MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH : NAGPUR
ORIGINAL APPLICATION NO. 882/2020

Rambhau son of Rajaram Sonare,
Aged about 50 years, Occ : Service,
R/o District Education and Training Institute,
Maltekdi Amravati,
Tahsil and District :Amravati. ……**Applicant.**

-Versus –

1. The State of Maharashtra,
through its Secretary, School Education and Sports Department,
Mantralaya, Mumbai- 32

2. The Commissioner (Education),
Central Building, Maharashtra State,
Pune, District – Pune.

3. The Principal, District Education and Training
Institute, Amravati. ……**Respondents.**

1.Shri K.S. Malokar … Adv. for the applicant
2.Shri A.P. Potnis …. Presenting Officer for the Respondents.

CORAM : HON. SHRI M.A. LOVEKAR ; MEMBER (J)
DATED : 15/09/2022

Date of Reserving for judgment : 07/09/2022
Date of Pronouncement of judgment : 15 /09/2022

JUDGMENT

(Delivered on this 15 th September, 2022)

Heard Shri K.S. Malokar, ld. Counsel for the applicant and Shri A.P. Potnis, ld. Presenting Officer for the Respondents.

2. In this O.A. the applicant prays for correcting his date of birth from 16.05.1970 to 07.05.1972.

Case of the applicant is as follows :-

(a) On 27.01.2006, the applicant was appointed to the post of Professor at Bhandara in the Respondent department. On 15.07.2008, he applied for correction of date of birth which was well within 5 years from the date of joining. He received a reply dtd.11.08.2008 (Annex.A-1) to first get the change effected in the gazette and then submit the proposal. By communication dt.04.01.2009 (Annex.A-3), he was called upon to answer certain queries raised therein. He resubmitted the proposal on 22.06.2009 with covering letter (Annex.A-2) attaching to it the certificate of date of birth issued by Gram Panchayat, affidavits sworn-in by him and his father, certificate issued by Sarpanch, School leaving certificate and the gazette published by the State of Maharashtra on 21.05.2009. The applicant submitted necessary details in a tabular form (Annex.A-4) to the Director, Education. Respondent No. 3 also

wrote to the Director, Education (Annex.A-5, Annex.A-6, Annex.A-7, Annex.A-9 and Annex.A-11) and so did the applicant (Annex.A-8 & Annex.A-10) about the proposal for correction of date of birth. To the letter dtd.13.07.2010 received from Respondent No.1, Respondent No. 2 gave a reply stating therein as follows :

> *" वरील मुद्दयांसंदर्भात श्री. सोनारे यांचे वडिलांनी रु.50/– च्या स्टॅम्प पेपरवर प्रतिज्ञापत्र सादर केले आहे. त्यात श्री सोनारे यांच्या वडिलांचे लग्न दि.15.05.1971 रोजी झाले असून त्यांचे पहिले अपत्य रामभाऊ राजारामजी सोनारे असून त्याचा जन्म दि.07.05.1972 रोजी झालेला आहे. मुलाचे नाव पहिल्या वर्गात सन 1976 ला दाखल केले त्यावेळेस मुख्याध्यापकाने त्याचे वय विचारले असता त्यावर 6 वर्षे पूर्ण झाले असे सांगितले. त्यामुळे त्यानुसार मुख्याध्यापक यांनी श्री. सोनारे यांची जन्मतारीख 16.05.1970 अशी असून तोंडी सांगितल्यामुळे जन्मतारखेची नोंद घेतली. सदरची जन्मतारीख ही चुकून अनावधानाने झालेली आहे असे प्रतिज्ञापत्रात नमूद केले आहे. सदर प्रतिज्ञापत्राची प्रत सोबत जोडली आहे.''*

(b) From the Director, Education communication dtd.05.11.2012 (Annex.A-13) was received by Respondent No. 3, in which it was stated :-

