

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.10 OF 2017

DISTRICT : SOLAPUR

Shri Mukund Atmaram Ingle.)
Age : 56 Yrs, Occu.: Service,)
R/o. Ujjani Officers' Colony, Gurunanak)
Chowk, Solapur, Tal. & Dist. : Solapur.)...**Applicant**

Versus

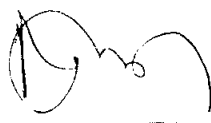
1. The State of Maharashtra.)
Through the Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)
2. Superintending Engineer.)
Small Scale Irrigation (W.C) Circle,)
Yerawada, Pune.)
3. Superintending Engineer.)
Bhima Canal Circle, Gurunanak)
Chowk, District : Solapur.)...**Respondents**

Mr. P.B. Dakve with Mr. J.N. Kamble, Advocates for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 11.09.2017



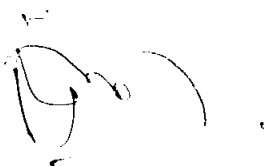
JUDGMENT

1. The Applicant, an Executive Engineer, Small Scale Irrigation (Water Conservation) Division, Solapur has submitted this Original Application (OA) seeking the relief of change of date of birth from 10.10.1959 to 10.10.1960 *inter-alia* stating that the date of the year 1959 recorded in his service book is incorrect.

2. I have perused the record and proceedings and heard Mr. P.B. Dakve with Mr. J.N. Kamble, the learned Advocates for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

3. The 1st Respondent is the State in Water Resources Department, the 2nd Respondent is the Superintending Engineer, Small Scale Irrigation, Water Conservation Circle, Pune under whose immediate control, the Applicant is functioning at the moment and the 3rd Respondent is the Superintending Engineer, Bhima Canal Circle, Solapur.

4. The Applicant joined Government service on 26.12.1983. At that time, the date of birth recorded was as already mentioned above 10.10.1959. It was for the first time on 20.11.1998 that the Applicant made an application

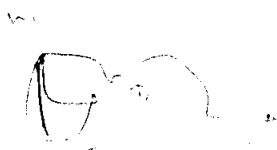


to the concerned authorities for change of his birth date. That request was based on a Certificate issued by the Tahasildar Mehakar in Buldhana District of this State. No response was forthcoming from the Respondents. On 4.5.2007, the Applicant made another representation to the Secretary, Irrigation Department but again nothing happened. On 26.6.2015, he again made a representation to the Chief Secretary and on 20.7.2016 by the communication herein impugned, his move failed and it was rejected.

5. It is pleaded in the OA that, in the year 1987, the Applicant approached the Tahasildar Mehakar searching for his date of birth. It is, therefore, quite clear that not till the lapse of four years after joining the service did the Applicant move in the matter. It appears from the contents of this OA that the Applicant was born at the place of his maternal grandfather. It is his case that, at that time, in the year 1987, Tahasildar Mehakar did not give him the extract of the relevant record on the ground that, as a result of a flood, most of the record got damaged, and therefore, he could not get the said extract immediately. The Applicant, going by the date of his recorded birth would retire in the next month. This OA was presented by him on 6.1.2017 which in the context is almost on the eve of his retirement though it was about nine months before.



The Applicant had presented the Misc. Application being MA No.160/2017 for condonation of delay and by the order dated 28.7.2017, the delay was condoned. However, it is one aspect of the matter that the delay was condoned whereby the path was cleared for the hearing of the OA. If, however, there is certain other fallout affecting the merit of the matter, then the order on the MA cannot in my view, be cited as a panacea of all ills. If it affects the merit, it will have to be taken note of. Therefore, even before proceeding further, it will have to be noted quite clearly that the Applicant came to know way back in 1998 that his move was not succeeding and at least he came to know it in close proximity of that time, but he did nothing except making representations and that too, at a time after about 7/8 years of each representation. He did not move this Tribunal in good time for redressal, and therefore, in my opinion, there is no escape from the conclusion that this OA presented almost on the eve of retirement would be hit by the Rule of the Judgment of the Hon'ble Supreme Court in **State of Maharashtra and Another Vs. Gorakhnath S. Kamble & Ors. : Civil Appeal No.9704 of 2010 arising out of Special Leave Petition (C) No.8779/2007, dated 16th November, 2010 : (2010) 14 SCC 423** which was referred to in **Bharat Coking Coal Ltd. And others Vs. Chhota Birsa Uranw : AIR 2014 SC 1975.** A copy of

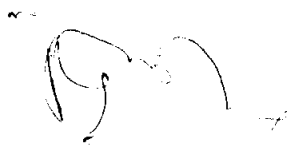


Gorakhnath Kamble's case placed on record is from an unreported Judgment and the reference to the Paragraphs will be from that unreported Judgment. In the discussion from Paras 12 onwards in **Gorakhnath Kamble** (supra), Their Lordships of the Hon'ble Supreme Court were pleased to refer to a number of earlier Judgments of the Hon'ble Apex Court which held that change of date of birth should not be allowed to be made when it was applied for on the eve of retirement of the concerned employee. In **Gorakhnath Kamble's** case as well as **Chhota Birsa's** case, the Hon'ble Supreme Court was pleased to examine this aspect of the matter from various angles including the fact that such a move on the eve of the retirement also adversely affect the chances of others who are patiently waiting in the queue for being promoted. It is, therefore, quite clear that, on this single aspect, this OA is liable to be rejected. I shall, however, still complete the discussion.

