

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.802 OF 2022

DISTRICT : MUMBAI

**Sub.:- Correction in Date of
Birth**

Shri Sanjay Gangaram Shirgaonkar.)
Age : 56 Yrs, Working as Ward Boy,)
G.T. Hospital Campus, L.T. Marg,)
Mumbai – 2, R/o. Servants’ Quarters,)
Room No.4, Old Doctors’ Quarters,)
G.T. Hospital Campus, L.T. Marg,)
Mumbai – 400 002.)...**Applicant**

Versus

The Superintendent,)
G.T. Hospital, Mumbai, having Office at)
G.T. Hospital Campus, L.T. Marg,)
Mumbai – 400 002.)...**Respondent**

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

Shri A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.03.2023

JUDGMENT

1. The Applicant has challenged the communication dated 21.01.2022 issued by Respondent – Superintendent, G.T. Hospital, Mumbai, thereby rejecting his claim for change of date of birth in service record as 21.03.1996 in place of 21.03.1963. Since Applicant is retiring

at the end of March, 2023 on the basis of date of birth recorded in Service Book, the O.A. is expedited and heard finally at the stage of admission.

2. Facts giving rise to this application are as under :-

The Applicant joined service as Ward Boy on 01.11.1993 on the establishment of Respondent. At the time of entry in service, he tendered Leaving Certificate of School and on that basis, the date of birth was recorded as 21.03.1963. He did not raise any grievance in respect of date of birth in service record and at the fag end of service, he made an application on 05.01.2022 (Page No.30 of Paper Book) requesting the Respondent that his correct date of birth is 21.03.1066, but in one of the Leaving Certificate of the School, it was wrongly recorded as 21.03.1963 on the basis of which entry was taken in Service Book. In this behalf, he contends that in the year 2021, occasionally, he made his cousin brother Vinayak V. Ambekar who is elder to him and that time, Applicant told him that he would retire from Government service by March, 2023 whereupon his cousin brother expressed surprise as to how he is retiring before him (cousin brother though he is elder to the Applicant). Thereupon, Applicant obtained Birth Certificate from Municipal Corporation Greater Mumbai and found that his real date of birth is 21.03.1966. Thereafter, he made an application on 05.01.2022 requesting the Applicant that his correct date of birth is 21.03.1966 but because of wrong date of birth in Leaving Certificate issued by School, the date of birth was recorded as 21.03.1963 in Service Book. However, Respondent by impugned communication dated 21.01.2022 (Page No.23 of P.B.) rejected his request on the ground that there was no such clerical error or mistake on the part of Office while making entry of date of birth in service record, since it was recorded on the basis of Leaving Certificate furnished by the Applicant himself. Secondly, 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), no application for correction of date of birth is permissible unless application for correction in date of birth is made within five years from the date of entry in service. The Applicant has challenged the communication dated 21.01.2022 in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to challenge the legality of impugned communication *inter-alia* contending that Leaving Certificate tendered by the Applicant at the time of entry in service itself was showing incorrect date of birth as 21.03.1963, but his correct date of birth is 21.03.1966. In this behalf, he referred to Birth Certificate issued by Municipal Corporation of Greater Mumbai wherein his date of birth is recorded as 21.03.1966. He, therefore, submits that Birth Certificate issued by Municipal Corporation has greater probative value and it prevails over the date of birth recorded in school record. As regard Instruction No.1 below Rule 38(2)(f) of 'Rules of 1981', he submits that the said amendment that no correction is permissible unless application is made within five years from the date of entry in service has been introduced in 'Rules of 1981' by way of amendment in 2008 and cannot be made applicable with retrospective operation. He has further pointed out that in old Rules of 1981 (prior to amendment), there was no such specific bar and all that, as per old Rules, the application was to be made normally within five years commencing from the date of entry in service. In this behalf, he placed reliance on the decision of Hon'ble High Court, Bench at Nagpur in **2nd Appeal No.399/2013 [Ashok Vs. Head Master, Zilla Parishad High School] decided on 09.07.2014**. On this line of submission, he submits that the impugned communication is bad in law and liable to be quashed and Applicant's date of birth be corrected as 21.03.1966 in place of 21.03.1963.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer in reference to contentions raised in Affidavit-in-reply sought to justify the legality of impugned communication dated 21.01.2022 *inter-alia*

