

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 22 of 2024 (S.B.)

Vidya w/o Subhash Pawar,
Aged about 57 years, Occupation- Service,
R/o. Flat No.202, Gajanan Heritage Apartment,
Jawahar Nagar, Akola, Tah. and District- Akola.

Applicant.

Versus

(1) State of Maharashtra,
Through Additional Chief Secretary,
Finance Department, Mantralaya, Mumbai-32.

(2) Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai-32.

(3) Assistant Director (Administration),
Directorate, Accounts & Treasury,
New Administrative Building No.15 & 16, Plot No.176,
Free Press General Road, Mumbai-400021.

Respondents.

S/Shri M.R. Khan, A.S. Kambani, Advs. for the applicant.

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

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 20th February,2024.

Date of Pronouncement of Judgment : 22nd February,2024.

JUDGMENT

(Delivered on this 22nd day of February,2024)

Heard Shri M.R. Khan, learned counsel for the applicant
and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed as Accounts Officer, Class-II on 20/05/1992. She was promoted as a Treasury Officer in the year 2006. Thereafter, the applicant was promoted on the post of Chief Accounts and Finance Officer. At present she is working as a Chief Accounts and Finance Officer (CAFO) in Zilla Parishad, Yavatmal.

3. The correct date of birth of applicant is 16/02/1967. In the extract of the service book of applicant, the date of birth has been wrongly shown as 16/02/1966. Therefore, the applicant is due for retirement on 29/02/2024 on attaining the age of superannuation. If the date of birth of applicant has been considered as on 16/02/1967, the applicant shall retire on 28/02/2025 on attaining the age of superannuation.

4. The applicant was surprised and felt severe jolt that all of a sudden without following the procedure, the Additional Chief Secretary, Finance Department, Mantalaya, Mumbai on 21/09/2023 and as per the order of Assistant Director (Administrative), Accounts and Treasury, Mumbai informed the applicant on 11/10/2023, that the date of birth of applicant shall not be changed as 16/02/1967.

5. It is submitted that as per the Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, the applicant made an application for correction of date of birth within a

period of five years. The applicant came to know about the incorrect date of birth in the extract of the service book, immediately she applied within a period of five years on 22/02/1994. The Executive Health Officer, Brihanmumbai Mahanagarpalika (BMC), Public Health Department issued Birth Certificate on 08/02/1994 and 22/04/2008 and the Birth Register abstract on 16/03/2023, wherein the date of birth of applicant has been shown as 16/02/1967. The name of applicant is shown as 'Vidya' which is conclusive proof of date of birth. The Tahsildar and Executive Magistrate, Akola issued Certificate in respect of age, nationality and domicile certificate on 05/10/1996 wherein the date of birth of applicant has been shown as 16/02/1967. The Aadhar Card and PAN Card also show the date of birth of applicant as 16/02/1967. The applicant again made representation, but lastly the respondents have rejected the request of applicant to change the date of birth by the impugned orders dated 21/09/2023 and 11/10/2023, therefore, the applicant has filed the present O.A. for the following reliefs –

“(9) (A) Quash and set aside the impugned order issued by the Additional Chief Secretary, Finance Department, Mantralaya, Mumbai, on 21/09/2023 (Annexure-A1), in the interest of justice.

(B) Quash and set aside the impugned order issued by the Assistant Director (Administration), Directorate of Accounts & Treasury, Mumbai on 11/10/2023 (Annexure-A2), in the interest of justice;

(C) Issue an appropriate order or directions to hold and declare that the correct date of birth of the applicant is 16/2/1967 instead of 16/2/1966, in the interest of justice;

(10) Stay the effect and operation of the impugned order dated 21/09/2023 issued by the Additional Chief Secretary, Finance Department, Mantralaya, Mumbai, and the impugned order dated 11/10/2023 passed by the Assistant Director (Administration), Directorate of Accounts & Treasury, Mumbai,, till the decision of Original Application, in the interest of justice.”

6. The O.A. is strongly opposed by respondent nos. 1 and 3. It is submitted that the applicant has approached before this Tribunal very belated i.e. after 31 years, 7 months and 5 days. Therefore, she is not entitled to relief as claimed. The Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 clearly provides that no application made after **five years** from the entering into Government service should be entertained in normal course. Therefore, the applicant is not entitled for the relief. For the first time the representation dated 24/03/2023 made to the authority for correction of date of birth after joining in the service. The applicant has approached to this Tribunal at the fag end of her service to correct the date of birth. It is not permissible.

7. The applicant was appointed on 20/05/1992. The applicant had registered her date of birth as 16/02/1966 in the service book. In the school leaving certificate, the date of birth of applicant is recorded

as 16/02/1966. The respondents have rejected the representation of the applicant after consideration and the opinion given by respondent no.2 by letter dated 21/09/2023. The applicant has stated her date of birth as 16/02/1966 in her Bio-data which was submitted by her on 20/05/1992 at the time of joining the service. Therefore, her contention that the date of birth is wrongly recorded in the service book is unfounded. The date of birth of applicant is shown in the service book which is also mentioned in the Secondary School Certificate Examination (SSC). The applicant stated in her Bio-data her date of birth as 16/02/1966 at the time of joining her service.

