

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.298 OF 2017

DISTRICT : NASHIK

Shri Sayyad Roshan Ali Abdul Reheman.)
Age : 64 Yrs., Occu.: Retired Civil)
Engineering Assistant, R/o. Surabhi Park,)
Flat No.5, Pakhal Road,)
Nashik – 422 009.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai – 400 032.)
2. The Superintending Engineer.)
Public Works Circle, Bhandhkam)
Bhavan, Opp. Collector Office,)
Jalgaon – 425 001.)
3. The Executive Engineer.)
National Highway Division No.9,)
Untawadi Road, Nashik – 422 002.)...**Respondents**

Mr. Bhushan A. Bandiwadekar,

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

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 12.02.2020

JUDGMENT

1. This is the second round of litigation wherein the Applicant has challenged the impugned order dated 06.11.2015 and communication dated 01.12.2015 issued by Respondents thereby rejecting the request of the Applicant for change of date of birth in service record invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Uncontroverted facts to be borne in mind while deciding the present application are as follows :-

(a) The Applicant joined Government service on the post of Clerk (Highway Karkun) on 01.02.1979.

(b) At the time of entry in service, the date of birth was recorded as 21.08.1951 on the basis of School Leaving Certificate.

(c) On 03.02.1986, the Applicant made an application for correction in date of birth as 19.05.1955 contending that it is his real date of birth.

(d) The Respondents (Government), however, rejected the claim of the Applicant by order dated 21.06.2005 on the ground that the application for correction was not made within five years and secondly, the name of the Applicant is not mentioned in Birth Register against entry of date of birth i.e.19.05.1955.

(e) In view of date of birth 21.08.1951 recorded in service record, the Applicant was due to retire on 31.08.2009 and accordingly stands retired.

(f) The Applicant has challenged the communication dated 21.06.2005 as well as order of retirement issued by the Department by filing O.A.No.1177/2009 before this Tribunal along with application for condonation of delay vide M.A.No.435/2009.

(g) The Tribunal, however, rejected M.A.435/2009 by order dated 31.08.2009.

(h) The Applicant has challenged the order of refusing to condone the delay by filing Writ Petition No.9889/2009 which came to be allowed by Hon'ble High Court on 01.12.2009 and the matter was remitted back to the Tribunal for decision of O.A. on merit.

(i) O.A.No.1177/2009 was decided by the Tribunal on 09.07.2014 holding that the application made by the Applicant on 03.02.1986 was well within time in view of Circular dated 03.03.1998 and matter was remitted back for decision afresh.

(j) Accordingly, the Applicant had made representation on 17.09.2014 to the Government along with Birth Certificates of his siblings to substantiate that there was no practice to mention the name of child in Birth Register.

(k) The Government, however, by impugned order dated 06.11.2015 which was communicated to the Applicant by letter dated 01.12.2015 rejected the claim of the Applicant on the ground that the Applicant could not establish his real date of birth i.e.19.05.1955, which is challenged in the present O.A.

3. Shri Bhushan Bandiwadekar, learned Advocate for the Applicant in view of the observations made by the Tribunal in O.A.1177/2009, canvassed all that the Government was required to see whether the claim of the Applicant is substantiated in view of practice of not mentioning the name of child in Birth Register, as the name of the child is always determined much after birth by holding Naming Ceremony. According to him, the Government, however, gone beyond the observations made by the Tribunal in O.A.No.1177/2009 while rejecting the claim of the Applicant. He further submits that as per the Birth Certificates of the siblings of the Applicant, it is quite clear that the Applicant's date of birth is 19.05.1955. He further submits that the Department has given undue importance to the extract of date of birth showing that the date of birth of the Applicant as 21.08.1951. With these submissions, he submits that though the Applicant stands retired in 2009, his claim that his real date

of birth 21.05.1955 is well established and he is entitled to pay and allowances for the relevant period considering his date of birth as 19.05.1955.

