

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 139 of 2017 (S.B.)

Tukaram Narsingh Chavhan,
Aged about 56 years, Occ. Service,
R/o 80/A, Bhosale Nagar,
Near Chhota Tajbagh, Nagpur-24.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary, Co-operation Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner of Co-operation and
Registrar of Co-operative Societies,
M.S., Central Building, Pune-1.
- 3) The Divisional Joint Registrar,
Co-Operative Societies,
Nagpur Division, Dhanwatey,
Chambers, Sitabuldi, Nagpur.
- 4) The District Dy. Registrar,
Cooperative Societies, Chandrapur,
District Chandrapur.
- 5) The Assistant Registrar,
Co-operative Societies, Chimur,
District Chandrapur.

Respondents

S/Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.

Shri M.I. Khan, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this day 22nd of November,2017)

Heard Shri D.M. Kakani, Id. Counsel for the applicant and
Shri M.I. Khan, Id. P.O. for the respondents.

2. The applicant has been appointed as Co-Operative Officer, Grade-I vide order dated 17/12/1992 and joined his post on 23/12/1992. It is the case of the applicant that his date of birth was recorded in the service book as 1/1/1960. However, as per the Kotwal book his date of birth should have been 16/12/1960. After joining the services the applicant applied within five years for correction of date of birth to the competent authority through respondent no.5. Such application was made on 31/7/1997. However, the said application came to be rejected by respondent no.2 on 12/1/2015. Against the said order the applicant filed appeal to respondent no.1 and said appeal came to be rejected on 22/8/2016. The applicant has therefore filed this O.A.

3. The applicant has prayed that the communication dated 22/8/2016 (A-1,P-15) issued by the respondent no.1 and communication dated 6/9/2016 (A-2,P-16) issued by respondent no.2 whereby the applicant's claim for change of date of birth has been rejected be quashed and set aside and directions be issued to the

respondents to record correct date of birth of the applicant in the service record.

4. The respondent nos. 1 to 3 have resisted the claim. It is stated that at the time of joining in department, the applicant submitted all relevant documents pertaining to his date of birth and these documents show that the applicant's date of birth is 1/1/1960 and the same has been rightly recorded in the service book. It is stated that the so called application filed by the applicant on 31/7/1997 for correction of date of birth has not been received by respondent no.3 and therefore there was no question of forwarding the same to the competent authority.

5. It is further stated that after receipt of the application dated 16/2/2000 from the respondent nos. 4 and 5, the respondent no.3 sent the said letter to respondent no.4 for scrutiny and necessary remarks on the said proposal as per the G.R. dated 3/3/1998, but said information was not furnished in spite reminders dated 30/10/2001 and 28/1/2002. The respondent no.3 is the Appointing Authority of the applicant, but the powers under Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 have been delegated to respondent no.2.

6. The respondents submitted that the applicant was well within the knowledge in 1985 itself that his date of birth was wrongly recorded, but he did not take any action for correction of his date of birth and on the contrary submitted the documents showing his date of birth as 1/1/1960 at the time of joining of service. It therefore cannot be said that the applicant was not knowing the fact of his correct date of birth and he has kept mum for long period of more than 24 years and therefore his date of birth cannot be changed at the fag end of his retirement. It is further stated that as per the provisions of Chapter IV of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, the entry of date of birth of the employee cannot be altered unless it is shown that the entry was due to want of care on the part of someone else than the concerned individual or it is a clerical error. In the present case the applicant knowing full well, has submitted documents of date of birth at the time of joining of services and as per those documents his date of birth was recorded. The respondent no.4 also files separate affidavit-in-reply and denied the applicant's claim.

7. The learned counsel for the applicant submits that the applicant joined the services on 23/12/1992 and on 31/7/1997 he filed application for correction of date of birth. The copy of the said application is placed on record at P.B. page no. 22. It is material to

note that the said application has been made to the Divisional Joint Registrar, Co-operative Societies, Nagpur, Division Nagpur. For the first time in this application it is mentioned that the applicant's date of birth was wrongly mentioned as 1/1/1960 instead of 16/12/1960 and it was because the applicant's father was illiterate. The learned counsel for the applicant invited my attention to the extract of Kotwal Book which is at P.B. page no. 48. The learned counsel for the applicant submits that the applicant came to know about his correct date of birth from this extract. It is material to note that this extract of Kotwal register has been received by the applicant on 21/8/1985. He applied for the said extract on 14/8/1985 and received the copy on 21/8/1985. The applicant had joined the services on 23/12/1992. It is really surprising as to why the applicant did not take any steps to get his date of birth corrected from 1985 till he joined his service till 1992. Not only that the applicant while joined the services, has submitted the documents as regards his date of birth which shows that his date of birth was recorded as 1/1/1960 in the School record. The said date of birth has been recorded in the service record also of the applicant and the said record has been verified by the competent authority and the applicant did not take any objection for recording his date of birth as 1/1/1960 instead of 16/12/1960.

8. The learned counsel for the applicant has invited my attention to the copies of affidavits made before the competent authorities as regards the correct his date of birth. These copies are at P.B. page nos. 49 to 56 (both inclusive). However, all these documents pertain to the years, 1996, 2009 and 2014, i.e., well after the applicant joined his services in 1992.

9. The applicant is a Co-operative Officer, Group-I and therefore it cannot lie in his mouth that he was not knowing the provisions as regards change of date of birth. Since the applicant came to know in 1985 itself that his date of birth was wrongly recorded in the school record, he ought to have taken efforts to see that his date of birth was corrected. However he took advantage of his date of birth, i.e., 1/1/1960 and taking advantage of that date of birth till his education was completed, not only that he also joined the services in 1992 and submitted the documents in support of his dated of birth as 1/1/1960 to the respondent authorities. Even for argument sake, it is accepted that application was made for correction of date of birth within five years as per the rules, the applicant remains silent from 1997 till filing of this O.A. in 2017 and has filed this O.A. at the fag end of retirement. Such attitude on the part of applicant cannot be ignored.

10. As per rule 38 (3) of the of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 all cases relating to

alterations of date of birth or Gazetted Government servants and such of the requests of non-gazetted government servants should invariably be referred to the General Administration Department and Finance Department through the Administrative Department concerned. It cannot be said that the applicant was not knowing this fact and the concerned rule. He should have therefore filed application to the competent authority. In any case the applicant has taken advantage of the fact that his date of birth was 1/1/1960 and joined the services on 23/12/1992 at that time he was fully knowing the fact that his date of birth was recorded as 16/12/1960 in the Kotwal Book and therefore the applicant's silence for not taking any action by the respondents for correction of his date of birth from 1997 to 2015 speak volumes.

11. The learned P.O. has invited my attention to the Judgment delivered by the Hon'ble Apex Court in case of **Life Insurance Corporation of India & Ors. Vs. R. Basavaraju Alias Basappa reported in (2016) 15 SCC, 781.** In the said case it has been held that once the date of birth is entered in the service record as per educational certificates and accepted by the employee, same cannot be changed. More so, claim for change in date of birth cannot be entered at the fag end of retirement. In this case even for argument sake, it is accepted that the applicant has applied for change of date of birth on 31/7/1997 and his claim was not considered till 12/01/2015,

the applicant remains silent and kept mum by not filing any petition before this Tribunal from 1997 to 2017. The applicant's claim for change of date of birth at the fag end of his retirement cannot be said to be bonafide. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

Dated :- 22/11/2017.

**(J.D. Kulkarni)
Vice-Chairman (J).**

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