IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.417 OF 2019

DISTRICT : SOLAPUR

Shri Mohammad Ismail Abdulrehaman)
Shaikh, Age : 55 Yrs., Working as Clerk in)
the Office of below named Respondent No.)
2, R/o. Plot No.95, Kajal Nagar, Hotgi Road,)
Solapur – 4.)**...Applicant**

Versus

1. The Director.)
Medical Education & Research)
Having office at Government Dental)
College & Hospital Building,)
4th Floor, St. Georges' Hospital)
Compound, Mumbai – 1.)

2. The Dean.)
Shri Chhatrapati Shivaji Maharaj)
Sarvopchar Hospital, Solapur.)**...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 03.09.2020

JUDGMENT

1. The Applicant is seeking declaration of date of birth recorded in his service record as 24.04.1962 be corrected as 23.04.1964 and also challenged the order dated 27.09.2019 passed by Respondent No.1 rejecting the claim of the Applicant for change in date of birth invoking

jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant joined as Ward Boy on the establishment of Respondent No.2 – The Dean, Shri Chatrapati Shivaji Maharaj Sarvopchar Hospital, Solapur on 24.04.1996. At the time of entry in service, his date of birth was recorded as 24.04.1962 on the basis of documents i.e. School Leaving Certificate, S.C.C. Certificate, etc. furnished by the Applicant himself. Later, the Applicant made an application on 21.03.2001 to Respondent No.2 (Page No.16 of Paper Book) requesting that his real date of birth as per Birth Certificate issued by Solapur Municipal Corporation is 23.04.1964. However, it was rejected by Respondent No.2 by communication dated 16.04.2001 (Page No.45 of P.B.) on the ground that there is difference in the name of his father in service book and in extract of Birth Register of Solapur Municipal Corporation. In service record, the name of father of the Applicant is recorded as Abdul Rehman whereas in extract of Birth Register maintained by Solapur Municipal Corporation, his father's name was recorded as Abdul Son of Lal Ahmed Shaikh (Page No.14 of P.B.). The Applicant then applied to Solapur Municipal Corporation and got father's name corrected. Accordingly, Solapur Municipal Corporation issued fresh Birth Certificate (Page No.19-A of P.B.). On that basis, he again applied for correction on 24.04.2001 However, Respondent No.2 rejected the same by order dated 22.05.2001 informing the Applicant that the change in date of birth is not permissible in terms of Rule 38 (2)(f) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) [Page No.21 of P.B.]. However, he did not receive any communication. The Applicant continued in service and was due to retire on 30.04.2020 from the post of Clerk. Therefore, after 18 years, he again made representation dated 02.02.2018 addressed to Respondent No.1 –

Director, Medical Education & Research for correction in date of birth (Page No.24 of P.B.). As there was no further communication to the Applicant about his representation, he had filed the present O.A. on 22.04.2019 initially praying for declaration that his date of birth be declared as 23.04.1964 and also prayed for interim relief for direction to Respondent No.1 to take decision on his representation dated 02.02.2018. Accordingly, the Tribunal by order dated 14.08.2019 directed to Respondent No.1 to pass appropriate order on representation dated 02.02.2018 in accordance to law.

3. It is on the above background, the Respondent No.1 by order dated 27.09.2019 rejected the claim for change in date of birth on the ground that the Applicant has not submitted complete proposal in prescribed format, and therefore, the decision already taken by Respondent No.2 – Dean, Shri Chhatrapati Shivaji Maharaj Sarvopchar Hospital, Solapur by order dated 22.05.2001 rejecting his claim is confirmed. In view of this development taken place during the pendency of matter, the Applicant amended O.A. and challenged the order dated 27.09.2019 passed by Respondent No.1. The Applicant got superannuated on 30.04.2020 on the basis of date of birth recorded in service book.

4. The Respondents resisted the claim of the Applicant by filing Affidavit-in-reply (Page Nos.29 to 40 of P.B.) *inter-alia* denying the entitlement of the Applicant for declaration of change of date of birth. The Respondents contend that the O.A. is barred by limitation since the orders passed by Respondent No.2 on 16.04.2001 and 22.05.2001 are not challenged by the Applicant within one year by availing judicial remedy and the Applicant has slept over his right. Therefore, the representations made by the Applicant at the fag end of service are not maintainable. Apart, the Respondent No.1 has also rejected the representations by order dated 27.09.2019 and the claim for change in date of birth after retirement now became unsustainable.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has raised following grounds to seek relief claimed in O.A.

(i) The Applicant has admittedly made an application firstly on 21.03.2001 for change in date of birth, which was within five years from entry into service.

