

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.753/2017**

**DISTRICT: OSMANABAD**

-----  
Vyankat s/o. Nivruti Koralkar,  
Age : 55 years, Occu. : Service,  
R/o. Munsii Plot, Akondi Road,  
Soni Nivas Omerga, Taluka Omerga,  
District Osmanabad.

...APPLICANT

**V E R S U S**

1) The State of Maharashtra,  
Through the Principal Secretary,  
Revenue Department,  
Mantralaya, Mumbai.

2) The Collector, Osmanabad.

3) The Sub Divisional Officer, Omerga.

4) The Tahsildar, Lohara,  
Taluka Lohara,  
District Osmanabad.

...RESPONDENTS

-----  
APPEARANCE :Shri Shamsundar B. Patil Advocate for  
the Applicant.

:Smt. Sanjivani Ghate Presenting Officer  
for the respondents.

-----  
CORAM : B. P. Patil, Member (J)

-----  
DATE : 10<sup>th</sup> December, 2018  
-----

**J U D G M E N T**  
**[Delivered on 10<sup>th</sup> day of December, 2018]**

1. The applicant by filing the present O.A. has challenged order dated 31-08-2017 issued by the respondent no.3 retiring him w.e.f. 31-08-2017 on the basis of his date of birth as 19-08-1959 and prayed to quash and set aside the impugned order. The applicant has also challenged the order dated 31-08-2017 issued by the respondent no.4 directing the applicant to hand over the charge of post of Talathi Sajja Salegaon to one Shri D.P.Gaikwad because of his retirement and prayed to quash the same. The applicant has also sought declaration against the respondents that action of respondents making change in the date of birth of the applicant from 11-11-1962 to 19-08-1959 as illegal, bad in law and prayed to declare that his date of birth is 11-11-1962.

2. The applicant has passed 10<sup>th</sup> standard in the year 1983. He was initially appointed as Muster Assistant on temporary basis in Osmanabad District on 06-10-1986 and posted in the office of Deputy Engineer (Works), Zilla Parishad Sub Division, Omerga, District Osmanabad. Accordingly, he joined the services on 06-10-1986. As per

the Government policy of absorbing Muster Assistants from various reserved categories such as Scheduled Castes, Scheduled Tribes, OBC, VJNT on suitable Class-3 and Class-4 post either in Government offices or in Zilla Parishad establishments, Collector, Osmanabad had issued an order in October, 2003 absorbing Muster Assistants on various posts in Government offices. Name of the applicant appeared at Sr.No.35 of the said list and his seniority number was 267. By the said order, he was appointed as Talathi in the office of Sub Divisional Officer, Bhore, District Pune. The applicant was relieved from the post of Zilla Parishad Works Sub Division Omega on 11-11-2003. Thereafter, he joined his new posting as Talathi in Bhore Taluka on 17-11-2003.

3. It is contended by the applicant that in the school records his date of birth is mentioned as 19-08-1959. On the basis of same, his date of birth has been recorded in the service record. Thereafter, the applicant came to know about his correct date of birth recorded in the office of Gram Panchayat and it was disclosed to him that his real date of birth is 11-11-1962. After collecting necessary documents in that regard, the applicant got changed his

date of birth as 11-11-1962 and got it published in Maharashtra Government Gazette dated 26-07-2007. The applicant has also got changed his name from Venkat Nitruiti Kamble (Koralkar) to Venkat Nivruti Koralkar by the same Government Gazette dated 26-07-2007. Thereafter, the applicant had applied to Tahsildar, Bhor for correcting his date of birth and making correction in the name recorded in his service record by filing an application dated 28-08-2007. The application was considered by Tahsildar, Bhor and accordingly his date of birth in the service book has been corrected as 11-11-1962.