4. Per contra, Shri A.J. Chougule, the learned P.O. retorted that in terms of direction given by the Tribunal in O.A.1177/2009, the Government had examined the matter in issue and during enquiry, it was revealed that the Applicant's real date of birth is 21.08.1951 as noticed from Birth Register of Igatpuri Municipal Council, but this aspect was suppressed by the Applicant and he tried to take disadvantage of one more entry of date of birth as 19.05.1955 from the record of Igatpuri Municipal Council. He further submits that if the date of birth sought to be corrected as 19.05.1955 is concerned, then at the time of admission in first standard, the Applicant was three years and two months old and would be ineligible for admission in primary school in view of Rule 128 of Bombay Primary Education Rules, 1949 (hereinafter referred to as 'Rules of 1949' for brevity) which *inter-alia* prescribes minimum age five years for admission in primary school. He, therefore, submits that where the employee had gained advantage by representing date of birth which is different than which is sought to be corrected is not entitled for correction of date of birth in service record in view of Rule 38 (2A)(i)(ii) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity). With this submission, he prayed to dismiss the O.A.

5. The procedure for writing and recording the date of birth in Service Book and its correction is governed by Rule 38 of Rules of 1981. It will be useful to reproduce the relevant portion as amended on 24.12.2008 as follows.

“38. Procedure for writing the events and recording the date of birth in the service book.

- (1) In the service book every step in a Government servant's official life, including temporary and officiating promotions of all kinds, increments and transfers and leave availed of should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills and leave account and attested by the Head of the Office. If the Government servant is himself the Head of an Office, the attestation should be made to his immediate superior.
- (2) While recording the date of birth, the following procedure should be followed:-
 - (a) The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;
 - (b) In the case of a Government servant the year of whose birth is known but not the date, the 1st July should be treated as the date of birth;
 - (c) When both the year and the month of birth are known but not the exact date, the 16th of the month should be treated as the date of birth;
 - (d) In the case of a Government servant who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment;
 - (e) When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in rule 12 should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deducted accordingly;
 - (f) When once an entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error.

Instruction :-

- (1) No application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant, who has entered into the Government service on or after 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.
- (2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested Xerox copy of the concerned page of the original birth register where his

name and time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.

(2A) At the time of scrutiny of the application, it shall be ensured that.-

(i) no advantage has been gained in school admission, entry into Government servant by representing a date of birth which is different than that which is later sought to be incorporated;

(ii) the date of birth so altered would not make him ineligible for admission in any school or University or for the Maharashtra Public Service Commission examination in which he had appeared; or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered in the Government service.

(2B) No application for alteration of entry regarding date of birth of the Government servant pending with the Government on the date of commencement of the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2006 shall be processed after the date of retirement of such Government servant and such application shall automatically stand disposed of as rejected on the date of retirement. Any such application made by the retired Government servant shall not be entertained.”

7. Thus, it is explicit that in terms of Rule 38(2)(f), the date of birth once recorded in Service Book should not be afterwards changed unless it is shown that the entry was taken due to want of care on the part of some person other than the individual in question or is an obvious clerical error.

8. Now turning to the facts of the present case, the Applicant is seeking direction to change the date of birth as 19.05.1955 in place of 21.08.1951, which is recorded in Service Book on the basis of School Leaving Certificate. In order to substantiate that his date of birth is 19.05.1955, he sought to place reliance on the extract of Birth Register from Igatpuri Municipal Council, which are at Page Nos.50 to 52 of Paper Book. Page No.52 is the extract of General Register of Birth of Igatpuri Municipal Council wherein there is entry at Serial No.174 that one child was born to Abdul Rehemman (Applicant's father) on 19.05.1955. On the basis of this extract of General Register, Igatpuri Municipal Council had

issued Certificate about birth of child to Abdul Rehman on 19.05.1955 which are at Page Nos.50 and 51 of P.B. These three documents coupled with the entries of date of birth of the siblings are heavily relied by the Applicant to substantiate his claim. It appears that the Applicant is youngest amongst all siblings. He has two brothers and two sisters.

9. The names of sisters and brothers and their date of birth as mentioned in his representation (Page No.56 of P.B.) are as follows :-

(i) Dilshad Begum Abdul Rehman Sayyad (sister)	29.10.1944
(ii) Najma Begum Abdul Rehman Sayyad (sister)	29.12.1946
(iii) Abdul Ghani Abdul Rehman Sayyad (brother)	28.07.1948
(iv) Sayyad Ahmed Ali Abdul Rehman Sayyad (brother)	02.05.1950