contending that the entry in Service Book was taken on the basis of School Leaving Certificate tendered by the Applicant himself and there was no clerical mistake or error on the part of Department while recording the date of birth. He further emphasized that in terms of instructions to Rule 38(2)(f) of 'Rules of 1981', there is specific bar that no alternation in date of birth is permissible unless application for change of date of birth is made within five years from the entry in service. Whereas in the present case, though Applicant joined service on 01.11.1993, he applied on 05.01.2022 at the fag end of service when he is due to retire at the end of March, 2023, and therefore, such application at the fag end of service is not maintainable. In this behalf, he referred to decisions of Hon'ble Supreme Court wherein it is reiterated that correction of date of birth in service record after lapse of long time at the fag end of service is not maintainable. With this submission, he contends that the challenge to the impugned communication holds no water and O.A. is liable to be dismissed.

5. In view of pleadings and submissions, the issue posed for consideration is whether the claim of the Applicant for change of date of birth in service record at the fag end of service is acceptable and answer is in emphatic negative.

6. The procedure for writing and recording the date of birth in Service Book and it's correction is governed by Rule 38 of 'Rules of 1981'. It would be useful to reproduce Rule 38(2)(a) and (f) and the Instructions as amended on 24.12.2008, which are as follows :

“38(2)(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;

(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.

(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. True, Instruction No.1 to Rule 38(2)(f) has been introduced by way of amendment by Maharashtra Civil Services (General Conditions of Services) Amendment Rules, 2008. Therefore, it is necessary to see what was Rule 38(2)(f) prior to amendment of 2008. Instruction No.1 to Rule 38(2)(f) as per old Rules was as under :-

“Instruction.- (1) Normally, no application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant should be entertained after a period of five years commencing from the date of his entry in Government service.”

Thus, as per old Rules, normally no claim for alteration of the entry regarding date of birth was permissible unless application is made within five years from the date of entry in service. Whereas after amendment, Instruction No.1 is amended to the effect that application for any such change is required to be made within five years from the date of entry in service in respect of Government servant who has entered into Government service on or after 16th August, 1981. This date 16th August, 1981 has great significance. The Applicant admittedly joined service on 01.11.1993, and therefore, he is governed by amended Instruction No.1.

8. As stated above, the date 16th August, 1981 is important because ‘Rules of 1981’ came into force with effect from 15.08.1981. It is in that context, in amended Instruction No.1, it is stated that no application for alteration is permissible unless application is made within five years

from the date of joining in respect of Government servant, who joined on or after 16th August, 1981.

9. At this juncture, it would be apposite to refer Government Circular issued by GAD, Government of Maharashtra dated 03.03.1988 (Page No.33 of P.B.). Para Nos.1 and 2 of Circular is material, which is as under :-

