

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.371 OF 2015

DISTRICT: PUNE

Mr. Krushnat @ Swaruprao Nagnath)
Deshmukh, Age : 57 years,)
Occupation : Divisional Joint Director of Agriculture)
R/at. Vrundavanam, 'D-104', Model Colony,)
Pune 16) Applicant

Versus

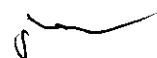
1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Agriculture, Animal Husbandary,)
Dairy Development and Fisheries)
Department, Mantralaya,)
Mumbai 400 032)
2. The Commissioner of Agriculture,)
Maharashtra State, Pune,)
District : Pune.)
3. The Additional Chief Secretary,)
General Administrative Dept.,)
Mantralaya, Mumbai)Respondents

Shri D.B. Khaire, the learned Counsel for the Applicant.

Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

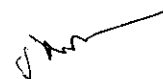
CORAM : SHRI J.D. KULKARNI, MEMBER(J)

DATE : 29.01.2016.



J U D G M E N T

1. Heard Shri D.B. Khaire, the learned Counsel for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.
2. In this Original Application the Applicant Shri Krushnat @ Swaruprao Nagnath Deshmukh has claimed that the impugned communication dated 18.05.2015 issued by the Respondent No.1 i.e. State of Maharashtra be quashed and set aside. He is also claiming the direction to the Respondents to correct his date of birth in the service book and his date of birth be recorded as 31.08.1958 as against the recorded 01.06.1957. He is also claiming the declaration that his date of birth be declared as 31.08.1958 and is claiming other consequential reliefs.
3. In the Original Application the interim relief was claimed to the fact that the Applicant was allowed to continue on his post as Divisional Joint Director of Agriculture even after 31.05.2015, but the said relief was not granted and therefore considering his date of birth as 01.06.1957 as recorded in the service book he came to be retired on superannuation on 31.05.2015.
4. From the factual matrix it seems that the Applicant was initially appointed as Agriculture Development Officer, Class – I on 15.04.1985 and he was promoted as Superintending Agriculture Officer in June, 1958. In October, 2008 he was promoted as Joint Director of Agriculture.
5. On 28.02.1990 i.e. well prior to completion of five years from the date of joining service, the applicant filed a representation before District – Soil Conservator Officer, Solapur and requested that his date of birth has been wrongly recorded as 01.06.1957 instead of 31.08.1958. He therefore, requested for making officer necessary changes in the service record and for correction of date of birth. His representation was forwarded with recommendation to Superintending Agriculture Office, Pune on 30.10.1990.



6. On 18/29.06.1992, the applicant again filed the representation before the Directorate of Agriculture, Pune and requested that his date of birth be corrected. On 18/29.06.1992, his representation was again recommended for further action to the Directorate of Agriculture, Pune. Vide letter dated 28.07.1992 the Directorate of Agriculture, Pune made certain queries. On 31.03.1993, the Applicant furnished information as per queries. The Superintending Agriculture Officer, Pune also submitted his no objection on 01.04.1993 and recommended to the Directorate of Agriculture Pune for change of date of birth of the Applicant however, nothing was done. On 01.04.1993 the Applicant again submitted the representation before Director of Agriculture, Pune. Certain documents were sought from the Applicant on 17.11.1994. Thereafter on 09.11.2012 again the representation was made to the Respondent No.2, but nothing was done.

7. Being aggrieved by the in action on the part of Respondents, the Applicant filed O.A.No.596 of 2014. On 27.11.2014 the Tribunal was pleased to direct the Respondents to take the decision on the report dated 13.10.2014 and to communicate the same to the Applicant within two months from the date of order. On 23.01.2015, the Applicant again submitted the representation to Respondent No.1. However, on 27.01.2015, the Respondent No.1 informed the Applicant that his request for change of date of birth shall be within five years from the date of his appointment and that it is not proved that the person Mr. Krushnat and Mr. Swaruprao are one and the same and therefore, the applicant's request was rejected.

8. The Applicant then filed O.A.No.86 of 2015. The application came to be partly allowed on 06.05.2015 by this Tribunal and the Respondents were directed to consider the applicant's representation. On 18.05.2015, the Applicant's claim for change in date of birth was rejected and hence this O.A.

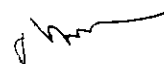


9. Respondent No.1 has filed reply affidavit which has been sworn in by one Shri Maroti Keshavrao Kendre, Deputy Secretary in the office of Agriculture, Animal Dairy and Fisheries Department, Mantralaya, Mumbai. The Respondents have admitted the facts as regards the representation filed by the Applicant as regards the change of his date of birth so also various correspondence. According to Respondents as per Rule 38(2) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 once the birth date is entered in the service book, it cannot be changed unless there is any clerical error or any careless entry made by the concerned person. It is stated that the date of birth of the Applicant has been recorded as 01.06.1957 from the service book for school admission. It is submitted as per Rule 128(1)A of the Mumbai Primary Education Act, 1949, no pupil shall be admitted to school if he has not completed 5th year of age on the date of admission. If the date of birth of the Applicant is admitted as 31.08.1958 he was not entitled to be admitted in the school.