10. The perusal of extract of Birth Register of Dilshad Begum issued by Tahasildar, Niphad (Page No.60 of P.B.) shows that one daughter was born to Abdul Rehman in November, 1944 without specifying the date of birth. In respect of Najma Begum, the Applicant has produced the Certificate (Page No.61 of P.B.) issued by Tahasildar, Niphad showing that there is no entry of date of birth of Najma Begum in the period from 1944 to 1946. Whereas, in the matter of Abdul Ghani, the Applicant has produced the Certificate issued by Tahasildar, Nashik wherein it is stated that there is no entry of date of birth of Abdul Ghani in Municipal record of 1948. As such, in respect of Najma Begum and Abdul Ghani, though they were shown born on 29.12.1946 and 28.07.1948 in representation, there is no record of their birth entry in record. As regard Sayyad Ahmed, the Applicant has produced the copy of extract of Birth Register of Igatpuri Municipal Council (Page No.67) to show that one male child was born to Abdul Rehman on 02.05.1950. On the basis of this extract, Igatpuri Municipal Council had issued Certificate which is at Page No.66.

11. In all these extract of Birth Register, the entry is taken showing birth of male or female child to Abdul Rehman without mentioning the

name of the child. The aspect of non-mentioning the name of the child in Birth Register is quite understandable, as it is common practice/custom to decide the name of child much after birth. It is, therefore, obvious that there could be no mention of the name of child in Birth Register. This being the position, only because the name of Applicant is not mentioned in Birth Register against birth date 19.05.1955, that itself cannot be the ground to reject the claim. However, this aspect is of little assistance to the Applicant to accept his claim that his real date of birth is 19.05.1955 in view of material collected by the Department during enquiry.

12. At this juncture, it would be apposite to reproduce the note prepared by the Government while rejecting the claim of the Applicant, which is at Page Nos.108 to 121 of P.B. The relevant portion on Page No.113 is as follows :-

“२) श्री.सय्यद यांनी जन्म-मृत्यु नोंदवहीच्या पृष्ठाची साक्षांकित प्रत (पृ.३९१/प.वि.) सादर केली असून त्यामध्ये श्री.अब्दुल रेहमान या इसमास दि.१९.०५.१९५५ रोजी मुलगा झाल्याची नोंद आहे. मात्र त्यामध्ये मुलाच्या नावाचा उल्लेख नाही. त्यामुळे मा.न्यायाधिकरणाने जन्म-मृत्यु नोंदवहीच्या पृष्ठाची साक्षांकित प्रत हा महत्त्वाचा पुरावा असून श्री.सय्यद यांच्या प्रकरणी जन्म-मृत्यु नोंदवहीमध्ये फक्त वडीलांचे नाव असून जन्मलेल्या मुलाच्या (अर्जदाराच्या) नावाचा उल्लेख नसल्यामुळे अर्जदाराचा दावा निर्विवादपणे सिद्ध होण्याकरिता अर्जदाराने त्याच्या सर्व भावडांच्या जन्म-मृत्यु नोंदवहीच्या पृष्ठाच्या साक्षांकित प्रती सादर करण्याचे निर्देश न्यायनिर्णयाच्या परि. २१ मध्ये दिले.

अर्जदाराने सादर केलेल्या माहितीनुसार अर्जदार स्वतःधरून एकूण ५ भावंडे असून त्यापैकी कोणाच्याही नावाची नोंद जन्म-मृत्यु नोंदवहीमध्ये असल्याचे आढळून येत नाही.

मात्र संबंधित कार्यकारी अभियंत्याने मुख्याधिकारी, इगतपुरी नगरपरिषद यांचेकडून प्राप्त करून घेतलेल्या जन्म-मृत्यु नोंदवहीच्या पृष्ठांमध्ये अनु.क.२१५ येथे श्री.अब्दुल रेहमान या इसमास दि.२१.०८.१९५१ रोजी मुलगा झाल्याची नोंद असल्याचे दिसून येते. याच नोंदवहित “सय्यद” असे नावही त्याचवेळी लिहील्याचे दिसते. मात्र अर्जदार श्री.सय्यद यांनी ही माहिती त्यांच्या अर्जांमध्ये किंवा सादर केलेल्या कागदोपत्री पुराव्यांमध्ये कुठेही नमूद केलेली नाही. म्हणजेच त्यांनी ही माहिती हेतूपूर्वक लपविल्याचा विभागाने काढलेला निष्कर्ष योग्य असल्याचे स्पष्ट होते. अर्जदाराने ही महत्त्वाची माहिती मा.न्यायाधिकरण तसेच शासनापासून दडवून ठेवून दिशाभूल तसेच फसवणूक केल्याबद्दलची त्यांची कृती त्यांच्याविरुद्धच्या कारवाईस पात्र ठरते. तसेच अशा प्रकरणी जेव्हा अर्जदार खरी माहिती दडवून ठेवून खोट्या माहितीच्या आधारे जन्मदिनांक नोंदीच्या बदलाबाबतचा दावा करीत असेल त्यावेळी फक्त मूळ जन्मनोंदणीवहित त्याचे नाव व जन्मतारिख नोंदली असल्याचा पुरावाच प्रश्नातीत पुरावा म्हणून ग्राह्य धरण्याबाबतची नियमातील तरतूद अत्यावश्यक असल्याचे स्पष्ट होते.

