

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.365/2018.

(S.B.)

Nandkishor Punvasiprasad Yadav,
Aged about 55 years,
Occ-Service,
R/o Deogad Apartment, IInd lane,
Shyam Nagar, Near Gajanan Maharaj Mandir,
Amravati.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Finance,
Mantralaya, Mumbai-400 032.
- 2) The Joint Director,
Accounts and Treasury Department,
Amravati Division, Accounts and Treasury Bhavan,
University Road, Amravati-444 602.
- 3) The Director,
Accounts and Treasury Department,
3rd floor, Thackersey House,
Mumbai Port Trust, J.N. Hardia Marg,
Ballard Estate, Mumbai-1.
- 4) The Joint Director (Administration),
Accounts and Treasury Department,
3rd floor, Thackersey House,
Mumbai Port Trust, J.N. Hardia Marg,
Ballard Estate, Mumbai-1.

Respondents

Shri R.A. Haque, the learned counsel for the applicant.
Shri M.I. Khan, the learned P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

ORAL ORDER

(Passed on this 10th day of January 2019.)

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

2. Affidavit in reply is filed by the respondents, it is taken on record and a copy thereof is supplied to the learned counsel for the applicant.

3. The applicant is Assistant Superintendent in the office of respondent No.2. It is his case that his actual date of birth in 23.8.1962. However, the same has been recorded as 1.2.1961. The applicant joined as a Junior Clerk on 28.5.1997 and immediately on 25.2.1999 he submitted an application for correction of his date of birth alongwith birth date extract. Initially, some queries were made from him and he was directed to produce some documents which he promptly supplied to the respondent authorities. The applicant was under the impression that his application will be considered. However, same was not considered and, therefore, on 15.6.2017, he again filed another application. On his application, explanation of

Joint Director (R.2) was called. The respondent No.2 issued a letter dated 6.9.2017 to the applicant and sought some information. The applicant supplied that information vide Annexure A-9 on 8.9.2017. However, the applicant has received impugned communication dated 23.8.2018 whereby his claim has been rejected with following relevant communication:-

“त्याअनुषंगाने कळविण्यात येते कि, शासन अधिसूचना दि. २४.१२.२००८ मधील नियम क्र. २ (ए) (२) नुसार “शासकीय कर्मचाऱ्याने, तो ज्या ठिकाणी जन्माला आला आहे, त्याठिकाणी ठेवण्यात आलेल्या व त्या त्यावेळी जन्मनोंदणी संबंधात अमलात असलेल्या नियमानुसार, ज्या मूळ जन्म नोंदवहीत त्याचे नाव व जन्मतारीख नोंदली आहे, त्या नोंदवहीतील संबंधीत पृष्ठाची साक्षांकित झेरोक्स प्रत सादर केल्यास (नाव नमूद असलेले पृष्ठ), त्यावरून शासकीय कर्मचाऱ्याची खरी जन्मतारीख निश्चित करता येईल व असा पुरावा त्याच्या सेवा अभिलेख्यात बदल करण्यासाठीचा प्रश्नातीत पुरावा म्हणून विचारात घेतला पाहिजे. “महाराष्ट्र नागरी सेवा नियम, १९८२ मधील नियम ३८ (२) (१) सूचना दोन (सी) नुसार कर्मचारी सेवेत रुजी झाल्याचे तारखेपासून ५ वर्षांचे आत जन्मतारखेत दुरुस्ती करणेची तरतूद आहे. असे असतांना विहित कालावधीत अशी कार्यवाही न झाल्याने संबंधितांची मागणी आता कालबाह्य झालेली आहे.”

4. From the aforesaid communication, it seems that the application for correction of date of birth was rejected on the ground that the correction was not made within five years from the date of joining.

5. The learned counsel for the applicant submits that as per rules, applicant has applied for correction of date of birth immediately within five years as required by rules. First of such application was made on 25.2.1999 and no action was taken on the said application. Perusal of the reply affidavit of respondent Nos. 1 and 2 clearly shows that the respondents have admitted that the applicant submitted representation on 25.2.1999 for correction of date of birth and the Deputy Director of Accounts and Treasuries, Amravati vide letter dated 11.3.1999 asked the applicant to submit his SSC certificate to ascertain the date. Similarly, vide letter dated 10.5.1999, the applicant was also asked whether the information submitted to the Regional Secondary Service Board, Nashik was wrong and why this was not brought to the notice of the office of District Treasury, Ahmednagar at the time of appointment. However, no action was taken by respondent No.2 and the applicant was required to file another representation which he filed on 15.6.2017.

6. From the communication dated 28.8.2017 (A-1, Pages 18 & 19), the Joint Director (Administration), Mumbai seems to have asked the Joint Director, Amravati (R.2) to state as to why the proposal for correction of date of birth of the applicant was not submitted for 18 years and what was the reason for delay. The explanation given to this letter is not placed on record. However, it seems that the respondent No.2 asked the applicant himself to explain the delay. The applicant has accordingly submitted his explanation for delay at Annexure A-9 in which he has stated as under:-

“श्री. यादव यांनी जन्मतारखेत बदल करण्याचा प्रस्ताव दि. २५.२.१९९९ रोजी सादर केलेला आहे. तरी तब्बल १८ वर्षांच्या विलम्बाने प्रस्ताव सादर करण्याचे प्रयोजन काय ?