> *" संचालनालयाच्या वरील प्रस्तावास अनुसरुन शासन पत्र क.एसएटी–प्र.क. 31/प्रशा–2,दि.24.9.2012 च्या पत्रान्वये सामान्य प्रशासन विभाग परिपत्रक दि.3.3.1998 मधील तरतुदीनुसार तसेच वित्त विभागाच्या दि.24.12.2008 च्या अधिसूचनेतील (2)ए(एक) या तरतुदीनुसार कर्मचा–यास त्याच्या जुन्या (सध्याच्या नोंदविलेल्या) जन्मतारखेचा फायदा शाळेत अथवा शासन सेवेत प्रवेशासाठी झालेला नसावा. असा फायदा प्रथम संबंधितांस झालेला असल्यास तद्नंतर अशी प्रकरणे विचारात घेता येत नाहीत. श्री. आर.आर. सोनारे यांना इ.1 ली मध्ये प्रवेश घेतेवेळी त्यांच्या प्रस्तावित दि.7.5.1972 या जन्मतारखेनुसार वयाची फक्त 4 वर्षे पूर्ण होत होती. म्हणजेच शाळा प्रवेशासाठी आवश्यक असलेल्या किमान वयाच्या अटींची (5 वर्षे पूर्ण) पूर्तता होत नव्हती. यावरुन असे स्पष्टपणे दिसून येते की, श्री. सोनारे यांना शाळेत प्रवेश घेतेवेळी त्यांच्या दि.16.5.1970 या सध्याच्या जन्मतारखेचा फायदा*

झालेला असल्यामुळे आता त्यांची जन्मतारीखेत बदल करण्याची विनंती शासन परिपत्रक दि.3.3.1998 व अधिसूचना दि.24.12.2008 मधील तरतुदीनुसार मान्य करता येत नाही असे शासनाने या संचालनालयास कळविले आहे."

(c) Thereafter, the applicant made representations (Annexs.A-14 & Annex.A-15) to the Director, Education stating therein that if his date of birth was not corrected, he would stand retired on completing age of 56 years. He further stated :-

" प्राथमिक निर्गम उता–यावरील नोंदीनुसार 30/4/1981 ला मी चौथी उत्तीर्ण करुन प्राथमिक शाळा सोडलेली आहे. 1970 च्या जन्मतारखेनुसार मी 1975 प्राथमिक शाळेत प्रवेश घेवुन 1979 ला 4 था वर्ग उत्तीर्ण होणे आवश्यक होते. कारण त्यावेळेस इ.पहीली शाळा प्रवेशाचे वय 5 वर्षे पूर्ण असे होते. त्यामुळे मला 1970 या जन्म तारखेचा फायदा झालेला नसुन 1972 या शारीरिक वयानुसार माझे पुढील शिक्षण झालेले आहे. माझ्या 16/5/1970 या जन्मतारखेत बदल न केल्यास मला वयाच्या 56 व्या वर्षी सेवेतुन निवृत्त व्हावे लागेल. हा माझ्यावर अन्याय होईल. त्यामुळे आपणास सदर प्रकरणी पुनर्विचार करुन जन्मतारखेतील बदलाची चुक दुरुस्त करुन देण्यास सदर प्रस्तावाद्वारे पुन्हा विनंती करण्यात येत आहे. "

In his representation (Annex.A-16), the applicant stated :-

" उपरोक्त संदर्भीय पत्रानुसार सविनय सादर करण्यात येते की माझ्या जन्मतारखेत बदल करण्याची विनंती सामान्य परिपत्रक सामान्य अनासंक. 106/13–अ, दि.16/8/2012 च्या अभिप्रायानुसार मान्य करता येत नाही असे कळविले आहे. संदर्भीय पत्रानुसार असे कळविले की, इ. पहीली मध्ये प्रवेश घेतेवेळी माझ्या प्रस्तावित दि.7/5/1972 या जन्मतारखेनुसार वयाची फक्त 4 वर्षे पूर्ण होत होती. त्यामुळे शाळेत प्रवेश घेतेवेळी 16/5/1970 या जन्मतारखेचा फायदा झालेला आहे. प्राथमिक शाळेत माझे दाखल खारीज वर नाव 12/7/1976 ला आहे, परंतु मी

1) *1977–1978 –इ. पहिली*
2) *1978–1979 –इ. दुसरी*
3) *1979–1980 –इ. तीसरी*
4) *1980–1981 –इ. चौथी उत्तीर्ण केलेली आहे.*