३) श्री.सय्यद यांच्या जनता इंग्लिश स्कूल, सायखेडा ही शाळा सोडल्याच्या दाखल्यावर दि.२१.०८.१९५१ अशी जन्मदिनांकाची नोंद असून एस.एस.सी.परिक्षा (इयत्ता ११ वी) ते ऑक्टोबर, १९६९ साली उत्तीर्ण झाल्याची नोंद आहे. म्हणजेच जून १९६८ साली त्यांनी इयत्ता ११ वी मध्ये प्रवेश घेतला. म्हणजेच इयत्ता पहिली ते अकरावी या शैक्षणिक वर्षांमध्ये श्री.सय्यद हे एकदाही अनुत्तीर्ण झाले नसल्यास त्यांनी दि.०१.०६.१९५७ रोजी इयत्ता पहिलीमध्ये प्रवेश घेतला असणे कमप्राप्त आहे. ते अनुत्तीर्ण झाले असल्यास सन १९५८ पूर्वीही ते इयत्ता

पहिलीमध्ये दाखल झाले असण्याची शक्यता आहे. (विभागास या बाबीची खातरजमा श्री.सय्यद यांच्या जीवन् शिक्षण विद्यामंदिर, चाटोरी या शाळेकडून माहिती मागवून करता येईल.)

मुंबई प्राथमिक शिक्षण नियम, १९४९ मधील नियम १२८ नुसार, शाळेत प्रवेश मिळण्याच्या दिवशी विद्यार्थ्यांच्या वयाला ५ वर्षे पूर्ण होणे अनिवार्य आहे.

सदर नियमानुसार दि.०१.०६.१९५८ रोजी इयत्ता पहिलीकरिता शाळेत प्रवेश घेताना श्री.सय्यद यांच्या वयाची ५ वर्षे पूर्ण होणे आवश्यक आहे. श्री.सय्यद यांचा जन्मदिनांक दि.२१.०८.१९५१ असा असल्यासच सदर अट पूर्ण होवू शकते. म्हणजेच शाळेत प्रवेश घेताना श्री.सय्यद यांनी दि.०१.०६.१९५८ हा जन्मदिनांक नोंदवून शाळा प्रवेशाचा फायदा घेतला असल्याचे स्पष्ट होते.

४) श्री.सय्यद यांच्या दाव्यानुसार त्यांचा जन्मदिनांक १९.०५.१९५५ असा ग्राह्य धरल्यास, दि.०१.०६.१९५८ रोजी इयत्ता पहिलीकरिता शाळेत प्रवेश घेताना श्री.सय्यद यांच्या वयाची फक्त ३ वर्षे पूर्ण होतात. म्हणजेच श्री.सय्यद यांनी प्रस्तावित केलेला त्यांच्या जन्मदिनांक १९.०५.१९५५ हा त्यांना शाळेत प्रवेश घेण्यासाठी नियमानुसार अपात्र ठरवित असल्याचे स्पष्ट होते. श्री.सय्यद यांचा दावा ग्राह्य धरल्यास, ३ वर्षांचे मूल इयत्ता पहिलीमध्ये शिकत असल्याची नैसर्गिक दृष्ट्या अशक्य असलेली बाब देखील ग्राह्य धरावी लागेल.

