

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.758 OF 2019 With
ORIGINAL APPLICATION NO.404 OF 2022**

**DISTRICT: PUNE
SUBJECT : Extension in age of
Superannuation**

**ORIGINAL APPLICATION NO.758 OF 2019
With
ORIGINAL APPLICATION NO.404 OF 2022**

- 1) Smt Ratan Baban Bhosale,)
Age : 61 years, Occ : Majdur in Social Forest -)
Department, Pune.)
R/at 54, Budhwar Peth, Kakakuwa Mention,)
Laxmi Road, Pune 411 002.)
- 2) Smt. Dhondabai Yedu Shinde, Age 61 years,)
Occ : Majdur, in Social Forest Department, Pune)
R/at. 54, Budhwar Peth, Kakakuwa Mention,)
Laxmi Road, Pune 411 002.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Revenue & Forest Dept.)
Mantralaya, Mumbai.)
- 2) The Divisional Forest Officer, Social Forestry,)
Division, Pune, Survey No.49, Forest Colony,)
Naresh -Hill, Salunkhe Vihar, Wanawadi,)
Pune 411022.)
- 3) The Conservator of Forest, Social Forestry Circle)
Vanbhaan, Gokhale Nagar, Pune 411 016.)
- 4) The Principal Chief Conservator of Forests,)
Social Forestry, Maharashtra State, Central)
Building, Pune 411001.)...**Respondents**

Shri M. B. Kadam, learned Advocate for the Applicants.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : **Shri A.P. Kurhekar, Hon'ble Member (J)**

DATE : **12.12.2022**

ORDER

1. Since both the Original Applications are filed by same Applicants (Van Majdur) and interlinked, heard together and being decided by common order.

2. The facts of O.A. No.758/2019 are as under:-

The Applicants joined as Van Majdur w.e.f. 01.08.1984. Since the Applicants had no record of date, month and year of their birth, they were sent to Sassoon General Hospital, Pune for medical examination to ascertain their age so as to record it in service book in terms of Rule 38(2)(e) of Maharashtra Civil Services (General Condition of Services), Rules 1981. The Sassoon General Hospital accordingly issued certificate on 11.08.1992 stating that the Applicants appears to be of age of 32 years by appearance and by deducting 32 years from date of examination, date of birth was considered as 11.08.1960. It is on the basis of it, the date of both the Applicants were recorded as 11.08.1960 in service book. Later, the Applicants were absorbed and regularized in service by G.R. dated 22.01.2004. At the time of giving effect of regularization in terms of G.R. dated 22.01.2004, the Applicants were again sent to Sassoon General Hospital, Pune for physical fitness. The Sassoon General Hospital by letter dated 08.03.2004 (page 98 of PB) certified that Applicants are physically fit to perform their duties and at the same time mentioned the age of Applicant Smt. Ratan Bhosale as 50 years and age of Smt. Dhondabai Shinde as 55 years. Surprisingly, it is on the basis of age mentioned by Sassoon Hospital in letter dated 08.03.2004, the Respondents changed the date of birth recorded in service book from 11.08.1960 to 08.03.1954 and 08.03.1949 respectively without giving notice to the Applicants. As per changed date of birth, the Applicants were to retire on 31.03.2014 and 31.08.2009 but they were continued in service till the impugned order.

3. Later, the Respondent No.2 abruptly by order dated 12.03.2018 retired the Applicants with retrospective effect on the basis of changed date of birth. The Applicant Ratan Bhosale held retired on 31.03.2014 and Applicant No.2 Dhondabai Shinde held retired on 31.08.2009 retrospectively. Infact, they were in service till passing of the order dated 12.03.2018 which was served upon the Applicants on 19.03.2018.

4. It is on the above background, the Applicants have challenged the order dated 12.03.2018 whereby they were retired retrospectively on the basis of changed date of birth and claimed consequential service benefits.