“परिपत्रक :- शासकीय कर्मचा-यांची सेवा सुरु झाल्यानंतर सेवापुस्तिकेत जन्मतारीख नोंदविताना कोणती जन्मतारीख नोंदविण्यात यावी या संबंधीची तरतूद महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम, १९८१ च्या नियम ३८(२) मध्ये केली आहे. सदरहू नियम १५ ऑगस्ट, १९८१ पासून अंमलात आलेले आहेत. या नियमानुसार जन्मदिनांक कागदोपत्री पुराव्यावरून पडताळून पाहण्यात यावा अशी तरतूद आहे. नियम ३८(२) खालील सूचना क्रमांक १ मध्ये एकदा नोंदलेल्या जन्मतारखेमध्ये बदल करण्यासंबंधीची विनंती सामान्यतः ५ वर्षांनंतर विचारात घेण्यात येऊ नये अशी तरतूद आहे. सूचना क्रमांक २ मध्ये अचूक जन्मतारीख नोंदवण्यासाठी कोणता कागदोपत्री पुरावा ग्राह्य मानावा याबाबत तरतूद आहे. सूचना क्रमांक ३ मध्ये राजपत्रित शासकीय अधिका-यांच्या जन्मतारखे मध्ये फेरबदल करण्यासंबंधीची प्रकरणे आणि वरील सूचना क्रमांक १ शिथिल करून गुणवत्तेनुसार विचारात घ्यावयाच्या अराजपत्रित कर्मचा-यांच्या विनंती बाबत कोणती कार्यवाही करावी याची तरतूद आहे. शासनाच्या असे निदर्शनास आले आहे की नियम ३८(२) नुसार सेवा पुस्तकात, जन्मतारीख नोंदविताना सूचना क्रमांक २ मध्ये उल्लेख केलेले कागदोपत्री पुरावे तपासून जन्मतारीख निश्चित न करता शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रांमध्ये नोंदवलेली जन्मतारीख सेवा पुस्तकात नोंदविण्यात येते व नंतर सेवा समाप्तीच्या टप्प्यावर जन्मतारीख बदलण्याचे प्रस्ताव येतात. सेवानिवृत्ती जवळ आलेली असताना, जन्मतारीख दुरुस्तीसाठी विचार करणे योग्य होत नाही.

२. शासन सेवेत प्रवेश केल्यापासून ५ वर्षांच्या आत जन्मदिनांकात दुरुस्तीसाठी अर्ज केला नसल्यास तो विचारात घेण्यात यावा अथवा कसे हा प्रश्न शासनाच्या विचाराधीन होता. सर्वोच्च न्यायालयाने दिवाणी अपील क्रमांक ५०२/१९९३ (केंद्रशासन विरुद्ध हरनामसिंग) याप्रकरणी दिलेला निवाडा व त्यासंबंधात केंद्र शासनाने काढलेले आदेश यांचा विचार करून शासन आता असे आदेश देत आहे की, ज्या शासकीय अधिका-यांनी/कर्मचा-यांनी महाराष्ट्र शासनाच्या सेवेत दिनांक १५ ऑगस्ट, १९८१ पूर्वी व ज्यांनी दिनांक १५ ऑगस्ट, १९८१ रोजी सेवेत प्रवेश केलेला आहे अशांच्या बाबतीत ५ वर्षांचा कालावधी दिनांक १५ ऑगस्ट, १९८१ पासून गणण्यात यावा म्हणजेच दिनांक १५ ऑगस्ट, १९८१ पूर्वी व दिनांक १५ ऑगस्ट, १९८१ रोजी सेवेत प्रवेश केलेल्या अधिका-यांनी/कर्मचा-यांनी दिनांक १४ ऑगस्ट, १९८६ पर्यंत अर्ज केलेला असल्यास तो विचारात घेण्यात यावा. अन्य शासकीय अधिका-यांनी/कर्मचा-यांनी सेवा पुस्तकात नोंदलेला जन्मदिनांक दुरुस्त करण्यासाठी सेवेत प्रवेश केल्यापासून ५ वर्षांच्या आत अर्ज केला असल्यास तो विचारात घेण्यात यावा. सेवा निवृत्त अधिका-यांची/कर्मचा-यांची जन्मतारीख दुरुस्त करण्याबाबतची प्रकरणे विचारात घेण्यात येऊ नयेत.”

10. Thus, even if Instruction No.1 has been amended in 2008, the Government had issued Circular on 03.03.1988 itself making it clear that Government servant who had been appointed on or before 15th August, 1981 may apply for correction of date of birth within five years from 15th August, 1981 and Government servants who are appointed on or after 15th August, 1981, they will have to apply for correction in date of birth within five years from the date of appointment. Thus, opportunity was given to them who joined before 15th August, 1981 by giving 5 years' time for change in date of birth. In the present case, admittedly, Applicant was appointed in Government service on 01.01.1993 and this being the position in terms of Circular dated

03.03.1988 for any such correction, he was to apply within five years i.e. upto 01.11.1998. However, he did not make any such application within five years from the date of joining of service. He made an application quite belatedly on 05.01.2022 when he was due to retire at the end of March, 2023 on the basis of date of birth recorded in Service Book. This being the position, it is very difficult to say that amendment in 2008 has no retrospective effect in the light of Circular dated 03.03.1998 issued by the Government.