१. मी दि. २५.२.१९९९ रोजी सादर केलेल्या अर्जामध्ये माझी जन्मतारीख दि. १.२.१९६२ दुरुस्त करून दि. २३.८.१९६२ अशी करणेबाबत अर्ज सादर केलेला होता व त्याकरिता जन्म व मृत्यू नोंदणी अधिकारी, महानगरपालिका, अमरावती यांचे कडून प्राप्त प्रमाणपत्र अर्जासोबत जोडण्यात आले होते. परंतु तत्कालीन उपसंचालक, लेखा व कोषागारे, अमरावती यांनी या प्रकरणामध्ये मी वारंवार मौखिक विनंती करून सुद्धा पुढील कार्यवाही केली नाही. सन २००३ पासून ते आजतागायत मी भांडार पडताळणी शाखेमध्ये कार्यरत असून मला नियमितपणे लेखा परीक्षाकरिता मुख्यालयाचे बाहेर राहावे लागते. तसेच जून २०१० ते ऑक्टोबर २०१३ या कालावधीमध्ये भांडार पडताळणी शाखा, नागपूर येथे कार्यरत होतो व ऑक्टोबर २०१३ मध्ये माझी पदोन्नती संग्रह पडताळक ते सहाय्यक अधीक्षक या पदावर सहसंचालक, लेखा व कोषागारे, अमरावती येथे

भांडार पडताळणी शाखेत करण्यात आजतागायत व्यस्त असल्यामुळे अशा परिस्थितीत मुख्यालयाला १ तारखेला हजर राहतेवेळी संबंधितांना वेळोवेळी मौखिकीकृत्या पाठपुरावा माझेकडून करण्यात आलेला आहे.

२. मी जन्मतारखेत बदल करण्यासाठी दि. २५.२.१९९९ रोजी सादर केलेल्या अर्जासोबत त्यावेळी जोडलेली सर्व कागदपत्रे यासोबत सादर करण्यात येत आहे."

7. From the aforesaid explanation, it seems that the applicant reiterated the fact that he has applied for correction of date of birth on 26.2.1999 and from time to time, he was requested to consider the change. As already stated, even from the correspondence between respondent No.2 and the applicant, as seen from reply affidavit, it seems that the application was kept pending from 1999 till it was rejected. It is true that the applicant also seems to have not persuaded his request. However, there is a lapse on the part of respondent No.2 in not submitting the proposal at the earliest to the respondent authorities.

8. In such circumstances, there cannot be said to be a lapse on the part of the applicant only for not taking decision on his representation and, therefore, the reason given in the impugned communication dated 23.8.2018 that the application cannot be considered since the date of birth was not corrected within five years

from the date of joining, is not legal and proper. The said communication, therefore, is required to be quashed and set aside.

9. Considering the fact that the applicant is going to retire on 31.1.2019, decision in this regard will have to be taken within a stipulated period before applicant's retirement.

10. The applicant has challenged in this O.A. the impugned communication dated 9.1.2018 whereby his application has been rejected by respondent No.2. The said communication is at Page Nos.29 and 30 (A.13). Vide this communication, it was intimated to the applicant that, though some documents were sought vide letter dated 10.5.1999, the applicant has not supplied those documents and the application for correction of date of birth was filed 1½ years prior to his retirement i.e. on 15.6.2017. In fact, the respondent No.2 seems to have taken no decision, but merely returned the application of the applicant.

11. In this regard, the learned counsel for the applicant has placed reliance on Rule 38, Instruction No.3 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. The said Instructions read as under:-

“3. All cases relating to alterations of dates of birth of Gazetted Govt. servants and such of the requests of Non-gazetted Govt. servants as are

proposed to be entertained on merits in relaxation of instruction No.(1) above should invariably be referred to the G.A.D. and the Finance Department through the Administrative Department concerned.”

12. The learned counsel for the applicant pointed out one G.R. issued by the Government in this regard which is dated 24.6.1992, a copy of which is placed on record at page No.68, Annexure R-2 which states as under:-

“याबाबत आता असे आदेश देण्यात येते कि, शासकीय कर्मचाऱ्याने त्याच्या सेवापुस्तिकेत नोंदण्यात आलेल्या जन्म दिनांकामध्ये दुरुस्ती करण्यासाठी दिलेला अर्ज सोबत जोडलेल्या तपासणीसूचीनुसार तपासून आवश्यक प्रस्ताव सामान्य प्रशासन विभाग व वित्त विभागास सादर करावा जेणेकरून उपरोक्त विभागांना ह्या प्रस्तावाची छाननी महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ च्या नियम ३८ प्रमाणे करून योग्य तो निर्णय घेता येईल.”

13. Thus, it was necessary for the respondent authorities to submit the proposal as regards correction of date of birth of the applicant to the competent authority as mentioned in the said G.R. and as per instruction No.3 of Rule 38. The impugned communications are, therefore, not legal and proper and he representation should have been submitted to the proper authority. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A. is partly allowed.
- (ii) Representation of the applicant for correction of date of birth dated 25.2.1999 with all necessary correspondence and documents shall be submitted to respondent No.1 by respondent No.2 immediately.
- (iii) On receiving such representation and documents, the respondent No.1 is directed to take a decision on the representation of the applicant dated 25.2.1999 on or before 28.1.2019 and the same shall be communicated to the applicant in writing.
- (iv) No order as to costs.
- (v) Steno copies be supplied to both the parties.

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

Dt. 10.1.2019.

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