

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.338/2022(S.B.)**

Dr. Sau. Kavita w/o. Anil More nee  
Kavita d/o. Raibhan Sakhare, aged about 53 yrs,  
Occ. Service (Livestock Development Officer),  
R/o. P.N. 604, Model Town,  
Indora Chowk, Post- Jaripatka,  
Nagpur- 440014.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Department of Agriculture,  
Animal Husbandry,  
Dairy Development & Fisheries,  
Mantralaya, Mumbai-32.
- 2) Commissioner of Animal Husbandry,  
(M.S.), Central Building- Pune 411001.
- 3) Regional Joint Commissioner  
of Animal Husbandry,  
Nagpur Division, Nagpur 440001.
- 4) Govt. of Maharashtra,  
through Secretary, Finance Department,

Mantralaya, Mumbai-32.

**Respondents**

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Shri P.V.Thakre, Ld. Counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 05<sup>th</sup> February, 2024.**

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**JUDGMENT**

**Judgment is reserved on 24<sup>th</sup> January, 2024.**

**Judgment is pronounced on 05<sup>th</sup> February, 2024.**

Heard Shri P.V.Thakre, learned counsel for the applicant and  
Shri M.I.Khan, learned P.O. for the respondents.

2. In this O.A. communications dated 27.07.2023 (Annexure A-27) and 01.08.2023 (Annexure A-28) issued by respondents 1 & 2, respectively rejecting prayer of the applicant for changing her date of birth from 14.04.1968 to 24.03.1969, are impugned.

3. Pursuant to order dated 30.08.1994 the applicant was posted at Veterinary Polyclinic, Bhandara as Livestock Development Officer by order dated 19.09.1994. On the basis of certificates produced by her, her date of birth was entered as 15.04.1968 in service book. On 15.10.1994 she submitted application (Annexure A-4) for changing her

date of birth to 24.03.1969. She submitted second application dated 15.12.1994 (Annexure A-6) to respondent no.2 for change of date of birth. In response to communication dated 01.11.1995 (Annexure A-7) she submitted her birth certificate and birth certificate of her elder brother. In official Gazette her date of birth was changed to 24.03.1969 (Annexure A-9). After some correspondence she submitted application dated 09.12.1999 (Annexure A-11) stating therein *inter alia* that date of birth of her elder brother was 06.12.1967 (which could not be reconciled with her date of birth being 15.04.1968). With application dated 14.12.1999 (Annexure A-12) she again submitted a set of relevant documents. By letter dated 25.09.2001 (Annexure A-14) she clarified that she had already submitted all the relevant documents. Pursuant to communication dated 22.11.2004 (Annexure A-16) she again submitted one set of documents (Annexure A-17 collectively). By communication dated 30.04.2005 (Annexure A-18) respondent no.2 sought clarification and she furnished it by letter dated 10.05.2005 (Annexure A-19). From respondents 3 and 2 she received letters dated 30.08.2005 and 29.05.2007 (Annexures A-20 & A-21, respectively). With letter dated 18.12.2007 (Annexure A-22) she submitted copy of her birth certificate (at P.60). Since she did not receive any communication from the respondents she made a representation dated 22.06.2015 (Annexure A-

23). This, too, went unheeded. During pendency of this O.A., by communication dated 19.05.2023 (Annexure A-25), respondent no.3 asked her to appear before respondent no.1 on 22.05.2023. On 22.05.2023 hearing was given to her. This was followed by the impugned communications (Annexures A-27 & A-28). Hence, this O.A..

4. Though one of the grounds on which the respondents have resisted this O.A. is that application for change in date of birth made by the applicant was rejected on 19.04.2010, there is nothing on record to substantiate said assertion. On the contrary, the documents attached to reply of the respondents which are collectively marked Annexure R-1, show that the applicant was pursuing the matter, answering queries raised by the respondents and furnishing clarifications from time to time.