11. Insofar as decision of Hon'ble High Court, Bench at Nagpur in **Ashok's** case (cited supra) is concerned, it's perusal reveals that the Circular dated 03.03.1998 was not brought to the notice of Hon'ble High Court, and therefore, it was held that the amendment made in 2008 cannot put restriction on employee to apply within five years from the date of entry in service. Apart, in that case, the Appellant who was to retire on 31.07.2014 had made an application for correction in date of birth on 20.11.2006 to change the date of birth as 07.02.1959 in place of 23.07.1956. Thus in that matter, the application for correction was made before 8 years of intended date of retirement. Whereas in the present case, the application is made at the fag end of service before 14th months from the date of retirement. Be that as it may, with due respect, the decision in **Ashok's** case is of no assistance to the Applicant in the present case particularly in the light of Circular dated 03.03.1998, the contents of which are reproduced above and various decisions of Hon'ble Supreme Court which will be referred little later.

12. True, entry recorded by local body i.e. Municipal Corporation, Mumbai in public record have greater probative evidential value than the entry of date of birth recorded in School. It is also equally true that in the present case, in one set of Leaving Certificates, the date of birth is recorded as 21.03.1963 whereas in some other School Leaving Certificates, the date of birth is shown as 21.03.1966. In Leaving Certificate issued by Primary Marathi School No.1 (Page No.45 of P.B.),

the date of birth is recorded as 21.03.1966 and similarly in Leaving Certificate obtained by the Applicant while leaving 6th Standard is shown 21.03.1966. However, in Z.P. Primary School, Bamnoli, his date of birth is shown 21.03.1963 (Page No.28 of P.B.) and again in Leaving Certificate issued by Ghatkopar Shikshan Prasaran Mandal School in which Applicant took admission for 9th Standard, his date of birth is shown 21.03.1963. Whereas as per the Certificate issued by Municipal Corporation, Mumbai, the date of birth is shown 21.03.1966. However, fact remains that the date of birth was recorded in service record as per Leaving Certificate produced by the Applicant himself. In other words, there was no such error or mistake on the part of Department in mentioning date of birth as 21.03.1963 in Service Book. In terms of Rule 38(2)(f) of 'Rules of 1981' when once entry of age or date of birth is made in Service Book, no alteration is permissible unless it is shown that the entry was due to want of care on the part of some person other than individual in question is an obvious clerical error. In the present case, Applicant himself produced Leaving Certificate showing his date of birth as 21.03.1966. Thus, Applicant was very much aware that his date of birth is recorded as 19.03.1963 in Service Book, but he remained silent for near about 30 years and made an application at the fag end of service on 05.01.2022. Thus, he slept over his alleged grievance for three decades.

13. The submission advanced by the learned Advocate for the Applicant that Department was required to give yearly inspection of Service Book to the Applicant, but it was not given, and therefore, he was not aware about the date of birth recorded in Service Book is totally fallacious, since admittedly, Applicant himself tendered Leaving Certificate showing his date of birth as 21.03.1966 and accordingly, entry in Service Book was taken. Therefore, even assuming that the Service Book was not yearly shown to the Applicant, that hardly matters.

14. The submission advanced by the learned Advocate for the Applicant that as per old Rule, normally application was to be made within five years commencing from the date of his entry does not mean that application could be made at the fag end of service. At any rate, in view of Circular dated 03.03.1998, the Government prescribed five years' period of limitation for those who joined on or after 15th August, 1981. Therefore, the Applicant was required to make any such application on or before 01.11.1998 in view of his joining on 01.11.1993.

