

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1031 OF 2022**

**(Subject:- Date of Birth)**

**DISTRICT:-OSMANABAD**

**Dr. Bharat Bansi Kadlaskar** )  
Age : 57 years, Occ: Service as Professor, )  
R/o; Ganesh Nagar, Near Ayurvedic College, )  
Tq. & Dist: Osmanabad. )  
Mo. No. 9422330084. ) **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra** )  
Through its Secretary, )  
Medical Education & Drug department,) )  
G.T. Hospital Sankul, )  
9<sup>th</sup> floor, Mantralaya, Mumbai-01. )
2. **The Desk Officer,** )  
Medical Education & Drug Department )  
G.T. Hospital Sankul, )  
9<sup>th</sup> floor, Mantralaya, Mumbai-01. )
3. **The Director of Ayush,** )  
Maharashtra State, Mumbai )  
Govt. Dental College & Hospital )  
Building, 4<sup>th</sup> Floor, St. Georges, )  
Hospital Compound, Fort, Mumbai-01.) )  
Division Aurangabad. )
4. **The Dean,** )  
Government Ayurvedic College, )  
Osmanabad. ) **RESPONDENTS**

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**APPEARANCE** : Shri A.S. Khedkar, learned Counsel  
for the applicant.  
: Shri B.S. Deokar, learned Presenting  
Officer for the respondent authorities.  
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**CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**RESERVED ON : 05.02.2024.**

**PRONOUNCED ON : 08.02.2024.**  
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## **O R D E R**

Heard Shri A.S. Khedkar, learned counsel for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondent authorities.

2. By this application the applicant is seeking direction to quash and set aside the impugned order dated 21.08.2021 passed by the respondent No.2 rejecting thereby the request made by the applicant to correct his date of birth in service record.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant came to be appointed as a Professor vide order dated 09.03.2017 issued by the Deputy Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai. He had joined the service on 13.04.2017.

(ii) It is the further case of the applicant that inadvertently, at the time of entry in the service book, his date of birth is wrongly mentioned as '01.06.1964' instead of '30.03.1965'. The applicant has immediately raised an objection to the aforesaid entry in the service book by submitting representation dated 17.11.2018 to the Dean, Government Ayurvedic College, Osmanabad and requested for correction in service record to the extent of date of birth as '30.03.1965' instead of '01.06.1964'. It is the further case of the applicant that he has made detailed representation dated 16.11.2018 supported by an affidavit to respondent No.1 and requested for correction in service book.

(iii) According to the applicant after receipt of the representation submitted by the applicant, the respondent No.4 i.e. the Dean, Government Ayurvedic College, Osmanabad has forwarded the applicant's proposal to respondent No.3 i.e. the Director, Directorate of Ayush, Maharashtra State, Mumbai vide communication dated 05.12.2018 along with the necessary documents. The copy of the same is marked as Annexure 'A-5'. Further the respondent No.3 after receipt of the said communication dated 05.12.2018 called upon certain details of the applicant

from the office of respondent No.4 and subsequently the respondent No.4 has forwarded all the necessary details as directed vide communication dated 03.05.2019 which is marked as Annexure 'A-6'. Moreover as directed by respondent No.3 in this regard, vide order dated 13.06.2019 to the respondent No.4, the details were submitted as per the checklist prescribed under Government Resolution dated 24.06.1992 (Annexure 'A-7').

(iv) It is the further case of the applicant that meanwhile the Desk Officer, Medical Education and Drugs Department, Mantralaya, Mumbai, made communication dated 06.01.2020 to respondent No.3 and sought information in respect of the request of the applicant. Moreover, the respondent No.3 was also directed that the proposal with regard to correction of date of birth of the applicant should be examined and submitted as per amended provision incorporated on 24.12.2008 in Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred as " Rules, 1981"). In view of same, the respondent No.3 has again directed the Dean, Government Ayurvedic College, Osmanabad, to send the fresh proposal of the applicant as per the amended provision incorporated on

24.12.2008 in Rule 38 of the Rules, 1981. The respondent No.4 has again forwarded all the necessary documents of the applicant to respondent No.3 vide communication dated 05.03.2020.