4. The applicant has further contended that as he is resident of Omerga, District Osmanabad, he requested the Government to transfer him in Osmanabad District from Pune District. His request was considered by the Government and he was transferred from Pune to Osmanabad in October, 2009. Since then he was working in Omerga, Sub Division of Osmanabad District. After joining his duty as Talathi in Sub Divisional Officer, Omerga, District Osmanabad had published seniority list of Talathis serving in Omerga Sub Division on 01-01-2017. His name has been recorded therein and his date of birth

has been shown as 11-11-1962. The Collector, Osmanabad had also published seniority list of Talathi as on 01-01-2017 mentioning the same facts therein. It is contention of the applicant that as per his date of birth i.e. 11-11-1962 recorded in the service book he has to retire on 30-11-2020. Nobody objected for his change in the date of birth. On 31-08-2017, respondent no.4 Tahsildar, Lohara issued communication stating that the applicant is going to retire on 31-08-2017 and he has to hand over charge of his post to one Shri D.P.Gaikwad, Talathi Sastur. Said order has been served on the applicant on 27-09-2017. The applicant made application to Tahsildar, Lohara for making necessary correction in the order.

5. It is his contention that the Sub Divisional Officer is the appointing authority and disciplinary authority for him. As order has been issued regarding his retirement by the Tahsildar, he has filed O.A. and challenged the order issued by the respondent no.4 Tahsildar, Lohara. During the pendency of the O.A., respondent no.3 Sub Divisional Officer, Omerga issued backdated order dated 31-08-2017 retiring him on age of 58 w.e.f. 31-08-2017 on his superannuation. It is contention of the applicant that the

impugned order has been issued by the respondent no.3 by putting backdate and it was served to the applicant on 14-10-2017. It is his contention that respondents have changed his date of birth from 11-11-1962 to 19-08-1959 behind his back without giving him an opportunity of hearing. Therefore, the said change made in service record is illegal and consequently the order issued by respondent nos.3 and 4 retiring him w.e.f. 31-08-2017 and directing him to hand over charge of his post to another employee is illegal. Therefore, he has prayed to quash and set aside the same by allowing the O.A. He also sought declaration that change made by the respondents in the date of birth in the service record is illegal. Therefore, he has prayed to direct the respondents to record his date of birth as 11-11-1962 by allowing the O.A.

6. Respondent nos.1 to 3 have resisted contentions of the applicant by filing their affidavit in reply. It is their contention that the date of birth of the applicant has been recorded in service book of the applicant as 19-08-1959 in view of the information supplied by the applicant. They have not disputed the fact that the applicant got notified his correct date of birth in the gazette as 11-11-1962. They

have denied that they have altered the date of birth of the applicant in service book in view of the provisions of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as “the MCS Rules, 1981” for short). It is their contention that the applicant himself moved an application for alteration in the birth record and service record and the said application has been filed after 21 years from the date of joining Government service by the applicant. It is their contention that the applicant joined Government service on 06-10-1986 and he moved an application for correction in date of birth on 28-08-2007. It is their contention that the application was not maintainable in view of the provisions of MCS Rules, 1981. The Gazette in which the corrected date of birth of the applicant has been published is not a proof of the date of birth of the applicant as provided under the MCS Rules, 1981. Therefore, it cannot be a basis for alteration of date of birth of the applicant recorded in service book. It is their contention that the change has not made by them in view of the provisions of the MCS Rules, 1981, and therefore, the applicant cannot take benefit of it. It is their contention that on attaining age of superannuation, the applicant has retired on 31-08-2017 and accordingly the impugned order

has been issued by the respondents. It is their contention that the delay caused for communication of the said order to the applicant is inadvertent and unintentional. It is their contention that the impugned order bears file number which has been maintained in view of the provisions of Chapter 4 (Self Indexing Files of Maharashtra Land Revenue Manual Volume 3), and therefore, the same cannot be doubted. It is their contention that the applicant was made to retire on attaining age of superannuation, and there was no illegality in the same. It is their contention that change in the date of birth of the applicant, which was recorded in service record has been made as per the MCS Rules, 1981, and therefore, the applicant cannot seek declaration as prayed for. On this ground they have prayed to dismiss the O.A.

