

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 46/2019 (S.B.)**

Nankishor S/o Punvasiprasad Yadav,
Aged about 56 years, Occ. Service,
R/o Deogad Apartment, IInd Lane,
Shyam Nagar, near Gajanan Maharaj Mandir,
Amravati.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Finance Department,
Mantralay Extension Bhavan,
Mumbai .
- 2) The Director,
Accounts and Treasury Department,
3rd floor, Thachersey House Mumbai Port Trust,
J.N. Hardia Marg, Ballard Estate,
Mumbai-400 001.
- 3) The Joint Director (Administration),
Accounts and Treasury Department
3rd floor, Thackersey House Mumbai Port Trust,
J.N. Harida Marg, Ballard Estate
Mumbai-400 001.
- 4) The Joint Director,
Accounts and Treasury Department,
Amravati Division,
Accounts Treasury Bhavan,
University Road,
Amravati – 444 602.

Respondents.

Shri R.A. Haque, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondents.

**Coram :- Hon'ble Shri Anand Karanjkar,
Member (J).**

Date of Reserving for Judgment : 11th July, 2019.

Date of Pronouncement of Judgment : 23rd July, 2019.

JUDGMENT

(Delivered on this 23rd day of July,2019)

Heard Shri R.A. Haque, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant was appointed as Junior Clerk in the office of District Treasury Officer, Ahmednagar in the year 1997. On 25/2/1999 application was submitted by the applicant that in the School record his date of birth was wrongly registered as 1/2/1961 and his correct date of birth was 23/8/1962. In support the applicant had submitted the extract from the register of birth maintained by the Amravati Municipal Corporation. As there was no action was taken by the respondents on his application, consequently inquiry was made by the applicant. On 16/6/2017 the applicant received one letter from the respondent no.4 in this regard and the applicant was directed to submit material documents to establish his claim. It is contention of the applicant that vide order dated 23/8/2018 his claim was rejected by the respondents and being aggrieved O.A. 365/2018 was filed by

the applicant before the M.A.T., Nagpur. Vide order dated 10/1/2019 the O.A. No. 365/2018 was partly allowed and direction was given to the respondents to decide the representation of the applicant to correct his date of birth.

3. It is grievance of the applicant that thereafter the Principal Secretary, Finance Department, Government of Maharashtra vide order dated 25/1/2019, Annex-A-19 rejected the representation of the applicant on the ground that in the Birth Certificate produced by the applicant, the name of the applicant "Nandkishor" was not mentioned, but it was simply mentioned that male child was born. The second reason was given that though the application submitted by the applicant for correction of his date of birth, but there was no compliance though letters were written by the Department to the applicant. The third ground was that the father's name of the applicant was written as Punvashiprasad Durgaprasad Yadav. The stand was taken by the respondents that name of father of the applicant was Punvashiprasad Bachaiprasad Yadav and on the basis of these three grounds the respondents rejected the application submitted by the applicant in the year 1999.

4. Being aggrieved by this order the present original application is filed by the applicant. The respondents have submitted their reply which is at page no.69 and resisted the application mainly

on the ground that the applicant submitted application in the year 1999, but he remained silent. The applicant was informed to submit material documents for the verification of the fact, but no steps were taken by the applicant after submitting the application in the year 1999 till 2017. The second contention is that the applicant's name was not mentioned in the birth register maintained by the Municipal Corporation, Amravati and there was doubt about the name of father of the applicant. The contention of the respondents is that the Competent Authority rightly examined the entire material and rejected the application, there is no error and therefore no interference is required in this matter.

5. I have heard oral submissions on behalf of the applicant and on behalf of the respondents. I have also perused the documents which are produced. The Annex-A-3 is the extract from the birth register maintained by the Amravati Municipal Corporation, there is a entry at sr.no.478 to the effect that male child was born on 23/8/1962, the information of the birth was given on 27/8/1962 name of the father was Punvashiprasad Durgaprasad Yadav and the informant was Police. The next document is the Birth Certificate issued by the Amravati Municipal Corporation. It is objection of the respondents that in this Certificate the name of the newly born child and name of

mother of newly born child were not mentioned and name of the father was recorded as Punvashiprasad Durgaprasad Yadav.

6. So far as this objection is concerned, in Para 6.9 the applicant has alleged that –

“The applicant by the letter dated 29th November,2017 addressed to the non applicant no.4 the Joint Director submitted the detailed explanation and clarification regarding the discrepancies and the queries raised. The applicant has stated in the abovementioned letter that he is the son of Punvasi Yadav and there is no discrepancy with regard to the name of the applicant’s father in any of the documents submitted by the applicant. The actual name of the applicant’s father is Punvasiprasad Bachiprasad Yadav. The applicant’s grandfather was Bachaiprasad Yadav who died in the year 1946 and after his death, the applicant’s grandmother married the brother of the applicant’s grandfather i.e. granduncle of the applicant Durgaprasad. Thus, the applicant’s father also got the name Punvasiprasad Durgaprasad Yadav apart from Punvasiprasad Bachaiprasad Yadav. Therefore in the Register of Birth maintained by the Amravati Municipal Corporation the name of the father of the applicant is mentioned as Punvasiprasad Durgaprasad Yadav. The copy of the abovementioned letter dated 29th November,2017 is annexed Annex-A-12”.