5. The facts of O.A.No.404 of 2022 are as under:-

In this O.A. which is filed subsequently during pendency of O.A.No.758/2019, the Applicants prayed for declaration that they be declared absorbed and regularized in service w.e.f. 01.11.1994 instead of 22.01.2004 on the basis of order of the Industrial Court. The Applicants have filed complaints before the Industrial Court for permanency. In the matter of Smt. Dhondabai Shinde, the Industrial Court, Pune by order dated 17.11.1998 passed in ULP No.125/1996 directed the Respondents to give benefits of permanency to her after taking sanction from the Government. Insofar as the Applicant- Smt Ratan Bhosale is concerned, the Industrial Court, Pune by order dated 22.02.1999, passed in ULP No.71/1997 directed the Respondents to give permanency benefits w.e.f. 01.11.1994. In both the orders, the Industrial Court observed that Respondents have committed unfair labour practice within the meaning of Maharashtra Reorganization of Trade Union and provision of Unfair Labour Practice Act, 1971.

6. Heard Shri M. B. Kadam, learned Presenting Officer for the Applicants and Smt. Archana B. K., learned Presenting Officer for the Respondents.

7. Firstly, let us see the grievances raised by the Applicants in O.A.o.758/2019 about change of date of birth and retirement with retrospective effect as done by the Respondents. The perusal of record reveals that the Applicants joined as Van Majdur on 01.08.1984. It is further explicit from record that on 11.08.1992, the Applicant Ratan Bhosale was sent for medical examination to ascertain the age in terms of Rule 38(2)(e) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as 'Rules 1981 for brevity) and Sassoon Hospital, Pune issued medical certificate dated 11.08.1992 which is at page no.78 of PB. The contents of certificate are as under:-

*“There is no any clinical or radiological method to ascertain the age of person, after the age of 25 years. However, according to his/her own statements the age Smt. **Ratan Baban Bhosale** is **32** years and by appearance also about **Thirty-Two** years.*

8. Then it comes the letter dated 26.07.1997 (Page Mo.77 of PB) whereby the Deputy Director, Social Forestry Division, Pune informed to Joint Director, Social Forestry, Nashik that the date of birth of Applicants are recorded as 11.08.1960 is in observance of Rule 38(2)(e) of 'Rules 1981'. Thus, indisputably the date of birth of the Applicants was recorded as 11.08.1960 in the service book which is at Page No.16 and 38 of PB. Apparently, since the Applicants were illiterate Van Majdurs and there was no documentary evidence of their date of birth, the procedure contemplated under Rule 38(2)(e) of 'Rules 1981' has been followed which *inter-alia* provides how to record the date of birth in service record. Here we are concerned with Rule 38(2)(e) and (f) which are as under :-

“Rule 38 (2) *While recording the date of birth, the following procedure should be followed:-*

(a)

(b)

(c)

(d)

- (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 deduced accordingly;*
- (f) *When once an entry of age or date of birth has been made in a 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.”*

9. Suffice to say, it is on the basis of Rule 38(2)(e), the Sassoon Hospital, Pune certified the age of Applicant Smt. Ratan Bhosale as 32 years on the date of issuance of certificate and accordingly the date of birth was recorded as (1992-32) 11th August, 1960. Though the medical certificate of Applicant Smt. Dhondabai Shinde is not forthcoming, indisputably her date of birth was also recorded as 11.08.1960 in observance of Rule 38(2)(e) of 'Rules 1981' as explicit from letter dated 26.07.1997 referred to above.

10. Material to note, while Applicants services were regularized in terms of G.R. dated 22.01.2004, in the annexures to G.R. also the date of birth of the Applicants is shown 11.08.1960. Suffice to say, the date of birth of the Applicants was recorded as 11.08.1960 following the provisions of Rule 38(2)(e) of 'Rules 1981' and it was acted upon by the Respondents.