(ii) The Applicant again made second application on 24.04.2001 with correction in the name of his father, which was also within five years from the date of entry and this being the position, the date of birth ought to have been corrected in view of corrected Birth Certificate of Solapur Municipal Corporation, but the same was rejected by Respondent No.2 on 22.05.2001, which was without jurisdiction and competency.

(iii) In terms of Rule 38(3) of 'Rules of 1981', the competent authority for correction of date of birth is Government of Maharashtra, and therefore, the applications made by the Applicant within time limit ought to have been forwarded to the Government for appropriate decision, but Respondent No.2 – Dean, Shri Chhatrapati Shivaji Maharaj Sarvopchar Hospital, Solapur himself rejected the application, and therefore, the order of rejection passed by Respondent No.2 – Dean is without jurisdiction renders the orders void and nullity.

(iv) As the orders passed by Respondent No.2 – Dean are void and nullity, the question of challenging the same in Court of law did not arise, and therefore, the question of limitation does not survive.

6. Thus, the sum and substance of the submission advanced by the learned Advocate for the Applicant is that the law of limitation of filing O.A. within one year would not come in the way of Applicant, as the orders passed by Dean itself are void and nullity and the application made by the Applicant being made well within five years in terms of Rules supported by corrected Birth Certificate issued by Solapur

Municipal Corporation ought to have been forwarded to the Government for its acceptance.

7. Shri Bandiwadekar, learned Advocate for the Applicant, therefore, made fervent plea that no fault can be attributed to the Applicant and O.A. be allowed. In alternative submission, he submits that there being no decision of the Government till date, the matter be remitted to the Government for taking appropriate decision in accordance to law.

8. Per contra, Shri A.J. Chougule, the learned P.O. in reference to contentions raised in reply vehemently urged that the applications for change in date of birth made by the Applicant having been rejected by Respondent No.2 – Dean twice by orders dated 16.04.2001 and 22.05.2001, the O.A. is hopelessly barred by limitation in absence of challenge to same within one year by availing judicial remedy. As regard competent authority for taking decision in the matter of change in date of birth, the learned P.O. fairly concedes that the competent authority for the same is Government of Maharashtra in terms of Rule 38(3) of 'Rules of 1981'. However, he was emphatic that in absence of challenge to the orders passed by Dean within one year as contemplated under Section 21 of Administrative Tribunals Act, 1985, the O.A. filed at the fag end of service is not maintainable.

9. The factual aspects as adverted to above are not in dispute. At the very outset, material to note that the Applicant has not challenged the orders dated 16.04.2001 and 22.05.2001 passed by Dean in this O.A. He simply seeks declaration that his date of birth be corrected as 24.04.1996. True, the challenge is to the order passed by Respondent No.1 – Director, which was passed by Respondent No.1 – Director on 27.09.2019 during the pendency of O.A. Be that as it may, there is no denying that the Applicant has not challenged the orders passed by Dean on 21.03.2001 and 22.05.2001. Apparently, the Applicant has cleverly omitted the relief of quashing these orders only to bye-pass law of limitation.

10. In view of submission advanced at the Bar, the question posed for consideration is whether the Applicant would get fresh cause of action on the basis of order passed by Director on 27.09.2019 and O.A. is within limitation.

11. Shri Bandiwadekar, learned Advocate for the Applicant sought to drew support from some observation in decision of Hon'ble Supreme Court in ***AIR 2001 SC 2552 (Dhurandhar Prasad Singh Vs. Jai Prakash University and Ors.)***. In that matter, the Appellant had filed Civil Suit for declaration that the order dated 11th October, 1977 passed by Respondent No.3 who was Secretary of Governing Body of Ganga Singh College terminating his service was illegal. The suit was decreed *ex-parte*. The Appellant, therefore, filed execution proceedings wherein objection was raised under Section 47 of CPC by Principal of College as well as Bihar University objecting to the executability of the decree on the ground that during the pendency of Suit, the College in question became the constituent unit of Bihar University and the erstwhile governing body ceased to exist but the University was not impleaded in the Suit, and therefore, the decree was not executable against it, in as much as the decree was obtained against erstwhile management by suppressing the fact. It is in that context, the question of executability of decree arose and the submission was advanced that the decree passed itself was without jurisdiction and void. It is in that context, the Hon'ble Supreme Court explained the difference between void and voidable documents in Para No.21 of the Judgment is relied by the learned Advocate for the Applicant in the present O.A, which is as follows :-

> ***21.*** *Thus the expressions void and voidable have been subject matter of consideration on innumerable occasions by courts. The expression void has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to*

avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

Material to note that on merit, the Hon'ble Supreme Court, however, turned down the contention that the decree is not executable holding that execution proceeding is maintainable. In this behalf, Para No.23 of the Judgment is material, which is as under :-