15. It is no more *res-integra* that application for change of date of birth can only be made strictly as per relevant Rules and regulations and where application is made quite belatedly at the fag end of service, no such correction is permissible as a matter of right even if there is cogent evidence. This issue has been examined by Hon'ble Supreme Court in following cases :-

- (i) **1994 Supp.(1) SCC 155 [Home Department Vs. R. Kirubakaran];**
- (ii) **(2011) 9 SCC 664 [State of M.P. Vs. Premlal Shrivastava];**
- (iii) **(2016) 15 SCC 781 [Life Insurance Corporation of India & Ors. Vs. R. Basavaraju];**
- (iv) **(2020) 3 SCC 411 [Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh].**

Recently, Hon'ble Supreme Court after considering above decisions, again reiterated the same principles while deciding **Civil Appeal No.5720/2021 [Karnataka Rural Infrastructure Development Limited Vs. T.P. Nataraja] decided on 21.09.2021**. In Para Nos.10 and 11, Hon'ble Supreme Court summarized the legal principles as under :-

"10. *Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under:*

(i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;

(ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;

(iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.

11. Therefore, applying the law laid down by this court in the aforesaid decisions, the application of the respondent for change of date of birth was liable to be rejected on the ground of delay and laches also and therefore as such respondent employee was not entitled to the decree of declaration and therefore the impugned judgment and order passed by the High Court is unsustainable and not tenable at law.”

16. Notably, in **Premal Shrivastava's** case (cited supra), Hon'ble Supreme Court dealt with situation where there was no specific rule prescribing the period within which such application could be filed and ultimately, it is held that even if there is no such specific rule prescribing time limit, the application made by employee after 25 years by no standard can be said maintainable. In **Premal Shrivastava's** case in Para Nos.8 and 12, it is held as under :-

“8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or 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 can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. *Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.”*

17. At this juncture, it would be also apposite to take note of the decision of Hon’ble Supreme Court arising from Maharashtra Civil Services (Conditions of Service) Rules, 1981 which is squarely applicable to the present situation. In that case, Respondent was appointed as Assistant Teacher on 13.02.1978 and at the time of entry in service, he had tendered Secondary School Leaving Certificate indicating date of birth as 02.06.1949 as proof of his date of birth and accordingly, it was recorded in service record. However, belatedly on 23.05.2004, he made an application complaining that his real date of birth as per birth record of Tahasil Office is 03.05.1951 and requested to correct the date of birth in service record as 03.05.1951 in place of 02.06.1949. It came to be rejected in reference to Rule 38(2)(f) of ‘Rules of 1981’. Being aggrieved by it, he filed Writ Petition No.6531/2006 before Hon’ble High Court of Bombay which was allowed on 19.01.2007. The State of Maharashtra preferred Civil Appeal No.9704/2010 before Hon’ble Supreme Court. While deciding SLP, Hon’ble Supreme Court took note of Instruction No.1, which was prior to amendment of 2008 and also considered the effect of amendment of 2008 in Rule 32(2)(f) of ‘Rules of 1981’. Hon’ble High Court in Para Nos.12, 13, 14, 15 and 20 held as under :-

“12. *Apart from the notification and the said instruction this Court in a series of cases have categorically laid down that the employees should not be permitted to change the date of birth at the fag end of his service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty eight years.*

13. *In Union of India Vs. Harnam Singh, (1993) 2 SCC 162, this Court was confronted with almost similar facts. The Court laid down as under :-*

"In the instant case, the date of birth recorded at the time of entry of the respondent into service as May 20, 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The respondent had the occasion to see his service-book on numerous occasions. He signed the service-book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of Note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty-five year from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct."

14. *In State of Tamil Nadu Vs. T.V.Venugopalan, (1994) 6 SCC p.302, this court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under :-*

".....The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register.

It is common phenomenon that just before superannuation, an application would be made to the Tribunal or Court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground....."

15. *In Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, (1994) Suppl.(1) SCC 155, the Court again reiterated the legal position that the courts have to be extremely careful when application for alteration of the date of birth is filed on the eve of superannuation or near-about that time. The court observed as under :-*

".....As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants to raise such a dispute without explaining as to why this question was not raised earlier....."

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.*

18. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order dated 21.01.2022 is devoid of merit and no such correction is permissible at the fag end of service in view of law laid down by Hon'ble Supreme Court. The O.A. is, therefore, liable to be dismissed. Hence, the order.

ORDER

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

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

Mumbai
Date : 20.03.2023
Dictation taken by :
S.K. Wamanse.

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