11. However, at the time of regularization of the Applicants in terms of G.R. dated 22.01.2004, they were again sent for medical examination for age and fitness and it is at that time, on receipt of medical certificate, the date of birth of the Applicants has been changed. In this behalf, perusal of letter dated 08.03.2004 issued by the Medical Superintendent, Sassoon Hospital, Pune (page no.98 of PB) reveals that Applicants were sent for medical examination for age and physical fitness and in response to it, the Medical Superintendent, Sassoon Hospital, Pune informed to department as under:-

“ With reference to your above letter’s Mazoors from your office (Names give below) have been examined and investigated in this hospital and found that they are Physically Fit for their duties (age given as below)

- | | | | |
|----|--|--------------------------|------------|
| 1) | <i>Smt. Rukmini Dyandeo Langar</i> | <i>age 40 YRS</i> | <i>FIT</i> |
| 2) | <u>Smt Ratan Baban Bhosale</u> | <u>age 50 Yrs</u> | <i>FIT</i> |
| 3) | <i>Smt Leelabai A. Kupate</i> | <i>age 52 Yrs</i> | <i>FIT</i> |
| 4) | <i>Smt Chandrabhaga Bhilare</i> | <i>age 40 Yrs</i> | <i>FIT</i> |
| 5) | <i>Smt Sonabai Bapur Choudhari</i> | <i>age 53 Yrs</i> | <i>FIT</i> |
| 6) | <i>Smt. Shantabai S. Lohar</i> | <i>age 50 Yrs</i> | <i>FIT</i> |
| 7) | <u>Smt. Dhondebai Y. Shinde</u> | <u>age 55 Yrs</u> | <i>FIT</i> |

(Total seven candidates)

Medical Superintending Officer”

12. Surprisingly, it is on the basis of this letter dated 08.03.2004, the Respondent No.2 – Divisional Social Forest Division, Pune changed the date of birth of Applicants from 11.08.1960 to 08.03.1954 and 08.03.1949 respectively. It appears that on the basis of that letter, the Respondent No.3 deducted 50 years and 55 years from 08.03.2004 i.e. the date of examination and changed the date of birth as 08.03.1954 and 08.03.1949. Admittedly, while doing it, no opportunity of hearing was given to the Applicants and the date of birth was changed unilaterally which is in breach of principle of natural justice.

13. That apart, there is absolutely nothing on record as to the nature of test or examination carried out by the hospital while mentioning their age as 50 years and 55 years respectively in the letter. It is not a case of department that while doing so any such medical scientific test like bone examination test was done. As such, it is in mystery as to how the age 50 and 55 years is shown in the letter dated 08.03.2004 which is the foundation for change of date of birth.

14. Indeed, once the date of birth of the Applicants were recorded as 11.08.1960 in observance of Rule 38(2)(e) of ‘Rules 1981’ then it could not have been changed in such a causal manner without performing

scientific test. That time, no notice for opportunity of hearing was giving to the Applicants and behind their back, it was done.

15. Apart, interestingly the Applicants were not made to retire on the basis of change of date of birth after attaining the age of 60 years. In terms of changed date of birth as 08.03.1954 and 08.03.1949, they were to retire on 31.03.2014 and 31.08.2009 on completion of 60 years of age. However, they were continued in service as if they have not attained the age of superannuation. Later, the Respondent No.3 woke up and abruptly by communication dated 12.03.2018 passed the impugned order stating that they deemed to have been retired w.e.f. 31.03.2014 and 31.08.2009 with retrospective effect. Such course of action is unheard of and totally arbitrary and unsustainable in law.

16. Later part is also interesting. The Association of Workers lodged compliant with Divisional Forest Officer, Pune on 18.06.2018 raising grievance of wrong retirement of Applicants and interference in date of birth recorded in the service book. The complaint is at page no.63 of PB. The perusal of record reveals that on that basis some correspondence was made between department inter se. In this behalf, letter dated 04.10.2018 written by the Respondent No.3 to Conservator of Forest, Social Forestry, Pune is material which is at page no.71 of PB. Its perusal reveals that Applicants were again sent for medical examination by letter dated 24.09.2018 and after examination of the Applicants, the Medical Superintendent, Sassoon Hospital by his letter dated 14.10.2018 gave his opinion about age of the Applicants which is consistent with original date of birth as 11.08.1960. The Relevant contents of letter dated 14.10.2018 are as under :-