***23**. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus it is plain that executing Court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and nullity, apart from the ground that decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing. In the case on hand, the decree was passed against the governing body of the College which was defendant without seeking leave of the Court to continue the suit against the University upon whom the interest of the original defendant devolved and impleading it . Such an omission would not make the decree void ab initio so as to invoke application of Section 47 of the Code and entail dismissal of execution. The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that original defendant absented himself from the proceeding of the suit after appearance as it had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law."*

12. As such, in fact, the objection that decree was without jurisdiction and not executable has been turned down on the ground that the validity of decree was not challenged by filing Suit or by taking any other remedy available under the law. The Hon'ble Supreme Court further observed that appeal with leave could have been filed not only by the person upon

whom interest has devolved but also by any other person or party interested. As such, the objection that the decree was unexecutable was turned down.

13. The learned Advocate for the Applicant further referred to some observation in ***2017(3) Mh.L.J. 308 (Umed Realtors Vani Shobha Deshpande)***. In Para No.2, it has been observed that "it is well settled that a document which is treated to be void ab initio can be ignored as nullity and it is not necessary to have the same set aside". These observations were made in reference to Sale Deed dated 14.05.1987 being hit by provisions of Section 89(1) of "The Maharashtra Tenancy and Agricultural Lands Act, 1948". There cannot be any dispute that if Sale Deed executed was without prior permission being hit by law has to be treated void ab initio. There is substantial difference between void document executed by party being hit by mandatory provisions of law and order passed by authority i.e. Dean and order passed by Dean cannot be equated to void document or nullity. Suffice to say, by no stretch of imagination, the orders passed by Respondent No.2 – Dean can be termed as void or nullity.

14. In my considered opinion, the observations referred from the Judgment by the learned Advocate for the Applicant are altogether in different context and of little assistance to him in the present situation. Here, admittedly, the Respondent No.2 had rejected the application twice by orders dated 16.04.2001 and 22.05.2001. As such, even if these orders are not passed by the Government, it being passed by Dean, who is instrumentality of the Government cause of action to challenge the same accrued to the Applicant on the date of communication of the orders. Therefore, the Applicant ought to have challenged the same by taking recourse of judicial remedy. Once the cause of action accrued to challenge the order, it cannot be revived by making another representation. There is no statutory provision for making any such representation which can extend the period of limitation.

15. Now turning to the aspect of representation, the Applicant claims to have made first representation on 25.05.2001 addressed to Respondent No.1 and again made second representation after a period of 18 years on 02.02.2018. The Applicant sought to contend that he was under belief that his representation was under consideration, and therefore, there was no cause of action to challenge the same. This contention is totally fallacious and unacceptable.

16. Indeed, the filing of representation dated 25.05.2001 itself is doubtful. True, there is pleading in Para NO.6.10 of O.A. about making representation on 25.05.2001 and reply filed by the Respondents on that point is silent. While giving reply to Para No.6.10, the Respondents in their reply (Page No.35 of P.B.) did not specifically deny filing of representation. Thereafter by way of amendment, the Applicant again pleaded about making representation dated 25.05.2001 vide Para No.6.22 of O.A, which pleading is denied by the Respondents by filing reply (Page No.67, Para 6 of O.A.). The Respondents in amended reply contend that filing of any such representation is doubtful and Applicant is required to prove the same. Later, the Applicant had filed additional Affidavit on this point (Page Nos. 72 to 75 of P.B.) wherein he comes with an afterthought story that he had handed over the representation to the then Administrative Officer Shri S.D. Bade. The Respondents denied these pleadings by filing Affidavit-in-rejoinder and contended that the Applicant has developed the story that the application dated 25.05.2001 was given to Shri Bade, who already stands retired from Government service.

17. Material to note that the Applicant has filed the typed copy of representation dated 25.05.2001 and has not filed office copy of application with acknowledgement or endorsement of the office. Furthermore, the Applicant has not made reference of representation dated 25.05.2001 in his representation dated 02.02.2018. Had any such representation was made on 25.05.2001, it would have reflected and

referred by the Applicant in his representation dated 02.02.2018. Suffice to say, filing of representation dated 25.05.2001 is not proved. On the contrary, the circumstances as discussed above, the story of making such representation on 25.05.2001 is highly doubtful.