प्राथमिक निर्गम उता–यावरील नोंदीनुसार 30/4/1981 ला मला 5 व्या वर्गात प्रवेशा करिता शाळा सोडल्याचा दाखला दिलेला आहे. 1970 च्या जन्मतारखेनुसार मी 1975 प्राथमिक शाळेत प्रवेश घेऊन 1979 ला 4 था वर्ग उत्तीर्ण होणे आवश्यक होते. कारण त्यावेळेस इ.पहीली शाळा प्रवेशाचे वय 5 वर्ष पूर्ण असे होते. त्यामुळे मला 1970 या जन्म तारखेचा फायदा झालेला नसून 1972 या शारीरिक वयानुसार माझे पुढील शिक्षण झालेले आहे. माझ्या 16/5/1970 या जन्मतारखेत बदल न केल्यास मला वयाच्या 56 व्या वर्षी सेवेतुन निवृत्त व्हावे लागेल. हा माझ्यावर अन्याय होईल. त्यामुळे आपणास सदर प्रकरणी पुनर्विचार करुन जन्मतारखेतील बदलाची चुक दुरुस्त करुन मला वयाच्या 58 व्या वर्षी सेवेतून निवृत्त होण्याची संधी देण्यात यावी अशी सदर प्रस्तावाद्वारे पुन्हा विनंती करण्यात येत आहे. 16/12/2014 ला सदर प्रस्ताव सादर केलेला होता. "

(d) The applicant then made a representation (Annex.A-17) to the Hon'ble Minister. By the impugned communication(Annex.A-18), Respondent No. 1 informed the applicant as follows :-

" उपरोक्त विषयावरील संदर्भाधीन पत्राच्या अनुषंगाने आपणांस कळविण्यात येते की, सदर पत्रान्वये आपल्या जन्मतारखेत बदल करण्याचीविनंती अमान्य करण्यात येत आहे. सामान्य प्रशासन विभागाच्या दिनांक 03.030.1998 रोजीच्या परिपत्रकातील व दिनांक 24.12.2008 रोजीच्या अधिसूचनेतील तरतुदी विचारात घेऊन सदर निर्णय घेण्यात आलेला आहे. "

Hence, this application.

3. Reply of Respondent Nos. 1 & 2 is at pages 38 to 42. It is their contention :-

" ***At the time of admission in school the applicant had completed 4 years of age as per his proposed birth date. It means that, the applicant was not fulfilling the condition of minimum age criteria at the time of admission in school. It is***

clear from the proposal of the applicant that the applicant had benefited by his current birth date of 16-05-1970. It is also clear that, the applicant wants to change his date of birth only to take benefits in service. Thus as per the Government G.R. dated 3-3-1998 and Notification dated 24-12-2008 the request of the applicant was rightly rejected. *"*

4. Contentions of the applicant in support of his prayer which are incorporated in his various representations as well as the grounds on which said prayer has been resisted by the respondents have been set out hereinabove.

5. The applicant and his father claim that marriage of the latter was performed on 15.05.1971 and hence, birth of the applicant could not have taken place on 07/05/1970. It may be stated that for proving the factum of date of marriage of father of the applicant, his affidavit and assertion of the applicant, without anything more by way of reliable proof, shall clearly not suffice.

6. To support his contention that his date of birth is 07/05/1972, the applicant has placed on record the certificate issued by the Gram Panchayat. This, too, cannot be accepted as authentic proof of date of birth

in view of Instruction No.(2) of Rule 38 (2) of the Maharashtra Civil Services (General Conditions of Services), Rules, 1981, which reads as under :-

Rule 38 (2)(2) " ***Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested zerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record***. "

7. It is the contention of the applicant that incorrect date of birth was given only to secure admission to school but in fact no undue advantage was extracted therefrom because he was given admission to the first standard only after he had completed 5 years i.e. in the year 1977-78. However, the fact remains that he was admitted to school on 12.07.1976. Instruction (2A) of Rule 38 lays down :-

Rule 38(2)(2A):-

" ***At the time of scrutiny of the application, it shall be ensured that, -***

(i) No advantage has been gained in school admission, entry into Government service by the said

Government servant by representing a date of birth which is different than that which is later sought to be incorporated;"

8. The mere fact of taking admission to school by giving a particular date of birth, shall preclude the applicant from contending that no advantage was gained thereby. According to the applicant, it was his father who supplied erroneous date of his birth to the school only to facilitate his admission and hence, he, the applicant, cannot be made to suffer therefor. The fact remains that it was the applicant himself who furnished, necessary details including the date of birth while entering the service and accordingly entry must have been taken in his service book. Under such circumstances, it would not be open to the applicant to contend that for mistake of his father he should not be penalized.

9. Discussion made so far would show that the O.A. lacks merit. Hence, the same is dismissed with no order as to costs.

(M.A. Lovekar)
Member (J)

Dated :- /09/2022
Skt.

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

Name of Steno : Smt. S.K. Thombre.