५) शासन अधिसूचना, वित्त विभाग दि.२४.१२.२००८ नुसार कर्मचा-यांच्या जन्मदिनांकात फेरबदला संबंधातील नोंदीत फेरफार करण्यासाठी प्रलंबित असलेल्या अर्जावर तसेच सेवानिवृत्त शासकीय कर्मचा-यांच्या अशा अर्जावर कोणताही विचार केला जाणार नाही, अशी तरतूद आहे. श्री.सय्यद हे दि.२१.०८.१९५१ या जन्मदिनांकानुसार नियत वयोमानानुसार दि.३१.०८.२००९ रोजी सेवानिवृत्त झालेले आहेत. त्यामुळे श्री.सय्यद यांच्या प्रकरणी आता निर्णय घेणे नियमाधीन नाही. तथापि, मा.न्यायाधिकरणाने दिलेले आदेश पाहता, श्री.सय्यद यांची सेवानिवृत्तीची बाब या प्रकरणी विचारात घेता येणार नाही.

६. सबब, सखोल तपासणीअंती उपरोक्त परि.४ मधील २), ३), ४) येथे आढळून आलेली वस्तुस्थिती विचारात घेता श्री.सय्यद यांची त्यांच्या मुळसेवापुस्तकात नोंदविलेला जन्मदिनांक दि.२१.०८.१९५१ बदलून दि.१९.०५.१९५५ हा जन्मदिनांक म्हणून ग्राह्य धरण्याची विनंती अमान्य करण्याबाबतचा विभागाचा प्रस्ताव योग्य असल्याचा निष्कर्ष निघतो.”

13. Thus, the Department had collected the information about the date of birth of the children of Abdul Rehman (father of the Applicant) and found that there is one more entry of birth of male child to Abdul Rehman on 21.08.1951. In this behalf, crucial document is extract of Birth Register of Igatpuri Municipal Council, which shows that at Serial No.214, the entry was taken that one male child was born to Abdul Rehman on 21.08.1951. On that basis, Igatpuri Municipal Council had issued Certificate, which is at Page No.68 of P.B. Significant to note that in respect of this entry of date of birth on 21.08.1951, there is no explanation from the side of Applicant as to whether it relate to his brother. Indeed, he has suppressed this aspect that there is entry of date of birth on 21.08.1951 in the record of Igatpuri Municipal Council. It was, however, revealed when the Department had collected information from Igatpuri Municipal Council.

14. Thus, what transpires from the record that there are two sets of documents (Page Nos.68 & 69 of P.B.) showing the date of birth to male child to Abdul Rehman on 21.08.1951 as well as another set of documents (Page Nos.50 to 52) showing the entry of date of birth to male child to Abdul Rehman on 19.05.1955. The Applicant is relying on Birth Register at Page Nos.50 to 52 only without explaining to whom date of birth 21.08.1951 relate. As stated earlier, as per representation made by the Applicant (Page No.56 of P.B.) after decision of O.A.1177/2009), the Applicant has two elder sisters and two elder brothers whose dates of birth are 29.10.1944, 29.12.1946, 28.07.1948 and 02.05.1950. However, curiously, there is no explanation of date of birth 21.08.1951, as seen from Page Nos.68 and 69 to explain to which child of Abdul Rehman it belongs. As such, in absence of plausible explanation, in view of two contradictory date of birth, it is not possible to jump to the conclusion that the date of birth 19.05.1955 is genuine. Needless to mention, in the matter of change in date of birth recorded in service record, unless a cogent, irrefutable and conclusive evidence is produced, the Tribunal should not issue direction on the basis of material which would make claim of the Applicant only plausible. The Tribunal must be fully satisfied that there is evidence of conclusive nature that the date of birth sought to be corrected is real and genuine date of birth. In the present case, in view of two sets of documents showing different dates of birth, that too, without explanation that the entry of date of birth 21.08.1951 is of somebody else, it is not possible to accept the Applicant's contention that his date of birth is 19.05.1955.

15. The submission advanced by the learned Advocate for the Applicant that the Government has not decided the claim within the parameters of the observation made by the Tribunal in O.A.1177/2009 and acted arbitrarily holds no water. In O.A.No.1177/2009, the directions were given to decide the claim of the Applicant on the basis of entries of date of birth of the Applicant and his siblings without ignoring the aspect of absence of name of child in Birth Register. The Department

accordingly collected the material in the form of extract of Birth Register of the Applicant as well his brother and sisters to verify the genuineness of the claim of the Applicant and it was revealed that the Applicant has suppressed material entry about the date of birth 21.08.1951. As stated above, the Applicant did not offer any explanation as to whom, date of birth 21.08.1951 relates. Indeed, the date of birth 21.08.1951 is registered as date of birth of the Applicant in School Leaving Certificate. As such, it is quite clear that there is complete chain of the circumstances that the Applicant's date of birth is 21.08.1951. In this view of the matter, it cannot be said that the Department acted beyond authority much less in contravention of the directions given by the Tribunal in O.A.1177/2009.