10. Accordingly to Respondent the Applicant has already taken benefit of his date of birth for getting admission in the school. The reference has been made to the decision delivered by the Hon'ble Supreme Court in the case of Union of India Versus C. Rama Swamy and Ors. decided on 09.04.1997 wherein the Hon'ble Supreme Court has observed as under :-

"It was faintly submitted that on the basis of the birth certificate obtained the sub Registrar's office by the respondent as well as his horoscope it should be held that there was a bonafide clerical mistake and, therefore, the date of birth could be corrected. We are unable to accept the submission. Bonafide clerical error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded."

(Quoted from page 77 of the paper book)



11. Heard learned Counsel for the Applicant Shri D.B. Khaire and learned Presenting Officer for the Respondents Shri K.B. Bhise, I have also perused the affidavit-in-reply as well as various documents placed on record.


12. The only point to be considered is whether the rejection of the Applicant's claim for correction of date of birth vide letter dated 18.05.2015 is legal and proper.

13. Learned Counsel for the Applicant Shri D.B. Khaire has invited my attention to the judgment delivered by this Tribunal in earlier two pronouncements i.e. in O.A.No.596 of 2014 and O.A.No.85 of 2015.

14. In O.A.No.596 of 2014, (copy whereof is at page 43 and 44 of the paper book) this Tribunal has given direction on 27.11.2014 to the Respondents and the Tribunal observed as under :-

"Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

OA No.596 of 2014 is filed by Shri K.N. Deshmukh seeking issuance of directions for change in date of birth from 1.6.1957 to 31.8.1958. It is the contention of the applicant that, having entered service on 15.4.1985, right from 1990 he has been moving the respondents to consider his request for alternation of date of birth. In Para 6.3 of the OA the applicant claims that he has submitted a representation on 25.9.1990. Reply has been filed by the respondents. Shri Lonkar, Ld. Advacate states that he does not wish to file rejoinder and the Tribunal may kindly issue directions to the respondents to take a decision on the report dated 13.10.2014 sent by the Jt. Director, Agriculture to Additional Chief Secretary, Agriculture. In the reply filed by the respondents it is stated that it is accepted by the applicant that he has submitted representation on 25.9.1990. Therefore, the applicant has not submitted his representation within stipulated period as provided in the instructions to Rule 38(2) of the MCS (General Canditions of Service) Rules, 1981. However, the respondents state that the matter is in process and action will be taken after scrutiny and verification of records. Since the applicant seeks a limited relief of decision on the report dated 13.10.2014 and the Ld. PO has no objection to the



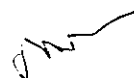
same, it is hereby ordered that respondents may take decision on the said letter as per rules within two months from the date of this order and send a self contained reply to the applicant. With these directions, O.A. is disposed off."

(Quoted from copy of order from pages 43 and 44 of the paper book)

15. In O.A.No.85 of 2015, copy whereof is from page 60 to page 67, point as to whether entry shall be taken within five years from the date of service and whether the representation of the applicant should have been considered, was dealt by this Tribunal, when this Tribunal was pleased to observe in paragraph 8 to 11 as under :-

"8. It is therefore, seen that there is strong evidence on record, though not absolutely conclusive, that the applicant had indeed submitted a representation dated 28.2.1990 which is well within 5 years of entry into service. The said representation also in fact refers to the names Swarupraa and Krushnat though the said representation is not mentioned in subsequent communications. The letter dated 30.10.1990 refers to forwarding of the applicant's representation along with documents by way of letter dated 25.9.1990. Therefore, the contention of the applicant that he had applied originally on 28.2.1990 is quite plausible. This plausibility is strengthened by admission of the respondents that though the claim is questionable the applicant had submitted the said representation to the office where he was working and clarifications sought from the higher officers as to the date of the representation were remained unanswered. It is indeed strange that the respondents have not yet received the answer to the clarifications sought, though scores of years have elapsed.

9. The applicant has also referred to the copy of the service book where the claimed date of birth 31.8.1958 appears to have been recorded initially and has been scored off and replaced with dated 1.6.1957. Since the affidavit filed by the applicant regarding the change of name does not appear to have been accepted the applicant has now caused the said matter to be published in Maharashtra Government Gazette dated 5.2.2015.



10. *Clearly the applicant was not diligent in mentioning the correct date of representation in the OA filed originally. However, for the fault of the applicant and his counsel in drafting the earlier OA appropriately, any merit in his claim should not be set to naught. Secondly, since the affidavit regarding his name sworn on 24.2.1986, had not been objected or rejected, the applicant had no way of knowing that the same was insufficient.*