(v) It is the further case of the applicant that vide impugned order dated 22.07.2021 (Annexure 'A-11'), the respondent No.2 has rejected the proposal of the applicant for correction of date of birth by misinterpreting the Rule 38 (2) (f) of the Rules, 1981 and the same has been communicated by the respondent No.4 to the applicant by communication dated 21.08.2021.

(vi) It is the further case of the applicant that the applicant has therefore approached the Hon'ble Bombay High Court by filing the Writ Petition No. 7349/2022 challenging the said order dated 21.07.2021. However, by order dated 01.07.2022 the Writ Petition came to be disposed of on the ground that the alternate remedy is available to the applicant. Thus the applicant has approached this Tribunal by filing the present Original Application.

4. Learned counsel for the applicant submits that the claim of the applicant with regard to the correction in his date

of birth in service record is well within the limitation as provided under Rule 38 (2) of the Rules, 1981.

5. Learned counsel for the applicant submits that in terms of the provisions of Rule 38 (2) Instruction No. (2), the correction in date of birth of 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. Learned counsel for the applicant submits that in terms of the said Instruction No.2 of Sub Rule (2) of Rule 38, the applicant has submitted representation supported by an affidavit along with attested zerox copy of the concerned page of the original birth register, where he was born and the birth certificate issued by the Registrar, Municipal Council, Baramati. The applicant has fulfilled the criteria as laid down in the aforesaid rule of Rules, 1981. Learned counsel for the applicant has applied for the correction of date of birth after couple of months from the entry in the service.

6. Learned counsel for the applicant submits that the applicant has entered his correct date of birth as '30.03.1965' at the time of submission of the online application for the purpose of recruitment undertaken by the Maharashtra Public Service Commission (M.P.S.C.) during the selection process and the said documents were also verified by the M.P.S.C.

7. Learned counsel for the applicant submits that the applicant was born at Baramati. His name was duly registered at birth and death register at Sr. No. 204. In view of same, the Registrar, Municipal Council, Baramati has also issued certificate dated 12.09.2008. Learned counsel for the applicant submits that the order impugned is incorrect, improper and illegal. The respondent authorities have misinterpreted the provisions of Rule 38 of the Rules, 1981 and arrived at a wrong conclusion. The respondent authorities particularly the respondent No.2 has not correctly applied his mind to the facts and circumstances of the case and further misinterpreting the provisions of Rule 38 2 (f) of Rules, 1981, has rejected the application submitted by the applicant for correction in date of birth in service book. It

appears that the respondent No.2 has not considered the Instructions of Sub-Rule (2) of Rule 38, more particularly Instruction No.2.

8. Learned counsel for the applicant submits that in view of Rule 38, it is obligatory on the part of the department to correctly record the date of birth of the employee in service book and while recording the date of birth, they have to follow the prescribed procedure.

9. Learned counsel for the applicant in order to substantiate his contention placed his reliance on the following cases:-

- (i) **Writ Petition No. 4336 of 2022 (Shankar S/o Arjun Nimsarkar Vs. Zilla Parishad, Wardha)** decided on 14.09.2022.
- (ii) **Writ Petition No. 2345 of 2015 (Shriniwas Prabhakar Karve Vs. State of Maharashtra and Ors.)** decided on 22.04.2016.
- (iii) **Original Application No. 280 of 2023 (Shri Sudhir Bhagwat Kalekar Vs. the State of Maharashtra & Ors.)** decided on 21.04.2023.

10. Learned Presenting Officer for the respondent authorities on the basis of affidavit in reply filed on behalf of respondent Nos. 1 to 4 submits that by appointment order



dated 29.03.2017 the applicant came to be appointed on the post of Professor Kayachikitsa at Government Ayurved College, Osmanabad and he has joined the said post on 13.04.2017 before-noon at Dean, Government Ayurved College, Osmanabad. At the time of joining, the applicant has submitted S.S.C. passing certificate, Pan Card, M.D. passing college leaving certificate and in all these documents the date of birth of the applicant is shown as '01.06.1964'. Further the applicant has also put his signature in service book wherein his date of birth is recorded as '01.06.1964'. Learned P.O. submits that the applicant's contention about the wrong entry in the service book is false one.

11. Learned Presenting Officer submits that it is true that after joining the service as on 13.04.2017, the applicant after 19 months submitted his representation dated 17.11.2018 in the college and also submitted another representation dated 16.11.2018 directly to the Government.

