

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 55/2023 (S.B.)

Raju S/o Murlidhar Nagare,
Aged 37 years, Occ. Service,
R/o Plot No.78, Matrupidru Prasad,
Gandhi Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home (Transport) Division,
2nd Floor, Mantralaya, Mumbai-32.

- 2) The Commissioner of Transport,
State of Maharashtra,
Having its office 5th Floor,
Fountain Dursanchar Bhavan-2,
Mahatma Gandhi Marg,
Fort Mumbai-400001.

Respondents

Shri S.P.Palshikar, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated: - 12th October, 2023.

JUDGMENT

Judgment is reserved on 10th October, 2023.

Judgment is pronounced on 12th October, 2023.

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. Case of the applicant is as follows. The applicant joined the respondent department on 20.02.2013 as Assistant Inspector, Motor Vehicles. In service book his date of birth was wrongly entered as 14.04.1984 instead of 14.04.1986. On 20.02.2015 he submitted application (Annexure A-1) to correct his date of birth. To this application he attached xerox copy of birth certificate, xerox copy of driving licence, birth certificate issued by Nashik Municipal Corporation and certificate of passing M.S.C.I.T.. He pursued the matter, submitted explanations, furnished documents as he was called upon to do relating to which internal correspondence also took place (Annexures A-2 to A-8) and ultimately, by the impugned order dated 23.11.2022 (Annexure A-9) respondent no.1 rejected the application (Annexure A-1) on the ground that there was no obvious clerical error which would have warranted correction in date of birth as per Rule 38(2)(f) of the M.C.S. (General Conditions of Services) Rules, 1981.

3. Stand of respondents 1 and 2 is that the impugned order was in conformity with Rule 38(2)(f) of the M.C.S. (General Conditions of Services) Rules, 1981. It reads as under-

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

(1) X X X

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

(a) X X X

(b) X X X

(c) X X X

(d) X X X

(e) X X X

(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.

4. Office record was made available for perusal. It shows that at the time of joining the applicant had produced two documents

containing his date of birth viz. School Leaving Certificate and S.S.C. Certificate and in both these documents his date of birth was stated to be 14.04.1984.

5. To his application dated 20.02.2015 the applicant had attached xerox copy of birth certificate issued by Asher Maternity Hospital, Nashik in which his date of birth is shown to be 14.04.1986 (Annexure A-10). There is nothing on record as to when this certificate was obtained. Para VII of the O.A. which contains pleading about this certificate is silent on this vital point.

6. To the application dated 20.02.2015 the applicant had also attached birth certificate issued by Nashik Municipal Corporation (Annexure A-11). This Certificate was issued on 28.05.2013 i.e. after the applicant had joined the respondent department. In this certificate date of birth of the applicant is shown to be 14.04.1986 and date of registration of birth is shown to be 28.04.1986. Though, birth was stated to have been registered barely 14 days after birth, the child was referred to by his first name. As per record, on 01.04.2019 one Shri Sandip Nimse was deputed to check record of Nashik Municipal Corporation in respect of birth of the applicant and when he visited the record room he found that the entire record had become brittle and hence it was not possible to get it xeroxed. The record further shows that there was no obvious

clerical error while recording date of birth of the applicant because said date was recorded on the basis of School Leaving Certificate and S.S.C. Certificate furnished by the applicant himself.

7. Learned P.O. relied on the **Commissioner of Police, Bombay And Another Vs. Bhagwan V. Lahane (1997) 1 Supreme Court Cases 247.** In this case, while advertng to the facts and recording conclusions it was observed-

6. It is not in dispute that the respondent had produced Secondary School Leaving Certificate which contains his date of birth as 12-11-1948. One of the instructions indicates that his own statement or that of a parent, guardian, friend or relative on the date of entry in service and also the School Leaving Certificate, Secondary School Certificate Examination, Matriculation Certificate or University Certificate, is the relevant document for that purpose. The respondent, admittedly, filed his Secondary School Leaving Certificate at the time of entry into service on the basis of which his date of birth was reflected in the service register as 12-11-1948. The respondent ought to have produced the reliable material to show that the date of birth mentioned in the School Leaving Certificate was incorrect. No such material was produced by him. The extract from the birth register produced by him along with his representation being inconsistent with the School Leaving Certificate produced by him earlier, he ought to have proved to the

satisfaction of the competent authority that he was given a name before or soon after his birth and that his name was entered in the birth register at the time of registration of his birth. Ordinarily, a child is not given a name before birth and in the entry in the birth register only sex, viz., male or female would be mentioned. After naming ceremony, the name is given. It is, therefore, highly doubtful if the parents of the respondent who were villagers and illiterate had named the appellant either before or on the day of his birth.

(Emphasis supplied)

8. It was argued by Shri S.P.Palshikar, learned Advocate for the applicant that in the instant case the applicant had relied on his birth certificate issued by the Hospital and certificate of birth registration issued by Nashik Municipal Corporation and hence, the ruling is clearly distinguishable on facts. The part of the aforequoted observations (which has been emphasised) on which the applicant desires to rely refers to reliable material. From record it can be gathered that the documents sought to be relied upon by the applicant to support his application dated 20.02.2015 were found to be not reliable. On the one hand there were these documents produced belatedly and on the other hand there were School Leaving Certificate and S.S.C. Certificate produced by the applicant on the basis of which his date of birth was

entered in service book to be 14.04.1984. Having regard to these circumstances submission of learned P.O. that there was no obvious clerical error necessitating correction as per Rule 38(2)(f) of the M.C.S. (General Conditions of Services) Rules, 1981 deserves to be accepted. The O.A. lacks merits and is liable to be dismissed. It is accordingly dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 12/10/2023
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 : 12/10/2023.
and pronounced on : 13/10/2023.