11. *The respondents are directed to consider the representation of the applicant which indeed appears to have been in correspondence from 1990 onwards, with no result as yet, on merits, considering the background submitted by the applicant so far like the copy of the extract of birth and death register etc. and take a decision on merits within one month from the date of this order. The respondents, it is hoped, would adhere to the time limit because the counsel states that the applicant is due for superannuation on 31.5.2015. The grounds mentioned in the impugned order dated 27.1.2015 shall not held against the applicant i.e. his application will not be rejected on the ground that he has not applied within 5 years of entry in service. Similarly, the ground of discrepancy in name also need not be held against the applicant because the letter of the Superintending Agriculture Officer to the Director, Agriculture refers to affidavit being sworn and submitted with regard to the change of name and Superintending Agriculture Officer has accepted the same while forwarding it to the Director, Agriculture. Therefore, the applicant would not have any reason to believe that the said affidavit is unacceptable. While deciding the matter on merits, the observations/findings of this Tribunal shall be kept in view."*

(Quoted paragraphs 8 to 11 from copy of judgment from pages 66 and 67 of the paper book)

16. In view of the above said observations, it will be clear that the question as to whether the Applicant Krushnat alias Swaruprao are one and the same person has been finally decided. The learned P.O. Shri K.B. Bhise, however, again agitated the same issue saying that the applicant Mr. Krushnath alia Mr. Swaruprao are different persons. Such exercise is futile.

VbW

17. The Tribunal has also observed that the Respondents cannot again agitate the issue as to whether the application should have been filed within five years or not and therefore the question of applicant's date of birth will have to be considered on merits. The Applicant has placed on record the documentary evidence to show that immediately after joining service within five years he applied for correction of his date of birth. The first of such application was preferred on 18.06.1992. The correspondence on the record shows that along with application the applicant has also placed before the authority the extract of birth registered showing that his date of birth was 31.08.1958 and his name was recorded as 'Swaruprao Nagnath Deshmukh'. He has also placed on record the copy of affidavit which was executed by him before the Executive Magistrate on 24.02.1986 mentioning therein that his birth name was 'Swaruprao' whereas his name in the family was 'Krushnath'. The affidavit has been sworn in the year 1986 and therefore it cannot be said that the same has been filed with ulterior motive.

18. It seems from the correspondence placed on record from the paper book at pages 28 to 39 that the representation filed by the Applicant from time to time were submitted for taking proper action for correction of date of birth of the applicant. But no action was taken on his various representations. It seems that the some queries were also made which were duly replied by the applicant as well as by the office. Since the applicant was pressing his cause from 1992 continuously it cannot be said that there was any malafide in his request.

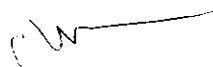
19. Learned P.O. submitted that making representation after representation cannot give birth to the cause of action. He submits that since, 1st representation was filed in the year 1992, the Applicant should have waited for six months thereafter and should have filed application within one year thereafter. However, the application has been filed in the year 2015 and therefore the application cannot be entertained as per the provisions of Section 21 of the Administrative Tribunals Act, 1985.



20. In this regard I would like to refer to the earlier applications filed by the applicant i.e. O.A.No.596 of 2014 and O.A.No.85 of 2015. Both these applications were for giving directions to the Respondents to decide the representation filed by the applicant for correction of his date of birth. In O.A.No.596 of 2014, the directions were given to take decision on the letters filed by the Applicant within two months. Thereafter, in O.A.No.85 of 2015 again the directions were issued to the Respondents to decide the matter on merits. It is material to note that in both these Original Applications the Respondents did not take defence that the application is not tenable. In other words it can be said that the question of maintainability of the application have been condoned or relinquished by the Respondents.

21. From the discussion in the foregoing paragraphs it will be thus crystal clear that the extract of date of birth of the Applicant shows that his date of birth is 31.08.1958. He is requesting that the said be recorded as his date of birth in his service record. However, no heed has been paid to his request. The Respondents ought to have considered the case of the applicant which seems to be well supported on merits to show that his date of birth has been wrongly recorded. On the basis of such wrong recording of date of birth the applicant has been made to retire on superannuation on 31.05.2015 instead of on 31.05.2016.

22. The impugned order shows that the representation of the Applicant has been rejected mainly on two grounds i.e. taking benefit of Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and second ground that as per Rule 128(1)A of Mumbai Primary Education Regulation Act, 1949, a pupil is to be admitted in the school only after completion of five years of age. The second ground mentioned in the order cannot restrain the applicant from applying correction of date of birth. So far as the first ground is concerned it is stated in Rule 38(2)(f) that once the entry of age or date of birth has been made in service book no alternation 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. This Rule, however, will not be applicable to the Applicant as he has rightly applied for correction of date of birth within five years of joining of service and his representation for the change in date of birth was never considered.

23. In view, therefore, I pass following order :-

ORDER

O.A. is allowed. The communication dated 18.05.2015 issued by the Respondent No.1 is quashed and set aside. Respondents are directed to make correction in the date of birth of the Applicant and to record his date of birth as 31.08.1958 instead of 01.06.1957 in the service book.

Since the Applicant has retired on superannuation considering his date of birth as 01.06.1957, the Respondents are directed to reinstate the Applicant in the service and Applicant be allowed to work on the post of Divisional Joint Director of Agriculture till his date of retirement on superannuation, considering his date of birth as 31.08.1958. The order be complied within one month. No order as to costs.


(J.D. Kulkarni)
Member(J)

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