12. Learned Presenting Officer submits that after considering all the documents about the birth date of the applicant the conscious decision was taken by the concerned authorities and the order was duly communicated to the applicant stating therein that the Government has

accordingly rejected the proposal of the applicant about the correction in the date of birth. Learned P.O. invited my attention to Annexure 'R-1' i.e. S.S.C. certificate of the applicant, wherein the date of birth of the applicant has mentioned as '01.06.1964' and further in the certificate of Age and Domicile (Exh. 'R-2') date '01.06.1964' has mentioned as birth date of the applicant. Learned P.O. submits that there is no substance in the application and the same is liable to be dismissed with costs.

13. In Rule 38 of Rules, 1981 the procedure is prescribed for writing events and recording the date of birth in the service book. It is obligatory on the part of the department to correctly record the date of birth of the employee in service book. By way of amendment of the year 2008 in Sub-Rule (2) of Rule 38 of M.C.S. Rules, 1981, for Instruction Nos. 1 and 2 following instructions have been substituted. Instead of reproducing the entire Rule 38, the aforesaid substituted instructions are reproduced herein below which are relevant for present discussion.

**“Rule 38 (2) of the Maharashtra Civil Services, Rules, 1981:-**

(2) ... ..  
*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 the 16<sup>th</sup> August, 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.*

*(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.*

*(2-A) 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;*
- (ii) the date of birth so altered would not make him ineligible for admission in any School or University or for the Maharashtra Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered in the Government service.*

*(2-B) 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, 2008 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 retired Government servant shall not be entertained.”*

14. In terms of Sub-Rule (2) clause (f) of Rule 38 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. However, this clause (f) has to be read with the substituted Instructions as reproduced herein above. In terms of Instruction No. (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 the 16<sup>th</sup> August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service. It thus appears that in terms of Instruction No.1 itself it is directed that the alteration of the entry regarding date of birth as recorded in the service book can be carried out if the application in this regard is submitted within the period of 5 years commencing from the date of his entry in Government service. Instruction No.2 appears to be more specific wherein it is stated that subject to Instruction No. (1), the correct date of birth of the 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. It is however stated in unambiguous words that “such proof should be considered as an unquestionable proof for change of date of birth in service record.”

15. It is not disputed particularly in terms of Age and Domicile certificate submitted by the applicant at the time of joining of his service (Exh. 'R-2') that the place of birth of applicant is Baramati and he domicile of the State of Maharashtra by reason of Birth/Residence. The applicant has submitted the attested copies of his birth certificate and the extract of his birth and death register along with representation. The copies thereof are annexed to this Original Application.

16. On careful perusal of the extract of birth and death register maintained by Municipal Council, Baramati it appears that at Sr. No. 204 the name of the applicant is mentioned along with the names of his parents and the date

of birth is shown as '30.03.1965' and the date of entry of the extract is 19.04.1965. On careful perusal of the birth certificate which has been issued by Municipal Council Baramati by referring the aforesaid registration No. 204 and the date of birth of the applicant is mentioned as '30.03.1965'. His place of birth is shown as C. Ju. Hospital, Baramati. Full name of his father is mentioned along with their permanent residence at Gunwadi Tal. Baramati, Dist. Pune. Thus the case of the applicant is fully covered in terms of Instruction No. 2 of Rule 38 of Sub Rule (2) of M.C.S. Rules, 1981.

17. In a case **Shankar Arjun Nimsarkar Vs. Zilla Parishad, Wardha & Ors.** (Writ Petition No. 4336/2022) decided on 14.09.2022, the Hon'ble High Court of Bombay, Bench at Nagpur in the similar set of facts in paragraph Nos. 13, 14, 15 and 18 has made the following observations:-

*"13. After perusal of the school leaving certificate it appears that the birth date of the petitioner was recorded as 29/08/1964. Admittedly, the petitioner had filed on record the birth register extract which shows that his date of birth is 19/02/1966 which was registered on 20/02/1966.*

14. After having considered the material placed on record, the petitioner has established that his birth date was 19/02/1966 which was registered immediately on the next date with the Municipal Council, Hinganghat i.e. on 20/02/1966. After careful consideration of the entire material on record it is crystal clear that the correct date of birth of the petitioner is 19/02/1966. The petitioner had claimed the said birth date on the basis of record which was maintained by the Municipal Council, Hinganghat during their day to day activities. From the Rule 38 of the M.C.S.R. Rules, it is quite evident that it is obligatory upon the department to correctly record the date of birth of an employee in the service book. While recording the date of birth they have to follow the prescribed procedure. The entry made in the service book is treated as final in terms of Rule 38(2)(f). Rule 38(2)(f) also states that 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.