7. I have heard Shri Shamsundar B. Patil Advocate for the Applicant and Smt. Sanjivani Ghate Presenting Officer for the respondents. Perused the documents placed on record by both sides.

8. There is no dispute about the fact that the applicant was initially appointed on 06-10-1986 on the post of Muster Assistant on temporary basis in Osmanabad



District. Admittedly, as per the Government policy he was absorbed in Class-3 post in view of the order issued by the Collector, Osmanabad in the month of October, 2003 and thereby appointed and posted as Talathi in the office of Sub Divisional Officer, Bhore, District Pune. Admittedly, the applicant joined his new posting as Talathi in Bhore Taluka on 17-11-2003. Admittedly, the applicant has been transferred to Osmanabad District from Pune District on his request in the month of October, 2009. Thereafter he was attached to the office of Sub Divisional Officer, Sub Division Omerga, District Osmanabad. He has been working there since November, 2009. Admittedly, the applicant retired on attaining age of his superannuation on 31-08-2017 by the impugned order. There is no dispute about the fact that initially date of birth of the applicant has been recorded as 19-08-1959 in the service record. On the basis of said date he was made to retire on 31-08-2017.

9. Learned Advocate for the applicant has submitted that initially the date of birth of the applicant was recorded as 19-08-1959 in the service book on the basis of School record. He has submitted that thereafter he came to know about other record of his date of birth i.e. Gram

Panchayat record and it was disclosed to him that his correct date of birth is 11-11-1962. Therefore, he got notified his correct date of birth as 11-11-1962 in the Maharashtra Government Gazette on 26-07-2007 and thereafter filed an application dated 28-08-2007 with the Tahsildar, Bhor, District Pune for making correction in the date of birth recorded in the service record. He has submitted that the Tahsildar Bhor considered his application and corrected the date of birth of the applicant recorded in the service record as 11-11-1962 instead of 19-08-1959. He has submitted that on the basis of the said date of birth seniority list has been maintained by the Sub Divisional Officer, Omerga as well as the Collector, Osmanabad in the year 2017 and nobody objected to it. He has submitted that once change has been made in the service record regarding date of birth, the respondents have no right to alter or correct it against and that too without notice to the applicant. He has submitted that respondents have altered the date of birth of the applicant in the service record as 19-08-1959 and on the basis of same they have issued order retiring him from service. He has submitted that the said action on the part of the respondents is illegal. Therefore, he has prayed to quash the impugned order and

direct the respondents to record his date of birth as 11-11-1962 in the service record.

10. Learned Advocate for the applicant has further argued that change in the service record regarding the date of birth has been made by the Tahsildar, Bhor under whose control the applicant was working. According to him the Tahsildar, Bhor was the competent authority to incorporate correct date of birth in service record. Therefore, said change is legal and proper and the respondent department has no right or authority to make further change in the said entry.

11. Learned Advocate for the applicant has submitted that once the department has made correction in the date of birth of the applicant in the service record then the respondents have no authority to make change in it. In support of his submission he has placed reliance on the judgment of **The State of Maharashtra & Others V/s. Shri Krishnaji Pandurang Kulkarni** passed in **Writ Petition No.5759** of 2016 delivered on 20-12-2017 by the Hon'ble High Court of Judicature At Bombay Bench at Bombay.

12. Learned P.O. has submitted that the applicant has initially joined Government service on 06-10-1986 as

Muster Assistant with the office of Deputy Engineer (Works), Zilla Parishad Sub Division, Omerga, District Osmanabad. At that time, service record of the applicant had been maintained. The date of birth of the applicant has been recorded as 19-08-1959 as per the information supplied by the applicant himself and this fact is evident from the first page of the service book filed at paper book page 45. She has submitted that the said entry has been taken on the basis of SSC certificate produced by the applicant which is at paper book page 46. She has submitted that thereafter the applicant has been appointed and posted as Talathi, and in view of the same, service book of the applicant has been maintained by the respondents. In that service record also the date of birth of the applicant has been recorded as 19-08-1959.