“ त्याअनुपंगाने वनपरिक्षेत्र अधिकारी, सामाजिक वनीकरण, पुणे यांचेकडील उपरोक्त संदर्भ क्र. ४ अन्वये या कार्यालयास अधिक्षक, जिल्हा शल्य चिकित्सक, ससुन रुग्णालय, पुणे यांचे उपरोक्त संदर्भ क्र.५ चे पत्र या कार्यालयास प्राप्त झाले आहे. (सोबत छायांकित प्रत जोडत आहे) सदर पत्राचे अवलोकन केले असता श्रीमती रतन बबन भोसले व श्रीमती धोंडाबाई येडू शिंदे यांची रुग्णालया मार्फत वयाबाबतची दंतशास्त्र व क्ष किरण शास्त्र या विभागामार्फत तपासणी केली असता खालील अभिप्राय देण्यात आलेला आहे.

Sr. No.	Name	Opinion
1.	Smt. Ratan B. Bhosale	1) Her dental age can be estimated to be in range of 25 years to 30 years. 2) Approximately radiological bone age is above 50 years of age and below 70 years of age.
2.	Smt. Dhondabai Yedu Shinde	1) Her dental age can be estimated to be in range of 25 years to 30 years. 2) Approximately radiological bone age is above 40 years of age and below 60 years of age.

तरी या कार्यालयाचे उपरोक्त संदर्भ क्र.१ च्या अनुषंगाने सर्व बाजूंचा विचार करता ११.०८.१९९२ अन्वये देण्यात आलेले ससून रुग्णालय यांच्या वैद्यकीय वयाचे दाखले व उपरोक्त संदर्भ क्र.८ शासन निर्णय दिनांक १२/१/२००४ अन्वये दर्शविण्यात आलेली ११.८.१९६० ही जन्म तारीख तसेच मुळ सेवापुस्तकात दर्शविलेली ११.०८.१९६० या जन्म तारखेनुसार व उपरोक्त संदर्भ क्र.१ अन्वये अधीक्षक, जिल्हा शल्य चिकित्सक, ससून रुग्णालय, पुणे यांच्या अहवालानुसार श्रीमती धोंडाबाई येदू शिंदेव श्रीमती रतन बबन भोसले हया ३१/८/२०२० रोजी सेवानिवृत्त होणे आवश्यक आहे, अशी या कार्यालयाची धारणा आहे, तरी याबाबत आपले मार्फत योग्य व उचित मार्गदर्शन व्हावे ही विनंती.’’

17. Thus, apparently the Sassoon Hospital, Pune again conducted radiological test as well as dental test and gave opinion about age of the Applicants as mentioned in above letter. Thus, the Respondent No.3 also realized that as per recent medical examination, the Applicants have to complete 60 years of age on 31.08.2020. He, therefore, sought further direction. However, no further steps were taken by the department and therefore, the Applicants were compelled to approach the Tribunal.

18. Thus, once the date of birth of the Applicants was recorded in service book as 11.08.1960 in observance of Rule 38(2)(e) of 'Rules 1981', it could not have been changed on the basis of letter dated 08.03.2004 issued by the Medical Superintendent, Sassoon Hospital, Pune wherein the age of the Applicants seem to have been mentioned as 50 and 55 years respectively without performing any scientific test. While altering date of birth, no opportunity of hearing was giving to the Applicants. That apart even after the said alternation in the date of birth, the Applicants were continued in service up to impugned communication dated 12.03.2018. In such scenario, the impugned action by letter dated 12.03.2018 retiring the Applicants with retrospective effect from

31.03.2014 and 31.08.2009 is totally unsustainable in law. As per date of birth recorded in service book, the Applicants were to retire on 31.08.2020 but they were prematurely retired that too with retrospective effect and this course of action is totally unsustainable and bad in law. Now, the date of superannuation as 31.08.2020 is also passed during pendency of O.A. Therefore, the question of reinstatement in service does not survive. Admittedly, the Applicants services were availed till 12.03.2018. They were entitled to work till attaining the age of superannuation i.e. up to 31.08.2020, but because of impugned orders and unsustainable action they are deprived of getting pay and allowances till 31.08.2020. Since they have not worked in the said period, it would be inappropriate to grant 100% pay and allowances for the said period. It would be just and fair to grant 50% pay and allowances. The Applicants are, therefore, required to be compensated by granting 50% pay and allowances from impugned order dated 12.03.2018. Their dates of retirement shall be taken as 31.08.2020 and not 31.03.2014 and 31.08.2009 as stated in impugned order. The impugned order dated 12.03.2018 is, therefore, liable to be quashed.