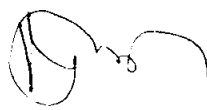
6. Mr. Dakve, the learned Advocate for the Applicant relied upon two Judgments of the Hon'ble Bombay High Court in the matters of **Shrinivas P. Karve Vs. State of Maharashtra & Ors. : 2017 (2) ALL MR 328** and **Ashok P. Meshram Vs. Head Master, Zilla Parishad High School, Palandur (Chauras) and Anr. : 2014 (6) MLJ 590**. In both these citations, the mistake occurred from the side of the Office to record the date of birth of the



said Applicants. In both of them, in the ultimate analysis, the move for change of date of birth was not suffering from latches. Though a period of more than five years had elapsed in **Shrinivas Karve's** case, but that was because the record of the said Applicant as per the then prevalent procedure was maintained elsewhere, and therefore, the Applicant could not be assailed for the delay. Now, here in this particular OA, I find that the very fact of the date of birth of the Applicant being 10.10.1960 is exemplified by a particular document which is at Exh. 'A-4' (Page 19 of the Paper Book (PB)). The Affidavit-in-reply has tried to point out several flaws in the contents thereof. No doubt, the Applicant had no control over the said document which is an extract of deaths and birth register. However, still read as a whole, if it does not conclusively establish the case of the Applicant and to my mind, the Applicant cannot claim benefit of **Shrinivas Karve** (supra) and **Ashok Meshram** (supra). In that extract, the date 10.10.1960 is below the column of report. So, it is not clear if date of birth and date of report are one and the same. In the column of name of the father, the name of Applicant's father is mentioned and the gender of the child is not mentioned clearly and there is a mistake in the name of the Applicant. Applicant's name is "Mukundrao" whereas the name recorded is "Mukindrao".



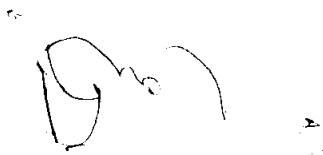
7. In such matters, the relevant Rule is Rule 38(2) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 with particular reference to Instruction No.2(c). In **Ashok Meshram** (supra), that provision was held to be prospective. However, in Para 9, there are observations which would make it clear that, in **Ashok Meshram** (supra), the outcome would have been the same regardless of whether the old Rule applied or the new one. Both in **Shrinivas Karve** as well as **Ashok Meshram**, the mistake was more of the Office rather than the Applicant and here, it is a clear case of indolence which is inexcusable as far as the Applicant is concerned. I have referred to the Rule and Instruction just now. Its import is that the move for correction of date of birth must be made not after five years of the date of joining. In **Shrinivas Karve** (supra) and **Ashok Meshram** (supra), it was ultimately found that, in the context of those facts, the Applicants therein could not be made to suffer for no fault of theirs. In **Chhota Birsa** (supra), although the Hon'ble Supreme Court ultimately held for the employee with regard to the date of birth, but there are several observations laying down the principles which serve as guidance to the Courts and Tribunals and it is those principles that will have to be applied. Further, in that matter, there was a clear finding of fact that the party



before the Hon'ble Supreme Court could not be assailed for having moved at the fag end of his career. It was clearly held, however, by the Hon'ble Apex Court that, unless a clear case on the basis of materials of conclusive nature was made out, the judicial forum should not issue a direction which makes such claim only plausible. Before any such direction was issued, the judicial forum must be fully satisfied that, there had been real injustice to the person concerned and his claim was in accordance with the procedure prescribed. And further, the onus to make good his claim rests on the concerned employee.

8. Similarly, in **Gorakhnasth Kamble** (supra), the Hon'ble Supreme Court found that, in interpreting the Rule above quoted, the Hon'ble High Court in fact rewrote the said Rule by introducing the expression, "normally" which was not there in the said Rule at all.

9. The above discussion would, therefore, make it very clear that unlike **Shrinivas Karve** (supra) and **Ashok Meshram** (supra), here in this matter, it is not possible for me to conclusively hold that the date of birth of the Applicant was 10.10.1960. The date 10.10.1959 was recorded at the time of entry of the Applicant in service and no blame of any nature whatsoever could be laid at the



doorsteps of the Respondents or any of their employees. As a matter of fact, going by the Rule above quoted and studying it in the context of the above referred case law, once it was found that the concerned employee like the present Applicant allowed the things to dither till the last moment and moved for the change just before the retirement, then in no case should such a move succeed unless the blame could be laid at the doorsteps of the employer. I am, therefore, very clearly of the view that, in the context of these facts, the principles laid down by the Hon'ble High Court in **Shrinivas Karve** (supra) and **Ashok Meshram** (supra) could not be made applicable and in fact, going by the law laid down in **Chhota Birsa** (supra) and **Gorakhnath Kamble** (supra), this Original Application must fail.

10. This Original Application is accordingly dismissed with no order as to costs.

Sd/-

(R.B. Malik)
VICE-CHAIRMAN
11.09.2017

11.09.17

Mumbai

Date : 11.09.2017

Dictation taken by :

S.K. Wamanse.