8. The applicant has attached the copy of Birth Certificate dated 08/02/1994 along with representation dated 08/02/1994 i.e. after joining the service. According to the applicant, her date of birth is 16/02/1967 as per the Birth Certificate dated 08/02/1994, 20/04/2008 and the birth register abstract. But other information like the place of birth is mentioned as Bai Motlabai Hospital in birth certificate, but in another copy the address of father of applicant is shown as Mohamd Aali Road in the birth register abstract. All the documents i.e. Nationality Certificate, PAN Card, Aadhar Card etc. are after the joining of the service by applicant. The applicant has produced marriage registration certificate of her father. It shows that her father Vasant Shivram Rane married with Shashikala Tukaram Satam it was

solemnized on 29/04/1966. The name of mother of applicant is shown as Shashikala. But the name of mother of applicant as per birth certificate is shown as Ratnaprabha. These documents are contradictory. At last submitted that the respondents have correctly passed the impugned order. Hence, the O.A. is liable to be dismissed.

9. During the course of submission, the learned counsel for applicant has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.1315/2021, decided on 30/06/2021. In the cited Judgment, "the Hon'ble High Court has observed that date of birth of petitioner was got verified from the HSSC Certificate and ultimately found correct. The said date of birth was not correctly recorded. The date of birth of petitioner in the Matriculation Certificate is 06/12/1961, but it was wrongly recorded in the service book as 01/07/1961. The Hon'ble High Court has recorded its findings in para-6.5 that as per the instruction (II) no.76 which came to be in existence in the year 1988 should have been followed. As per this instruction, in case of the existing employee Matriculation Certificate or Higher Secondary Certificate issued by the recognized University or Board or Middle Pass Certificate issued by the Board of Education and / or Department of Public Instruction should be recorded in the service book." In the present case, the applicant is denying the date of birth recorded in the school record. The Hon'ble

High Court has recorded its findings in para-26,27 and 30. Those are reproduced below –

“ (26) In the present matter, it has come on record and not disputed by the respondents that the Umrer Sub Area Committee and the Area Committee recommended the case of the petitioner for change of the date of birth from 1st July 1961 to 6th December, 1961 as per the II No.76 in all official record. It has further come on record and not disputed by the respondents that after joining on the post of 'Sirdar', 'Overman' and lastly 'Senior Overman', the date of birth of the petitioner was recorded as 6th December, 1961 in the official record. Moreover, record shows that the petitioner was called through Employment Exchange and Registration Card of the Employment Exchange issued to the petitioner contains the date of birth of the petitioner as 6th December 1961. It is also not disputed by the respondents that the said Employment Registration Card was asked to be submitted by the petitioner at the time of interview. Furthermore no dispute is raised by the respondents about the genuineness of the Matriculation Certificate which shows the date of birth of the petitioner as 6th December, 1961. Further, the fact pleaded by the petitioner that wrong date of birth was recorded due to negligence of a clerk in the office of Mine Manager, has not been disputed by the respondent. Thus, the said mistake was an obvious clerical error. Hence, there is ample material available on record in support of the claim of the petitioner that his date of birth was wrongly recorded as 1st July, 1961 in place of 6th December, 1961. The petitioner has successfully produced evidence of unrefutable nature in support of his case. Hence, we find that the petitioner has discharged his onus to prove the recording of wrong date of birth.

(27) Hence, we are of the considered view that the respondents have failed to follow the procedure as laid down in the II 76. The

aforesaid omission on the part of the respondents amounts to inaction whereby real injustice has been caused to the petitioner.

(30) Furthermore, the respondents are not disputing the case of the petitioner that the respondents have corrected the date of births of similarly situated employees like petitioner. The respondents are also not disputing the correctness of entry of birth in matriculation certificate and are banking upon a reason which is connected with procedure, though their own procedure permits correction of birth entry while in service. Thus, in the above stated backdrop, we are of the opinion that the impugned 'Reasoned Order' is erroneous and not sustainable in the eyes of law and hence needs to be set aside with direction to the respondents to correct the date of birth of the petitioner as 6th December, 1961 as per II No.76, in all official record."

10. The case of the applicant is different. She is denying the date of birth recorded in school record. Therefore, the cited Judgment is not applicable to the case in hand.

11. The learned counsel for the applicant has pointed out the Judgment of M.A.T., Bench at Aurangabad in O.A.No.117/2021. The fact in the cited decision is very much different. In the cited decision, the applicant had claimed that along with his application, he had enclosed the copies of school admission extract issued by the Zilla Parishad Kendriya School, Tamba Rajuri and school admission extract. The Tahsildar, Gavrai also vide communication dated 06/04/2015 addressed to the Collector, Beed has stated that the date of birth of applicant in the service book though is 21/06/1963, the date

of birth mentioned in 10th Standard Certificate and 7th Standard Certificate is 17/07/1964 and therefore the Tribunal come to the conclusion that the date of birth recorded in the school record should have been considered.