18. Even assuming for a moment that Applicant made representation on 25.05.2001, in that event also, he ought to have filed O.A. after a period of 18 months as contemplated under Section 21(1)(b) of Administrative Tribunals Act, 1985. However, admittedly, no such judicial remedy was availed by filing O.A as contemplated under Section 21(1)(b) of Administrative Tribunals Act, 1985. The Applicant slept over his right and made second representation on 02.02.2018 after lapse of 18 years. His second representation could not revive cause of action to the Applicant as he failed to avail judicial remedy though cause of action was accrued to him on 16.04.2001 and 22.05.2001 when Respondent No.2 rejected the claim of the Applicant for change of date of birth. The submission advanced by the learned Advocate for the Applicant that Respondent No.2 – Dean was not competent authority to decide the claim, and therefore, it is void and nullity and needs to be ignored is misconceived. The analogy of void document or nullity does not apply her for the simple reason that cause of action had accrued to the Applicant in 2001 itself in view of rejection of application by Respondent No.2 – Dean. The term course of action refers to set of facts or allegations that make up the grounds for availing judicial remedy. Thus, even if these orders were not passed by the Government, the rejection was by some authority which furnishing cause of action in 2001.

19. As such, there is no escape from the conclusion that the Applicant had slept over his right and filed the O.A. at the fag end of his service. The order passed by Respondent No.1 on 27.09.2019 on representation of the Applicant dated 02.02.2018 could not extend or revive cause of action in favour of Applicant. The Applicant has not filed application for condonation of delay. This being the position, the O.A. has to be said

hopelessly barred by limitation. The O.A. ought to have been filed within one year from the date of passing orders dated 16.04.2001 or 22.05.2001 as mandated by Section 21(1)(a) or at least within one year after the expiration of six months from making representation as contemplated under Section 21(1)(b) of Administrative Tribunals Act, 1985. Suffice to say, the O.A. is liable to be dismissed on the point of limitation.

20. At this juncture, it would be apposite to refer Judgment of Hon'ble Supreme Court in ***State of Tripura and Ors. Vs. Arbinda Chakraborty & Ors. (2014) 6 SCC 460*** wherein it has been held that the period of limitation commences from the date on which cause of action arises for the first time and simply making representations in absence of any statutory provision, the period of limitation would not get extended. In view of this ratio laid down by Hon'ble Apex Court, even assuming that the Applicant has made representation on 25.05.2001 (which itself is not proved), in that event also, the O.A. will have to be held hopelessly barred by law of limitation.

21. Besides, there is another angle of the matter which also renders the claim untenable having been made at the fag end of career. As stated above, even if applications made by the Applicant was rejected twice by Respondent No.2 on 16.04.2001 and 22.05.2001, the Applicant slept over his right and did not take any steps to avail judicial remedy. He was due to retire on 30.04.2020 and filed this O.A. on 22.04.2019. As such, the claim being made at the fag end of service is unsustainable in view of catena of decisions of Hon'ble Supreme Court.

22. In this behalf, I am guided by the decision of Hon'ble Supreme Court. In (2010) ***14 SCC 423 (State of Maharashtra Vs. Gorakhnath S. Kamble)***, the Hon'ble Supreme Court considered series of its earlier decisions and held as under :-

> *"**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."*

23. In ***(2011) 9 SCC 664 (State of M.P. & Ors. Vs. Premlal Shrivas)***, the Hon'ble Supreme Court again reiterated as under :-

> *"**9**. It needs to be emphasized that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation of at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal come to the aid of those who sleep over their rights."*

24. Recently again, the Hon'ble Supreme Court in ***2020(3) SLR 639 (SC) Bharat Coking Coal Limited and Ors. Vs. Shyam Kishor Singh***, reiterated well settled position that correction in date of birth at the fag end of service is not sustainable. In that case, the employee sought change in date of birth mentioned in service record on the basis of some verification of date of birth from Bihar School Examination Board. However, the Hon'ble Supreme Court turned down the contention for change in date of birth being at the fag end of service.

25. True, the distinguishing aspect in the present case is that the Applicant had made an application within five years from the entry into service. However, admittedly, both the applications dated 21.03.2001 and 24.04.2001 were rejected by Respondent No.2 on the ground that it is not in consonance of Rule 38(2)(f) of 'Rules of 1981' by orders dated 16.04.2001 and 22.05.2001. The legality or correctness of these orders now cannot be challenged, as no judicial remedy was availed within prescribed period of limitation. These orders have attained the finality.

The Applicant is now estopped from doing so and Rule of estoppel and acquisance apply with full vigour. The submission advanced by the learned Advocate for the Applicant that the order passed by Respondent No.2 being not of competent authority viz. the Government of Maharashtra are void and nullity is fallacious and misconceived. The analogy of void or nullity does not apply here. This being the position, the claim made after lapse of 18 years at the fag end of service is unsustainable in law in view of decisions of Hon'ble Supreme Court referred to above.

26. The necessary corollary of aforesaid discussion leads me to conclude that the O.A. is devoid of any merit and deserves to be dismissed. Hence, the following order.

O R D E R

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

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 03.09.2020
Dictation taken by :
S.K. Wamanse.
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