5. The other ground raised by the respondents is founded on Rule 38(2)(f) of the M.C.S. (General Conditions of Services) Rules, 1981 which reads as under-

*38. Procedure for writing the events and recording the date of birth in the service book.*

*(1) XXX*

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

(a) X XX

(b) X XX

(c) X XX

(d) X XX

(e) X XX

(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 shown 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.*

6. It was submitted by Shri Thakare, learned counsel for the applicant that instruction no.(2) to Rule 38(2) does provide for fresh determination of date of birth if the applicant furnishes requisite documentary evidence. There is no dispute about this proposition.

7. The question is whether, in the facts and circumstances of the case, change in date of birth would be permissible.

8. The applicant has relied on Judgment of Principal Bench of this Tribunal dated 24.04.2023 in O.A.No.733/2022 wherein it is held-

***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 situations, where entry of date of birth 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 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 has 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.*

9. In reply, it was submitted by learned P.O. that effect and implementation of aforesaid Judgment dated 24.04.2023 has been stayed by the Hon'ble Bombay High Court in Writ Petition

No.9098/2023. Documents placed on record substantiate this submission.

10. The respondents, on the other hand, have relied on the Judgment of Hon'ble Bombay High Court in the case of **the State of Maharashtra Vs. Sudhir Bhaqwat Kalekar 2023 SCC OnLine Bom 1296, decided on 23.06.2023** wherein it is held-

*11. At the time of entry into service, the Respondent submitted and relied upon College Leaving Certificate, as well as Matriculation Certificate. In both the documents, his date of birth was recorded as 23 May 1965. No efforts were made by him for change of entry of date of birth in the School/College records or in the Matriculation Certificate. As a matter of fact, under the provisions of Clauses-26.3 and 26.4 of the Secondary School Code, change in date of birth is not permissible after student leaves the school. Thus, under the Code, there is complete prohibition on alteration of entry relating to date of birth from school records after the student passes out or leaves the school. The said provision has been interpreted by the Full Bench of this Court in Janabai V/s. State of Maharashtra, 2020 (1) ALL MR 360 holding that in cases of 'obvious mistake', application for alteration of date of birth can be entertained even after the student leaves the School.*

*12. In the present case, however, the Respondent did not make any attempt to get the date of birth corrected in his school records. Upon*

*correction of date of birth in the school records, Respondent could have got the same corrected in the Matriculation Certificate as well. However, even this was not done. Therefore, as of today, both in school/college records as well as in the Matriculation Certificate, Respondent's date of birth continues to be reflected as 23 May 1965. In that view of the matter, permitting Respondent to correct his date of birth in service record would result in incongruous situation where there would be different dates recorded in his school records/matriculation certificate and service records.*

*17. The Tribunal has also erred in interpreting the provisions of Rule 38 of the Rules of 1981. It is not Respondent's case that the error is attributable to any other person other than himself. Respondent himself produced College Leaving Certificate and Matriculation Certification, on the basis of which his date of birth was recorded as 23 May 1965. He therefore cannot blame any other person for the alleged error. So far as the second ground of 'obvious clerical error' is concerned, it cannot be stated that there has been any obvious or clerical error in recording Respondent's date of birth. The date of birth has been recorded on the basis of the documents produced by the Respondent. Even today, the said documents continue to reflect 23 May 1965 as Respondent's date of birth. Therefore, the case of Respondent is not covered by the expression 'obvious clerical mistake'.*



Aforequoted observations squarely apply to the facts of the case. On the basis of documents furnished by the applicant herself her date of birth was entered in service book. It was neither error of someone else nor was it an obvious clerical mistake. Hence, the bar under Rule 38(2) (f) was clearly attracted. This the being factual and legal position, the impugned communications cannot be faulted. The O.A. is accordingly dismissed with no order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 05/02/2024  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J).  
Judgment signed on : 05/02/2024.  
and pronounced on  
Uploaded on : 06/02/2024.