16. The submission advanced by the learned P.O. that the Applicant was not eligible for admission in primary school, if his date of birth is considered as 19.05.1955 is based upon Rule 128 of 'Rules of 1949', which inter-alia prescribes minimum age of five years for admission in primary school. Rule 128 of 'Rules of 1949' is as follows :-

“128. Admission of pupils :- (1) No approved school shall admit-
(a) a child who has not completed the 5th year of age on the date of admission.”

17. Material to note that Clause 2(a) of Rule 38 of 'Rules of 1981' specifically provides that while scrutinizing the application made for correction of date of birth, it shall be ensured that the concerned Government servant has not gained advantage while taking admission in School by representing date of birth, which is different than the date of birth sought to be incorporated and further provides that it shall be ensured that the date of birth so altered could not make the concerned Government servant ineligible for admission in school. In the present case, the Applicant was admitted in primary school on 09.07.1958. If his date of birth is sought to be corrected as 19.05.1955 is concerned, then he was three years and three months old at the time of admission in

school and obviously ineligible for admission in school. In other words, the Applicant had gained disadvantage by incorporating date of birth as 21.08.1951 in school record. It is quite unnatural and unbelievable that the child of three years would be competent for admission in first standard. As such, it is highly unbelievable that the Applicant was born on 19.05.1955.

18. True, the entry of date of birth in public record maintained by Municipal Council has high probative value and generally, it should prevail over the entries of date of birth made in school record. However, in the present case, in the record of Igatpuri Municipal Council itself, there are two different dates of birth i.e. 21.08.1951 as well as 19.05.1955. In school record, the date of birth is recorded as 21.08.1951 which is in consonance with date of birth recorded in Birth Register. At the same time, there is absolutely no explanation as to whom, the date of birth 21.08.1951 relates. It is not the case of the Applicant that the date of birth 21.08.1951 relates to his brother or somebody else. As such, there are two contrary dates of birth and there is no conclusive evidence as to date of birth 19.05.1955 is correct and genuine. Indeed, if his date of birth recorded in service record as well as in school record as 21.08.1951 is concerned, then only he would have been eligible for admission in primary school on 09.07.1958. This being the position, the rejection of the application made by the Applicant for change of date of birth being not in consonance with Rule 38 (2)(f) and 22A (i)(ii) of 'Rules of 1981' cannot be faulted with.

19. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court in **Civil Appeal No.9704/2010 (State of Maharashtra Vs. Gorakhnath S. Kamble and Ors.) decided on 16th November, 2010**. In this Judgment, the Hon'ble Apex Court reiterated that the grievance as to the date of birth in service record should not be permitted at the fag end of service of the employee. It would be useful to reproduce Para Nos. 17 to 21.

17. *In another judgment in State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal, (2005) 11 SCC p.477, the relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.*

18. *Two decades ago this Court in Government of A.P. & Anr. Vs. M. Hayagreev Sarma, (1990) 2 SCC p.682, has held that subsequent claim for alteration after commencement of the rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on State of Uttar Pradesh & Ors. Vs. Gulaichi (Smt.), (2003) 6 SCC p.483, State of Tamil Nadu Vs. T.V. Venugopalan, (supra), Executive Engineer, Bhadrak (R & B) Division, Orissa & Ors. Vs. Rangadhar Mallik, (1993) Suppl.1 SCC p.763, Union of India Vs. Harnam Singh, (supra) and Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (surpa).*

19. *These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in Secretary and Commissioner, Home Department & Ors. Vs. R. Kribakaran (surpa) reads as under:*

"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."

20. *In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the conclusion that no application for alteration of date of birth after five years should have been entertained.*

21. *The approach of the High Court in re-writing the rules cannot be approved or sustained. Consequently, the appeal filed by the State of Maharashtra is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs.”*

20. The necessary corollary of aforesaid discussion leads me to conclude that the impugned order rejecting the claim of the Applicant for correction in date of birth does not suffer from any illegality and challenge to the same is without any substance. The O.A. thus holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.02.2020

Dictation taken by :

S.K. Wamanse.

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