

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 236 OF 2021

DIST. : AHMEDNAGAR

Vikram s/o Bajirao Garje,)
 Age : 56 years, Occu.: Service,)
 R/o. Karadwadi (Shirapur),)
 Taluka Pathardi, Dist. Ahmednagar.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
 Through Secretary,)
 Public Works Department,)
 Madam Kama Marg,)
 Hutatma Rajguru Chowk,)
 Mantralaya, Mumbai-400 032.)

2. The Superintendent Engineer,)
 Public Works Department,)
 Bandkam Bhavan,)
 Near Ashoka Hotel,)
 Nagar-Aurangabad Road,)
 Ahmednagar,
 Dist. Ahmednagar – 414 001.) .. **RESPONDENTS**

 APPEARANCE :- Shri Avinash S. Deshmukh, learned
 Advocate for the applicant.

: Shri N.U. Yadav, learned Presenting
 Officer for the respondents.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
DATE : **13th MARCH, 2023**

O R A L - O R D E R

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri NU Yadav, learned Presenting Officer for the respondent authorities.
2. The applicant has filed the present Original Application seeking direction against the respondents to correct his date of birth in the service book. It is the contention of the applicant that though his correct date of birth is 15.8.1965, the same has been recorded in the service book as 1.6.1963. The applicant falls in the category of persons with disability. In the move undertaken by the State Government for recruitment of the persons with disability in Government service, the applicant was appointed as Jr. Engineer vide order dated 31.12.2005 and he joined sometimes in January, 2006.
3. It is the case of the applicant that on 11.7.2007 he submitted an application seeking correction in his date of birth. The said application was submitted to the Executive Engineer.

It is the further contention of the applicant that on 3.5.2008 he submitted another detailed application with the same prayer. It is the grievance of the applicant that the said application was kept pending by the respondent authorities for years together and applicant was again constrained to file a representation on 26.4.2021 since his date of retirement was nearing. It is the further contention of the applicant that prior to that also certain applications were submitted by him requesting the respondents to take decision on his representation/applications for correction in his date of birth in his service book. Eventually on 27.5.2021 the applicant was informed that his request cannot be considered and that according to date of birth recorded in the service book he will be retiring on attaining the age of superannuation on 31.5.2021.

4. Aggrieved by the aforesaid actions of the respondent authorities the applicant filed the present Original Application on 24.5.2021 i.e. about one week before his date of retirement. Though there was a prayer for interim relief to the effect that the respondents shall continue the applicant in service till the applications of the applicant are decided by the respondents, it is the matter of record that interim relief was not granted in favour of the applicant. As such, during the pendency of the

present O.A. the applicant retired on 31.5.2021 on attaining the age of superannuation.

5. Shri Avinash Deshmukh, learned counsel appearing for the applicant submitted that within one year of entering into the Government service the applicant has preferred an application seeking correction in his date of birth by giving necessary particulars in the said application itself. The learned counsel submitted that the respondents were under an obligation to decide the said application at the earliest at least within the reasonable period. The learned counsel submitted that by way of precaution the applicant in the year 2008 submitted another application with same prayer by providing some more particulars, however, that application also remained pending for years together. The learned counsel submitted that when the date of retirement of the applicant was nearing he deemed it appropriate to remind the respondents of his pending applications and only thereafter the applications were considered by the respondents and eventually the request so made by the applicant has been rejected.

6. The learned counsel further submitted that the applicant has produced on record the particulars as about the dates of birth of his siblings and the necessary documentary evidence in

that regard. The learned counsel referring to those documents submitted that from the documents so submitted it was quite explicit that the applicant's date of birth could not be 1.6.1963 as recorded in his service book since his elder brother had born in December, 1963 and more particularly on 21.12.1963 as shown in the Grampanchayat record. According to the learned counsel, the respondents must have considered the aforesaid record and accordingly corrected his date of birth within the reasonable time. The learned counsel submitted that from the documents, which the applicant has placed on record, it can be reasonably inferred that his date of birth cannot be 1.6.1963 as recorded in his service book and must be of later period and it must have been recorded in his service book as 15.8.1965.

7. The learned counsel further submitted that an application was also made with the learned J.M.F.C. Courte seeking direction and accordingly orders have been passed directing the Gram Panchayat officials to record the date of birth of the applicant as 15.8.1965 and on that basis the competent authority has also issued birth certificate. The learned counsel submitted that in the circumstances the respondents be directed to correct his date of birth in the service record and treat the applicant in service till his superannuation according

to his correct date of birth and pay him wages of the said period.

