

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1098 OF 2015

DISTRICT : MUMBAI

Mr. Rajendra W. Dhakad.)
Age : 58 Yrs, Occu.: Office Superintendent))
at Technical Education, Regional Office,)
Nashik and residing at C/o. 'Shivam)
Classic', 202/A, Sec. 23, Nerul (E),)
Navi Mumbai 706.)...Applicant

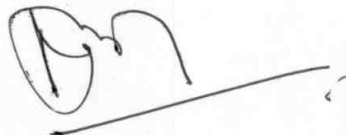
Versus

1. The State of Maharashtra.)
Through the Secretary,)
Higher & Technical Department,)
Mantralaya, Mumbai - 400 032.)
2. The Director.)
Technical Education, MS,)
Mahapalika Marg, Mumbai 1.)
3. The Joint Director.)
Technical Education, Regional)
Office, Govt. Technical Premises,)
Post Box No.219, Samangaon Road,)
Nashik Road, Nashik 400 101.)...Respondents

Shri K.R. Jagdale, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

vs



CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 29.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant having been appointed as Junior Clerk on 2.7.1986 and then promoted from time to time upto the post of Office Superintendent came to be dismissed from service by the order dated 18.11.2015 (Exh. 'Exh. D', Page 78 of the Paper Book (P.B) of the disciplinary authority 3rd Respondent - Joint Director, Technical Education, Nashik Regional Officer. The Original Application (OA) was brought pending appeal which appeal came to be dismissed by the 2nd Respondent - Director, Technical Education, MS, Mumbai vide the order dated 4th February, 2016. Aggrieved, the Applicant is up before us by way of this OA under Section 19 of the Administrative Tribunals Act, 1985 (Act).

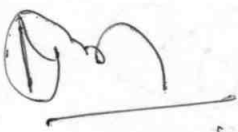
2. We have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer (PO) for the Respondents. The 1st Respondent is the



State of Maharashtra in the Department of Higher and Technical Education.

3. A complaint which was ultimately found to be pseudonymous was made in the name of one Mr. P.N. Wani on 30.5.2011 against the Applicant alleging *inter-alia* that he had secured the job initially by practicing fraud about his date of birth. He was actually born on 30.11.1958 but he submitted an Affidavit of his mother Smt. Pramilabai Waman Dhakad sworn on 28.4.1986 stating therein that the Applicant was born on 30.11.1958. Had the DOB been 30.11.1958, he would have been age barred and hence, the alleged fraud, etc. we shall presently examine this aspect.

4. But it is clear from the record that the said "complainant" was at the time of Departmental Enquiry (DE) found to be aged, infirm and completely bedridden and unable to move. He disowned the complaint and the Applicant. He mentioned that his name was used (misused) by some busybody. In this behalf, Mr. Jagdale, the learned Advocate for the Applicant relied upon two Circulars dated 7.5.1985 and 27.12.1996 issued by G.A.D. The sum and substance was that anonymous complaints

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should not be readily acted upon. Pseudonymous complaints too should be treated alike.

5. Now, as the discussion progresses, it will become clear that even the Applicant cannot be held to be totally free from blame. Whether the whole thing has been blown completely out of proportion to the infraction shall be presently examined. But we do not propose to rely entirely on the nature of the complaint (Pseudonymous). But we must at the same time, record our disagreement with Respondents based on G.A.D. GR dated 25.02.2015. Even that GR lays down that in such cases, the identity of the complainant be established and two chances be given and if he did not appear, the complaint be filed. It can be safely mentioned that the glee and rejoicement of the Respondents are disproportionate to whatever should be there. So be it. We proceed further.

6. We must now examine the charge such as it was against the Applicant. The charge is in Marathi under three heads. The 1st Charge is that the Applicant was interviewed for the said regular post on 25th May, 1986. As on that day, he had crossed 28 years by about five and half months. At the time of his order of appointment on 1.7.1986 that limit was crossed by seven months. His

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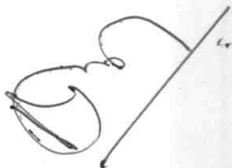
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mother Smt. Pramilabai W. Dhakad of Dhule had sworn an Affidavit dated 28.4.1986, therein mentioning his date of birth as 30.11.1958. The first charge proceeds to say that this was a false Affidavit and was meant to mislead the Government and committed a fraud. The 2nd charge was that in order to get the job, the Applicant did not submit the School Leaving Certificate, but produced a false Affidavit referred to above and thereby committed misconduct. The 3rd charge was with regard to the violation of Rule 3(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (D & A Rules). This charge-sheet was dated 27th July, 2015.