13. Learned P.O. has further submitted that in the year 2007, the applicant applied for correction in the date of birth recorded in the service record by filing the application with Tahsildar, Bhore on the basis of the Government gazette dated 26-07-2007 regarding correction in the date of birth of the applicant. The Tahsildar, Bhore made correction in the date of birth of the applicant and corrected

his date of birth as 11-11-1962 instead of 19-08-1959. She has submitted that Tahsildar, Bhore has no authority to make such alteration in the entry of the date of birth recorded in the service record in view of the provisions of Rule 38 of the MCS Rules, 1981. She has submitted that in view of the said provisions, the application for alteration of entry regarding age or date of birth has to be filed by the Government servant within 5 years commencing from the date of entry in Government service. She has further argued that such cases of alteration of the date of birth should be referred to the General Administration Department (G.A.D.) and Finance Department through administrative department concerned and the G.A.D. and Finance Department are vested with the powers to take decision in this regard. She has submitted that in view of the said provisions, Tahsildar Bhore has no authority to make any alteration relating to the date of birth of the applicant. Therefore, any change made in the date of birth ordered by the Tahsildar Bhore is illegal. He has submitted that the applicant has not filed application within 5 years from the date of his entry in service i.e. from 06-10-1986. Therefore, his application cannot be entertained. She has submitted that the documents produced by the applicant at

that time for alleged alteration or change made by the Tahsildar Bhor are not as per the provisions of the MCS Rules, 1981.

14. In support of her submissions, she has attracted my attention towards the provisions of Rule 38 (2) (f) and instruction no.(1) and (3) of the MCS Rules, 1981. She has submitted that the date of birth of the applicant has been recorded as 19-08-1959 on the basis of information and documents supplied by the applicant when he entered in the service in the year 1986. On the basis of the said entry, the applicant was made to retire w.e.f. 31-08-2017 on attaining age of superannuation, and therefore, there is no illegality in the impugned order regarding retirement of the applicant. She has submitted that since the applicant has retired on superannuation, the direction as prayed for by the applicant cannot be granted. Therefore, she has prayed to dismiss the O.A.

15. On perusal of the record, it reveals that the applicant entered the Government service on 06-10-1986 as Muster Assistant and posted in the office of Deputy Engineer (Works), Zilla Parishad Sub Division, Omerga, District Osmanabad. On joining his duties, service book was

opened. His date of birth has been recorded in the service record maintained by the Sub Divisional Officer, Omerga as 19-08-1959 on the basis of information supplied by the applicant as well as the documents supplied by the applicant i.e. SSC certificate of the applicant which are at paper book page 44 and 46. Thereafter, the applicant has been absorbed and he was appointed and posted in the year 2003 as per the Government policy as Talathi in Pune District. Thereafter, Tahsildar Bhor has maintained service record of the applicant. Initially in that service book also the date of birth of the applicant was mentioned as 19-08-1959. The applicant has not made any grievance regarding incorrect date of birth recorded in the service book till the year 2007. For the first time in the year 2007 he got published his correct date of birth in the Government gazette dated 26-07-2007 and on the basis of said gazette he filed the application dated 28-08-2007 to Tahsildar, Bhor for making correction in the date of birth recorded in service book. On the basis of his application Tahsildar, Bhor corrected the date of birth in service record as 11-11-1962 instead of 19-08-1959.

16. Rule 38 of the MCS Rules, 1981 provide procedure for writing events and recording date of birth in the service book. Sub Rule 2 to the Rule 38 provides procedure to be followed while recording the date of birth. Rule 38, Sub Rule 2 (f) provides that once an entry of age or date of birth has been made in the service record, 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. Instruction no.(1) below the said sub rule 2 of Rule 38 provides that 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. Instruction No.(3) to sub Rule 2 of Rule 38 of the MCS Rules, 1981 provides that all cases relating to alteration of dates of birth of Gazetted Government servants and such of the requests of Non-gazetted Government servant above, should invariably be referred to the General Administration Department and the Finance Department



through the Administrative Department concerned. Provisions of Rule 38 Sub Rule (2) (f), instruction no.(1) and (3) are material, therefore, same are reproduced as under:

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

(1) ...

