, there is no merit in the Original Application and the same is dismissed.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.01.2021
Dictation taken by : A.K. Nair.