8. The contentions raised by the applicant are strongly opposed by the respondents. The learned Presenting Officer submitted that though it is accepted that the applicant had submitted application in the year 2007 or 2008 seeking correction in his date of birth, no necessary documents were annexed with the said application in support of his claim that his correct date of birth was 15.8.1965 and not 1.6.1963 as recorded in the service book. The learned P.O. submitted that in the circumstances the respondents were not able to take any decision. The learned PO further contended that it was the primary duty of the applicant to place on record the requisite evidence so that the respondents can take the appropriate decision. Failure on the part of the applicant has resulted in rejection of his request. The learned PO further pointed out that in the school leaving certificate of the applicant the date of birth of the applicant is recorded as 1.6.1963 and that was the primary evidence, which has been considered by the respondents.

9. The learned Presenting Officer further submitted that on 7.3.2011 the applicant had made a written application under

his own signature seeking exemption from passing the departmental examination on the ground that he has completed the age of 45 years on 31.5.2008. The learned PO brought to my notice the said application which is produced on record by the respondents at Exhibit R-5. In the said application the applicant has made a positive statement that his date of birth is 1.6.1963 and accordingly he has completed the age of 45 years on 31.5.2008 and in the circumstances exemption was sought by the applicant from passing the departmental examination. Along with the said application the applicant under his own signature provided the necessary particulars wherein he himself has mentioned his date of birth as 1.6.1963. The learned PO submitted that in view of the application submitted on 7.3.2011, the applicant shall be deemed to have given up the claim allegedly made in the year 2007 and/or 2008.

10. The learned PO further submitted that if the school leaving certificate of the applicant is perused, he is shown to have entered in the first standard on 1.7.1969. The learned PO submitted that if the claim of the applicant that his correct date of birth is 15.8.1965 is to be accepted, then at the time of admission in first standard the applicant was of the age less than 4 years and having regard to rule 128 of the Mumbai

Primary Education Rules, 1949 the applicant could not have been admitted at that age. The learned PO submitted that if the evidence placed on record by the applicant is perused, there appears no substance in the request of the applicant that his correct date of birth is 15.8.1965. On all these grounds the learned PO has prayed for rejection of the O.A.

11. I have carefully considered the submissions advanced on behalf of the applicant and the State authorities. I have also gone through the documents filed on record. Apparently it does not appear that any case is made out by the applicant for causing interference in regard to the date of birth as recorded in the service book. Though it is accepted that the applicant has made application within 5 years from his entry into the Government service, the fact remains that the applicant did not make any follow-up of the said application till the year 2021. The duties and responsibilities are cast on both, the applicant, as well as, the respondents. In the present matter, however, it was primary duty of the applicant to see that his correct date of birth is recorded in his service book, if at all he was confident that his date of birth is 15.8.1965 and not 1.6.1963 for the reason that there was difference of 27 months which the applicant could have certainly spent more in service. There is

absolutely nothing on record to show that from year 2008 till 2021 any follow-up was made by the applicant to ensure that his correct date of birth is recorded in his service book.

12. The documents, which are placed on record more particularly school leaving certificate wherein the date of birth of the applicant is recorded as 1.6.1963 and entry in school in the 1st standard is noted as 1.7.1969 also negates his claim that his correct date of birth is 15.8.1965. The applicant could not have been admitted in the 1st standard had he of the age of less than 4 years while entering in the school.

13. Second more important aspect is that the applicant in the year 2011 submitted an application with the respondents making a statement that his date of birth is 1.6.1963 and has completed the age of 45 years in the year 2008 and hence was entitled for exemption from passing the departmental examination. The applicant has not denied that such applications were made by him with the authorities concerned. When the applicant submitted the application as above and accordingly got exemption from passing the departmental examination, it is significant to note that according to applicant's pleadings in the present O.A., the applications submitted by him in the years 2007 and 2008 seeking

correction in his date of birth were pending with the respondents. By making an unambiguous statement in his subsequent application dated 7.3.2011 that his date of birth is 1.7.1963, the applicant must be deemed to have given up his claim in the earlier applications that his correct date of birth is 15.8.1965. After having got the benefit of exemption from passing the departmental examination claiming the date of birth as 1.7.1963, the applicant in fact is estopped from raising a claim that his correct date of birth is 15.8.1965 and must be held to have given up the said claim made by him in his earlier applications.