12. The learned counsel for the applicant has pointed out the decision of M.A.T., Bench at Aurangabad in O.A.No.1031/2022, decided on 08/02/2024. From the perusal of this decision, it appears that the Judgment of the Hon'ble Bombay High Court in Writ Petition No.6976/2023 was not pointed out. The Tribunal has relied on the Judgment in the case of ***Sudhir Bhagwat Kalekar Vs. State of Maharashtra and Ors.***, decided by the Principal Bench of M.A.T., Mumbai on 21/04/2023. Relying on this decision, the M.A.T., Bench at Aurangabad allowed the O.A. Decision in the case of ***Sudhir Bhagwat Kalekar Vs. State of Maharashtra and Ors.***, was challenged by the State of Maharashtra in Writ Petition No.6976/2023. The said Writ Petition was decided on 23/06/2023. It is held that the date of birth in the service record was correctly recorded as per the School Leaving Certificate and allowed the Writ Petition by quashing the Judgment of M.A.T., Principal Bench, Mumbai. This Judgment was not cited before the M.A.T., Bench at Aurangabad. Therefore, this Judgment is not applicable. In the said Writ Petition, it is observed by the Hon'ble High Court as under –

“(18) The Tribunal ought not to have entertained the O.A. filed by Respondent two months before his retirement. The objective behind formulating rule/administrative instructions to bar correction of date of birth after five years of entry into service is to give finality and achieve certainty with regard to the rights of the Government Servants. The issue of correction of date of birth cannot be kept pending till the fag end of an employees' retirement. This would create uncertainty, as has happened in the present case. The Tribunal has allowed the O.A. of the Respondent a month before his date of retirement thereby creating confusion and uncertainty. The pension papers of the Government Servant are processed well before his retirement with a view to ensure timely payment of retirement benefits to him. The anticipated vacancy created due to retirement is taken into consideration for various purposes like effecting promotions, effecting transfers, etc. Sometimes date of birth becomes a relevant factor for determining seniority of officers appointed/promoted on same day. In such circumstances, entertaining litigation filed couple of months before the date of retirement, with the sole objective of seeking extension of tenure of service, would lead to uncertainty and chaos in the administration. An officer may casually make application for change of date of birth within 5 years of his entry in service (so as to meet technical requirement of the rules/administrative instructions) and not pursue the same for years together. He cannot then knock the doors of courts/tribunals at the fag end of service for correction of date of birth. The objective behind prescribing time limit for seeking correction of date of birth is required to be kept in mind. The objective is to achieve clarity and prevent uncertainty not only about the officer's career but also in the area of administrative management. If an application for correction of date of birth is made within 5 years of entry into service and if the same is not acted upon, remedy in respect of such inaction must be exercised in a

timely manner and filing of litigation at the fag end of service is required to be discouraged. Mere rejection of request for change of date of birth by the employer before date of retirement would not revive the cause which got time barred by officer's failure to exercise remedies in a timely manner. Entertaining Respondent's for correction of date of birth OA instituted at the fag end of service on specious plea of rejection of request on 1 March 2023 would completely frustrate the objective behind prescribing time limit for seeking correction in date of birth under Rule 38. The Tribunal therefore ought to have avoided entertaining Respondent's application for correction of date of birth filed in March 2023 when he was slated to retire on 21 May 2023."

13. In the present matter, the applicant was appointed in the year 1992. She made representation in the year 1994 for change of the date of birth. Since then, there was internal correspondence. After the representation of 1994, the applicant has made representations in the year 1995, 1998 and thereafter in 2006. From 2006, she did not make any correspondence. Last representations were dated 20/12/2021 and 26/05/2022. She could have approached to the Competent Court earlier, but after the rejection of her representation, at the fag end of service she approached to this Tribunal.

14. From the perusal of documents filed by the applicant, it appears that those documents are doubtful. Birth certificate issued by the Brihanmumbai Mahanagarपालिका (BMC) shows that female child was born on 16/02/1967 in the Bai Motlabai Hospital. The name of her

mother is shown as Ratnaprabha. The abstract of birth register shows that her the date of birth is recorded as 16/02/1967. The Marriage Certificate of her father shows that he married with one Shashikala. It is not clear as to whether Shashikala and Ratnaprabha are the one and same lady. The respondents have filed documents along with reply. These documents show that at the time of entering her date of birth, she has produced School Leaving Certificate in which the date of birth is recorded as 16/02/1966. Her Secondary School Certificate Examination Marksheet shows the date of birth as 16/02/1966. The applicant herself has submitted Bio-data in which she has stated her date of birth as 16/02/1966. The applicant cannot deny those documents which she herself had submitted at the time of joining her service. Therefore, the applicant cannot claim that her date of birth is wrongly recorded in the service book. Hence, the following order –

ORDER

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

Dated :- 22/02/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/02/2024.