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

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(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;*

*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) ...*

*(2-A) ...*

*(2-B) ...*

*(3) All cases relating to alterations of dates of birth of Gazetted Government servants and such of the requests of Non-gazetted Government servants above, should invariably be referred to the General Administration Department and the Finance Department through the Administrative Department concerned.”*

17. On plain reading of the said provisions, it reveals that the instruction no.(1) and (3) to Sub Rule 2 of Rule 38 shall have to be read conjointly. On conjoint reading of the said Rules, it reveals that an application for alteration of entry regarding the date of birth recorded in the service book shall not be entertained after a period of 5 years commencing from the date of entry in the Government service by the Government employee and all cases relating to the date of birth of such employee should invariably be referred to G.A.D and Finance Department through the administrative department concerned. Said rules nowhere

provide that such application can be dealt with by Head of the Department or the Controlling Officer under whom the Government servant is serving. Therefore, Tahsildar, Bhor under whom the applicant was serving in the year 2007 is not empowered to deal with the cases relating to alteration of date of birth of the applicant. Only competent authority is G.A.D. and Finance Department to take decision in such matters and proposal in that regard has to be forwarded to them through administrative department concerned.

18. In the instant case, the applicant has not filed the application for alteration of entry regarding the date of birth recorded in the service record i.e. service book within stipulated period of 5 years from the date of his entry in service as provided in Rule 38(2) (f) Instruction no.(1). Not only this but the concerned department i.e. Revenue Department has not forwarded any proposal in that regard to G.A.D. and Finance Department which are competent authorities to take decision in that regard as provided under Instruction no.(3) to sub Rule (2) of Rule 38 of the M.C.S. Rules, 1981. Therefore, change in the date of birth as made by the applicant made by Tahsildar, Bhor is not as per the said provision, and therefore, it is illegal and bad in

law. The competent authority as provided under the said Rules has not made any alteration in the date of birth recorded in the service book of the applicant. Therefore, the original date of birth as 19-08-1959 recorded in the service book of the applicant can be considered for considering the date of retirement of the applicant and accordingly the respondents considered the said date and issued the order retiring the applicant w.e.f. 31-08-2017. Therefore, I do not find any illegality in the impugned order.

19. I have gone through the decision referred by the learned Advocate for the applicant. Facts in that case are different from the facts in the present case. In that case, department on its own accord made change in the service record of the applicant and on the basis of that the petitioner in that case continued to work. Therefore, the Hon'ble High Court has not considered the plea of the employer i.e. the Government. Hence, the said decision is not much useful to the applicant in the present case.

20. In view of the discussion in the foregoing paragraphs, it is crystal clear that the respondents had recorded the date of birth of the applicant as 19-08-1959 on the basis of information and documents submitted by the applicant in

the service record of the applicant and the said date of birth has not been altered or changed by the order of the competent authority after following due procedure as provided under Rule 38 (2) (f) and Instruction Nos.(1) and (3) of M.C.S. Rules, 1981. On the basis of service record and entry in the Sevaarth System, the impugned order retiring the applicant from service has been issued by the respondents. Said order is legal and proper and therefore no interference is called for in the same. Since the applicant had been made to retire on the basis of the date of birth recorded in the service record, no direction as claimed by the applicant for making correction in the date of birth of the applicant can be issued.

21. In view of the above discussion, there is no merit in the O.A., hence no interference in the impugned order is called for. Consequently, O.A. deserves to be dismissed. Hence, O.A. stands dismissed without any order as to costs.

**(B. P. PATIL)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 10-12-2018.**