15. In the instant case, the school leaving certificate was issued by the School wherein the petitioner was admitted. It appears that inadvertently said date of birth was wrongly recorded in the school record and on the basis of same respondent Nos.1 and 2 have

*recorded his date of birth as 29/08/1964. Though the petitioner had filed an affidavit it was not considered by the respondent Nos.1 and 2.*

*18. After having considered the facts in the present case, admittedly the petitioner had filed an application within five years supported with birth record maintained by the Municipal Council, Hinganghat during their day to day activities. The date of birth which recorded in the record of Municipal Council is 19/02/1966 which was immediately registered with the Municipal Council on 20/02/1966. The material is sufficient on record to show that in school leaving certificate the birth date of the petitioner was wrongly recorded and, therefore, he has made out the case to show that the incorrect date of birth was recorded in the school leaving certificate and in his service book without his fault but due to want of care on the part of some other person. Though he had submitted the representation for correction of the said date of birth within the stipulated period of five years his date of birth was not corrected and wrongly his representation was rejected. The action of respondent No.1 rejecting his representation is illegal and without considering Rule 38(2)(f) as well as Government Resolution dated 03/03/1998, therefore, the said communication deserves to be set aside.”*

18. In a case **Shriniwas Prabhakar Karve Vs. State of Maharashtra and Ors.** (Writ Petition No. 2345 of 2025) decided



on 22.04.2016 the Hon'ble High Court of Bombay, Bench at Aurangabad has also taken the similar view.

19. In Original Application No. 280 of 2023 in a case **Shri Sudhir Bhagwat Kalekar Vs. the State of Maharashtra & Ors.** decided on 21.04.2023 in paragraph Nos. 10 and 11 the principal seat of this Tribunal at Bombay has made the following observations.

*“10. True, as per Rule 38(2)(a)(f) of ‘Rules of 1981’, once an entry of date of birth is made in service book, no alteration of entry afterwards 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 or is obvious clerical error. At the same time, Instruction No.1 provides for alternation in date of birth recorded in service book where application is made within five years from the date of joining service. Thus, harmonious construction of Rule 38(2) is that in certain situation, where entry of date of party recorded in the service book is on account of some error, it can be corrected if conclusive evidence for change of date of birth is forthcoming and the procedure contemplated under Rule 38(2) of ‘Rules of 1981’ is adhered to. In other words, there is no such express bar or prohibition for change of date of birth in service record where it is found 6 O.A.280/2023 that there is obvious mistake in recording the date of birth and there is cogent and satisfactory evidence to establish the correct date of*

*birth. Needless to mention, the extract of public record i.e. Birth Register maintained by local body in terms of Rules have greater probative evidential value and must prevail over the entry of date of birth recorded in School record. There is presumption of correctness of the entries taken in public record and presumption continues to hold unless it is rebutted.*

*11. In the present case, the Applicant has explained that due to illiteracy of parents, the incorrect date of birth as 23.05.1965 was recorded in School record though his correct date of birth as per Municipal record is 23.11.1965. Such mistake in recording date of birth in School record for one or other reason is not uncommon. Therefore, one need to see whether some other authentic public record about the date of birth is available and where such evidence is forthcoming and stands unrebutted, it should prevail over School record.”*

20. In view of the discussions as above and since the ratio laid down in the aforesaid cases is squarely applicable to the facts and circumstances of the present case, the Original Application deserves to be allowed. Hence, the following order:-

**ORDER**

- (A) The Original Application is hereby allowed.
- (B) The impugned order dated 22.07.2021 passed by the respondent No.2 is hereby quashed and set aside.

- (C) The respondents are hereby directed to make necessary correction in service record of the applicant in respect of date of birth as '30.03.1965' instead of '01.06.1964' in terms of the birth certificate of the applicant.
- (D) In the circumstances, there shall be no order as to costs.
- (E) The Original Application stands disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 08.02.2024**

SAS O.A. 1031/2022 (S.B.) VKJ Date of birth.