7. After reading Para 6.9 it appears that it was specifically alleged in this application by the applicant that the applicant is son of Punvasi Yadav and Punvasi Yadav was biological son of Bachaiprasad Yadav. Bachaiprasad Yadav had one brother Durgaprasad. Bachaiprasad Yadav died in the year 1946 and after death of Bachaiprasad his wife performed second marriage with

Durgaprasad and as Punvashiprasad was brought up and educated by Durgaprasad, therefore, sometime Punvashiprasad also wrote name of Durgaprasad as his father. In support of this contention the applicant has placed on record extract of record of right which is at page no.127. It appears that the City Survey no.95, 61.7 Sq. Meter, situated at Shegaon Dist. Buldana was owned by Punvashi Durgaprasad and it was sold by Punvashi Durgaprasad to one Shaikh Kadar Shaikh Gafur. The applicant has also placed on record the copy of the Form-B in relation to this property and the copy of the sale deed. After reading the sale deed it appears that the name of the seller was Punvashi Bachairam Yadav, aged 39 years. This document is dated 2/12/1972. In the sale deed it is specifically mentioned that the property was belonging to Durgaprasad Gangadin Yadav who died on 20/10/1972 and as Punvashi was his heir, he executed the sale deed. As a matter of fact this material was sufficient to show that Punvanshiprasad was son of Bachaiprasad Yadav and he was also recognized as son of Durgaprasad with whom his mother performed second marriage after death of his biological father Bachaiprasad. Here I would like to point out that though there was elaborate pleading in para-6.9, but all these allegations in this regard made in para-6.9 were not disputed by the respondents. The respondents in their reply para-5 has averted as under –

“(5) As to paragraph no.6.1 to 6.8, 6.9 –

In this regard, it is submitted that the content of this paragraph is matter of record and hence admitted.”

8. Thus it appears that the respondents have not disputed the facts alleged in para-6.9 of the application, therefore, the entire story of the applicant that Punvashiprasad was son of Bachaiprasad and he was also representing him as son of Durgaprasad has gone unchallenged. Not only this in para-5 of the reply it is specifically stated that the allegations in para-6.9 were as a matter of record and hence admitted. The legal position is settled that the facts which are specifically admitted need not be proved. In the present case the Principal Secretary, Finance Department, Government of Maharashtra rejected the application mainly on the ground that the name of father of Punvashiprasad was written as Durgaprasad and whereas as per the service record of the applicant name of father of the applicant was Punvashiprasad Bhacaiprasad, but as the allegations in para-6.9 are admitted by the respondents, therefore, there remains no substance in the objection.

9. In the present case it seems that the applicant submitted the application for correction of his date of birth. The application was submitted within near about two years after joining the service. The only contention of the respondents remains why the applicant did not

supply the material documents promptly, why applicant remained silent till 2017. In this regard I would like to point out that though there was inaction on the part of the applicant to comply the letters, it was open to the respondents to decide the application at that time, but it was not done. Ultimately in year 2017 it was realized by the respondents that the application submitted by the applicant in the year 1999 was pending, it was not decided and thereafter there was a compliance made by the applicant. The legal position is settled that if clean and clear evidence about correct date of birth is given by the Government servant within period of five years from the date of joining service, then his date of birth is required to be corrected. It is shown by the applicant on the basis of several documents particularly the property extract and copy of the sale deed that Punvashiprasad was also regarded as son of Durgaprasad. Secondly there is no denial, but admission of this fact.

10. It is contention of the respondents that name of the child was not recorded in the first entry i.e. Annex-A-3. Here I would like to point out that the applicant was born in year 1962 and in orthodox families as per the Hindu Custom, the child remains unnamed, till the child attains the age of 12 days, therefore, I do not see any merit in this contention. In view of this discussion, I am compelled to say that the action of the respondents rejecting the application submitted by

the applicant for correcting his date of birth was mechanical order, it was without verification of the documents and facts and consequently this order passed by the respondents is required to be set aside. In the result, the following order –

ORDER

The O.A. stands allowed. The order dated 25/1/2019 is hereby quashed. The respondents are directed to enter date of birth of applicant as 23/8/1962. No order as to costs.

Dated :- 23/07/2019.

*dnk..

(A.D. Karanjkar)
Member (J).

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 23/07/2019.
and pronounced on

Uploaded on : 23/07/2019.