7. A memorandum was annexed to the said charge wherein it was mentioned *inter-alia* more or less the same facts but a few additional ones also which may be noticed. In the unnumbered 2nd Paragraph, there is a reference to the School Leaving Certificate wherein the date of birth was mentioned as 30.11.1958. It was then mentioned that a Committee of In-charge Principal of Technical Education, Ahmednagar Smt. V.P. Ashwatpur and 2 others came to be constituted. It was mentioned further that the Establishment had received a complaint from Shri P.N. Wani dated 30.5.2011 to which a reference has already been made above.



8. At Pages 29 & 30 of the Paper Book, there is some kind of a preliminary enquiry report of Smt. Ashwatpur whose name has figured above, Shri K.M. Wakhure, the Member of the Enquiry Committee and Shri S.D. Bhuse, the Member Secretary of the Enquiry Committee. The facts have been mentioned with regard to how the documents were submitted and furnished, etc. Further the career details of the Applicant just preceding his appointment to the post hereto relevant were mentioned. There was then a reference to the Affidavit of Mrs. Dhakad referred to hereinabove. He was interviewed and appointed, but his joining report was not made available to this particular Committee. So also were not made available the documents pertaining to his interview. It was then mentioned that on 2.7.1986, when the Applicant reported for duty, his School Leaving Certificate was showing his date of birth as 30.11.1958. The same date was shown in his S.S.C. Board Examination Certificate. The conclusion of this particular Committee was that as on the date of appointment of the Applicant, he was more than 28. It was further mentioned that the then Member ought to have taken guidance with respect to the proper document for asking the age of the Applicant but he relied only on the Affidavit and somewhat curiously in the concluding Paragraph of the conclusions, it was mentioned




that the Applicant made the authorities to do so (exact Marathi words, "अशी नोंद घेण्यास भाग पाडलेले आहे.")

9. It is quite intriguing as to how a lowly placed judicial Clerk just about to report for duty for the first time could bring pressure on the highly placed officials and how the officials could be so naive as to just act on an Affidavit of his mother in preference to the other documents of unimpeachable veracity which we shall presently discuss. As the discussion progresses, it would become very clear that there is a clear attempt to cover up the complete negligence, if not anything more of the authorities, who dealt with this matter way back in 1986. In fact, the Applicant all by himself could have achieved nothing even on the strength of the said Affidavit of his mother, but we shall be presently pointing out that it is completely incorrect to say that other documents were not available at that time. In fact they were very much available. At Page 19 of the P.B, there is an extract of the list of the candidates of 31st July, 1986. Although it is somewhat faint, it appears that Applicant's name is at Serial No.1. His qualification and other eligibility criterions have been mentioned and his date of birth is mentioned as 30.11.1958. This is a document of his office and not any private document as such. At Page 24, there is a School

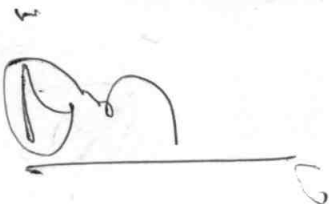


Leaving Certificate issued on 8.5.1978 showing the date of birth of the Applicant as 30.11.1958. There is an extract of Birth Register from the Village of the Applicant of November, 1957 showing that the Applicant was born on 30.11.1958. The same date appears in SSC Certificate as well. At Page 27 is the complaint purporting to be by Mr. Wani which has been discussed hereinabove in extenso. Quite pertinently, however, at Page 31, a very important document is there which appears to be the first page of the Service Book of the Applicant. His date of birth was recorded therein as 30th November, 1958 which was encircled and later on, the date 30th November, 1957 was put up.