14. It further appears to me that the documents which are relied upon by the applicant in order to establish that his correct date of birth is 15.8.1965 and not 1.6.1963 as has been recorded in the service book also may not be of any help to the applicant. The applicant has relied upon the extract of the register maintained by the village Panchayat of Moje Shirapur containing the entries in respect of the births taken place in the month of December, 1963. At Sr. No. 61 there is a entry showing the birth of the son of Bajirao Bhaurao Garje on 21.12.1963. According to the applicant, the aforesaid entry pertains to the birth of his elder brother Sambhaji Bajirao

Garje. The applicant has also filed on record the affidavit of his father Bajirao Bhaurao Garje, wherein said Bajirao has averred on oath that the correct date of birth of the applicant is 15.8.1965. In the affidavit the father of the applicant has further contended that since he is an illiterate person, he has nowhere recorded the date of birth of the applicant and hence there is no documentary evidence in respect of date of his birth. The applicant has also placed on record the age certificate pertaining to his another elder brother Karbhari Bajirao Garje, wherein the date of birth of said Karbhari is noted as 13.7.1961. Based on the aforesaid documents the applicant has claimed that his date of birth cannot be 1.6.1963 as recorded in the service book, but is 15.8.1965 as stated on oath by his father.

15. Insofar as the entry in the birth register of Grampanachayat Shirapur is concerned, on the basis of the said extract it is difficult to hold that the aforesaid entry is in respect of the birth of the elder brother of the applicant namely Sambhaji Bajirao Garje. Applicant has not brought on record any other evidence to corroborate that entry in the Gram Panchayat Birth Register taken on 21.12.1963 is in respect of the birth of Sambhaji Bajirao Garje. Even in the affidavit sworn by Bajirao Garje, he has not even whispered that Sambhaji was

born on 21.12.1963. The said extract does not disclose the name of person, who gave information as about the birth of said Sambhaji. Such evidence, therefore, cannot be depended upon.

16. The affidavit sworn by the father of the applicant also does not inspire any confidence. In view of the fact that the birth of the elder son namely Sambhaji is recorded in the Grampanchayat register, contention of Bajirao in his affidavit that he is an illiterate person and hence could not record the birth of the applicant in Gram Panchayat record appears unbelievable. The applicant has not explained why there is no entry in the Gram Panchayat record of his date of birth when such evidence is available in regard to his elder brother. Moreover, in his affidavit Bajirao Bhaurao Garje has not stated anything about the birth dates of his son Sambhaji or his another son Karbhari or his daughter. It is thus evident that such evidence could not have been sufficient and acceptable to hold that the correct date of birth of the applicant is 15.8.1965 and not 1.6.1963. Thus, even otherwise also there was no case on merit for the applicant to accept his request.

17. The applicant has also relied upon the order passed by the learned JMFC, wherein the direction has been given for taking entry of birth of the applicant in the Grampanchayat record and

to record his date of birth as 15.8.1965. The order of learned JMFC is based on the affidavits submitted by the applicant and his father or near relatives. There is no independent enquiry by the learned Magistrate. Such orders, therefore, cannot be considered as the conclusive evidence in respect of the date of birth.

18. After having considered the entire facts and circumstances existing in the present matter it does not appear to me that any case is made out by the applicant for accepting his contention that his correct date of birth is 15.8.1965 and further that the respondents have wrongfully rejected his request to correct the date of birth in his service book. I reiterate that failure on part of the applicant in following up the application made by him for correction of his birth till year 2021 i.e. till the end of his period of service, benefit of exemption from passing the departmental examination availed by the applicant stating his date of birth as 1.6.1963 in the application filed on 7.3.2011 and failure in producing on record any cogent evidence in order to prove that his correct date of birth is 15.8.1965 are the major reasons for rejecting the request of the applicant. The respondents have not committed any error in rejecting the application. The

applicant is, therefore, not entitled for any relief. In the result following order is passed :-

ORDER

- (i) The Original Application is dismissed.
- (ii) No order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 13.3.2023

ARJ O.A. NO. 50 OF 2021 (salary)

ERROR: syntaxerror
OFFENDING COMMAND: --nostringval--

STACK:

/Title
()
/Subject
(D:20230328190508+05'30')
/ModDate
()
/Keywords
(PDFCreator Version 0.9.5)
/Creator
(D:20230328190508+05'30')
/CreationDate
(abhay joshi)
/Author
-mark-