19. Claim in O.A.No.404/2022 :-

This O.A. is filed subsequently during pendency of O.A.No.757/2019. The Applicants prayed for declaration that they be declared absorbed and regularized w.e.f. 01.11.1994 instead of 22.01.2004. In this behalf, the Applicants sought to place reliance on the decision of the Industrial Court, Pune. In the matter of Smt. Dhondabai Shinde, the Industrial Court Pune by order dated 17.11.1998 passed in ULP No.125/1996 directed the Respondents to give benefit of permanency to her with specific stipulation that it should be done after taking appropriate sanction from the Government. Insofar as the Applicant Smt. Ratan Bhosale is concerned, Industrial Court by order dated 22.02.1999 passed in ULP No.71/1997 directed the Respondents to give benefits of permanency to the Applicant w.e.f. 01.11.1994 with

stipulation that it should be done after receipt of approval from the Government.

20. Notably, the Applicants were aware that they were absorbed in service in terms of G.R. dated 22.01.2004 but did not raised the grievance of absorption in terms of order passed by the Industrial Court, Pune. They remained silent for near about 20 years and now raised the grievance for compliance of order passed by the Industrial Court for absorption from 01.01.1994. In first place, there are latches on the part of Applicants for remaining silent for about two decades which amounts to acquiescence. Secondly, the perusal of order of Industrial Court clearly reveals that those are not final and absolute orders of permanency from 01.01.1994 but it was to be implemented with approval of Government. No such approval of the Government is forthcoming. If the Applicants were aggrieved by the decision of the Industrial Court or had any grievance for non-compliance of it, they would have taken certain steps in the matter. However, they chose to remain silent and subsequently in 2004 they were absorbed in Government service. In such situation, the claim of the Applicants for declaration of absorption w.e.f. 01.01.1994 and other consequential service benefits is totally unsustainable in law and liable to be rejected. O.A.No.404/2022 is, therefore, liable to be dismissed.

21. The reliance placed by learned Counsel for the Applicants on the decision in O.A.No.726/2020 decided with connected O.A.s by the Tribunal on 11.10.2022 is totally misplaced. True, in that case, benefit of permanency was granted by the Tribunal on the basis of order passed by the Industrial Court in the matter of Muster Assistant. However, in those cases, there was no such conditional order of Industrial Court regarding approval of Government for giving benefit of permanency nor acquiescence. Therefore, the said decision is of little assistance to the Applicants.

22. The totality of the aforesaid discussion leads me to sum up that O.A.758/2019 deserves to be allowed partly. Impugned order dated 12.03.2018 retiring the Applicants retrospectively is quashed and set aside. The Applicants are deemed to be in service till 31.08.2020 for their pensionable service and other consequential service benefits subject to rider that they are entitled to 50% pay and allowances only from the date of terminating their services till they attained superannuation i.e. up to 31.08.2020. Hence, the following order :-

ORDER

- (A) Original Application No,758/2019 is allowed partly.
- (B) Impugned communication dated 12.03.2018 declaring the Applicants retired with retrospective effect is quashed and set aside. The Applicant deemed to be continued in service till they attained the age of superannuation i.e. up to 31.08.2020. The Applicants be paid 50% pay and allowances for the period from the date of impugned order till 31.08.2020.
- (C) Two months time is granted for compliance.
- (D) O.A. 404/2022 is dismissed.
- (E) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 12.12.2022
Dictation taken by: Vaishali Santosh Mane
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