10. The above discussion would, therefore, make it very clear that the unassailable official documents were not only there but they were tendered as well which conclusion could be also arrived at, if one were to place the averments in the OA in juxta-position with those in the Affidavits-in-reply and other documents. It is absolutely unbelievable and we refuse to believe it that the officials who were much higher than the Applicant in Applicant's own case would meekly go by an Affidavit of a private lady when compared with unassailable official documents. In this view of the matter, therefore, to put the blame entirely on the



Applicant and mete out maximum punishment is entirely disproportionate to the alleged delinquency. The fact that this state of affairs continued for more than 25 years and in fact, close to 30 years is also something which cannot be lightly ignored. The delay in this matter is something which cannot be glossed over. Mr. Jagdale, the learned Advocate for the Applicant referred us to **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board, Appeal (Civil) 4901/2005, dated 8th August, 2005 (S.C)**. In that matter, the Hon'ble Supreme Court was pleased to hold *inter-alia* that although the effect of delay is something which is fact specific, but then, it is not something that can lightly be brushed aside. Therefore, if the delay has occasioned into solidification of certain state of affairs, then the judicial forum can ill afford to just gloss over it. In this particular matter, as we have already indicated above, the officials knew on the basis of the unimpeachable document as to what the real date of birth of the Applicant was. Despite that, the Applicant not only continued as Junior Clerk but also came to be given promotions till he became the Office Superintendent. In that view of the matter, therefore, to place the entire blame on the Applicant would be quite contrary to the basic tenets of principles of justice and fair-play. We have already mentioned above that the Applicant has to be blamed to a




certain extent but then the degree of delinquency and the quantum of punishment has to be in keeping with the part played by him. We reject the case of the Respondents that no higher-ups, no authority who was to receive the documents at that point in time and not even the Principal were responsible for what had come to pass. If the authorities chose to ignore all the other documents of unimpeachable veracity and entered a particular date only on the basis of an Affidavit of a private individual, then as a matter of fact, they had a greater role to play in whatever had come to pass. The test would be as to whether at the time of entry of a Government servant, his date of birth could be entered just by relying upon the Affidavit of a private individual, if other document like Birth Certificate, School Leaving Certificate, etc. were produced. The answer is axiomatic and that is also an answer to all the questions that the Respondents would like to throw at the Applicant. It is, therefore, quite clear that taking the case of the Respondents as it is, the Applicant could not have been meted out the ultimate punishment, after having served for about 29 years.

11. We may now turn to the departmental enquiry aspect of the matter. It would appear from Page 35 of the P.B. (Exb. 'B') that the Regional Enquiry Officer Shri



Chinchnikar was appointed as an Enquiry Officer (EO). Before we proceed to read to the extent necessary and permissible, the departmental enquiry proceedings, it will be appropriate to delineate to ourselves the scope of our own jurisdiction in dealing with the matters like the present one. Our jurisdiction is of a judicial forum that functions as a forum of judicial review of administrative action. It is not an appellate forum, and therefore, the latitude is that much narrower. The process and purity and accuracy of the process of reaching the conclusion rather than the conclusions themselves is the chief concern in such jurisdictions. That process must be informed by the principles of natural justice, *audi alteram partem*. The strict Rules of Evidence such as enshrined in the Codes of Procedure and Indian Evidence Act with their rigors are inapplicable to the departmental proceedings, but still a delinquent must receive a treatment in accordance with the principles of natural justice and fair-play. In actual practice, he must be given an opportunity to defend himself both by way of testing by cross examination the witnesses against him and also leading positive evidence, if he was so inclined to do. The burden of proof in such matters on the employer is not like it is on the prosecution in a criminal trial of proof beyond reasonable doubt, but it is of preponderance of probability.



The mere fact that the judicial personnel presiding over the judicial forum would have or have not reached the same conclusion as did the authorities would not be by itself sufficient for the judicial forum to act.

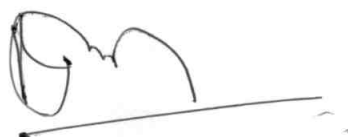
12. The judicial forum would make sure that there was some incriminating material to act in the manner that they did and if that incriminating material warranted the conclusions drawn by them to be drawn, then that would be something which would be accepted by the judicial forum and that precisely is the distinction between an appellate forum and the forum that exercises the jurisdiction of judicial review of administrative action. These principles apply in the matter of not only the determination of guilt, but also the imposition of penalty. In case of proved delinquency, the punishment will not be disproportionately harsher which might mock at the principles of natural justice and fair-play. This is the broad parameter which we must act within.

13. Turning to the facts in the above background, as we peruse the report of the Enquiry Officer, we find that up to Page 42, it narrates the facts which we have already summarized hereinabove. The Enquiry Report runs into 29 pages. It deals with the issues raised and the replied by

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the Applicant and then discussion, based on the statements of the witnesses. Though the statements themselves have not been furnished to us but going by the report, it appears that the witnesses examined were from the office of the educational institution. We have already mentioned above the details with regard to our jurisdictional ambit, and therefore, we need not closely read the evidence itself. Because if as we mentioned above, the evidence presented some incriminating material, then subject to other discussion, we probably would not just for the asking rush into substituting our own conclusions.

14. However, the general trend of the enquiry report faithfully followed by the order of the disciplinary authority would show that there is a complete absence of consideration of very vital aspect of the matter which we have discussed already. There is not much discussion with regard to the role played by the higher officials themselves and whenever inconvenient situations arose, it was tried to be bypassed by mentioning that the Applicant did not rebut the same. Now, with all the jurisdictional and judicial limitations that inhere in the proceedings like the present one, we do not think that any pronouncement which ignores even the consideration of the vital aspects of

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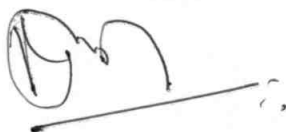
the matter should go judicially unnoticed. In fact, from the report of the EO himself on Page 48 of the P.B. (Internal Page 13), it would become clear that only on the basis of an Affidavit of Applicant's mother, the date of birth could not have been entered in the Service Book. We get absolutely no inkling either from the Enquiry Officer's report or order of the disciplinary authority as to how they were disposed to the attitude deliberate or otherwise of the then authorities to let even an Affidavit play the decisive role if at all it did. It did not actually do so is what we have found above. In fact, we would go to the extent of mentioning that even if the Applicant produced the Affidavit as the only piece of evidence and the authorities meekly acted on it, they were at fault much more than the Applicant was. But it is not just highly improbable verging on being impossible but it actually did not so happen.

15. The upshot, therefore, is that the report of the Enquiry Officer accepted by the disciplinary authority is something that cannot pass muster with the test which is prescribed even for our limited jurisdiction and we have no hesitation in interfering in the matter. Although there cannot be any approving, the productions of documents like Affidavits when it was quite unnecessary to do so.



Further, the time that has elapsed and the events that have happened also would support our conclusion.

16. In the report of the Enquiry Officer, the order of the disciplinary authority and the order of the appellate authority all fully used the expressions like false Affidavit, deception, etc. But, in our opinion, the ultimate outcome would depend upon the examination of this aspect in a proper perspective bearing in mind the contextual connotation peculiar hereto. The Affidavit was sworn on 28th April, 1986 and was apparently presented about one and half months thereafter. The authorities did not act on that Affidavit only because there were other documents as well and even if they did it, their involvement was more than the Applicant. In that view of the matter, therefore, strictly speaking, it cannot be said that the said Affidavit was an instance of submitting false document. Ultimately, the crux of the matter was acceptance thereof. It was open to the authorities to visit the Applicant with the consequences right from the day one, if upon considering the said Affidavit in the context of the other documents discussed above, they found the conduct of the Applicant improper. That being the state of affairs, although the Applicant cannot go entirely scot-free, but to brand him as



manufacture of false document will also amount to err on the other extreme which we are not prepared to err.

17. In view of the foregoing, therefore, we hold that the punishment meted out to the Applicant is disproportionate to the proved delinquency. He is no doubt guilty to a lesser extent for which he would have to be punished, but that will be for minor infraction. Therefore, the order herein impugned dated 18th November, 2015 as well as the appellate order made pending OA, both will have to be quashed and set aside.

18. The order made by the 3rd Respondent dated 18th November, 2015 (Exh. 'D', Page 78 of the P.B.) dismissing the Applicant from the service and confirmed in the appeal by the 2nd Respondent pending OA by the order of 4th February, 2016 are both quashed and set aside. The matter stands hereby remanded to the 3rd Respondent to re-examine the matter and impose one of the minor punishments as prescribed in Rule 5(1) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and then re-work out the case of the Applicant in the matter of treating him on continuous service as if the impugned order was not made by treating his date of birth as 30th November, 1958. The matter with regard to his pension



and post retiral benefits also be accordingly worked out. Compliance within three months from today. The OA is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
29.08.2016

Sd/-

v. g. v. agarwal
(Rajiv Agarwal)
Vice-Chairman
29.08.2016

Mumbai

Date : 29.08.2016

Dictation taken by :

S.K. Wamanse.

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