

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.887/2016

DISTRICT – PARBHANI

Ashok Ramrao Pawar,
Age: 55 years, Occ : Service,
R/o : Dargah Road, Ganesh Nagar,
Parbhani.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Director General of Police,
Bhagatsingh Marg, Colaba,
Mumbai – 400 001.
Nasik, District Nasik.
3. The Superintendent of Police,
Parbhani.

...RESPONDENTS

APPEARANCE :Shri P.S.Paranjape, learned Advocate for
the applicant.

:Smt. Resha Deshmukh, learned
Presenting Officer (PO) for the
respondents.

CORAM : Hon'ble Shri B.P.Patil, Member (J)

DATE : 3rd July 2017

J U D G M E N T
[Delivered on 3rd day of July 2017]

Applicant has sought direction to the respondent nos.2 and 3 to correct his date of birth recorded in the service record as 06-04-1962 instead of 06-04-1959 by filing this Original Application (O.A.). The applicant is resident of Village Mandva, Tq. & Dist. Parbhani. He was born on 06-04-1962 at Mandva but his date of birth was not registered with the local authority i.e. Gram Panchayat. At the time of admission in school, his father had wrongly mentioned his date of birth as 06-04-1959 with a view to increase his age. Same date of birth was carried on in the school records as well as in the school leaving certificate. On attaining age of majority, applicant came to know about the mistake. He moved an application for notifying the change in his date of birth in the gazette. Accordingly, gazette notification dated 13.10.1983 was published and change in the date of birth was notified accordingly.

2. On 10-06-1986, applicant was recruited as Police Constable. While filling service book, his date of birth was mistakenly recorded as 06-04-1959 on the basis of school leaving certificate. In the year 1989, the applicant moved

an application with respondent no.3 i.e. Superintendent of Police, Parbhani for correction in date of birth wrongly recorded in his service book on the basis of gazette notification dated 13-10-1983 but no heed was paid to his request. Thereafter, time and again applicant moved applications during the year 1989 and 2006. But the respondent no.3 had not paid heed to his request. However the respondent no.3 sent a letter dated 11-10-2012 and reminder letter dated 17-12-2012 to the respondent no.1 and forwarded application for necessary action. Respondent no.3 has not taken decision on it, and therefore, the applicant preferred O.A.No.747/2013 before the Tribunal. Subsequently, he had withdrawn it on 16-12-2013. Thereafter, applicant moved M.A.No.453/2014 under rule 13 of the Birth and Death Registration Rules, 1969 before the Judicial Magistrate First Class (JMFC), Parbhani seeking direction to Gram Panchayat to record his date of birth in the Birth Register as 06-04-1962. The M.A. came to be allowed. Thereafter, applicant moved an application dated 18-11-2014 with the respondent no.3 and requested to correct his date of birth in service record but the respondent had not decided the same.

3. It is contention of the applicant he is eldest amongst his brothers. He has two brothers viz. Arun and Balasaheb. Arun Ramrao Pawar is younger to him and his date of birth is 13-10-1963 while Balasaheb Ramrao Pawar is their youngest brother having date of birth as 12-06-1968. His father has sworn in his affidavit in that regard and the same has also been filed. Application of the applicant has been forwarded to the respondent no.2 by the respondent no.3 but no decision has been taken by the respondents. It is his contention that he moved application within 5 years of joining government service for correcting date of birth recorded in service record and produced necessary documents in support of his contention, but the respondents rejected the application by order dated 26-12-2016. Therefore, applicant approached this Tribunal and sought direction to the respondents to correct date of birth recorded in service record as 06-04-1962 instead of 06-04-1959.

4. Respondents have resisted the contentions of the applicant by filing their affidavit in reply. They have specifically denied that the applicant moved applications for

correction in date of birth recorded in his service record during the year 1989 to 2006. They have denied that the date of birth of the applicant in the service book has been mistakenly recorded as 06-04-1959. It is their contention that on the basis of the information supplied by the applicant and the documents placed on record by him, his date of birth has been recorded in the service record as 06-04-1959. Applicant had not produced gazette notification at that time. It is their contention that xerox copies of the applications filed by the applicant dated 15-09-1989, 20-05-1993, 18-04-1998 and 27-01-2006 are suspicious as there is overwriting on the same. It is their contention that they have never received said applications filed by the applicant. It is further contended by them that they ascertained correctness of the date of birth on the basis of certificate of 10th examination produced by the applicant. The applicant filed M.A.No.453/2014 before JMFC, Parbhani after withdrawing O.A.No.747/2013 but they have no knowledge about the same. It is their contention that they have rightly rejected application of the applicant as application was not filed within 5 years from the date of joining service, and accordingly order dated

26-12-2016 has been passed by the respondent no.1. They have denied that there was inaction on their part in taking decision on applications moved by the applicant. It is their contention that the applicant has moved the application with intention to avail financial benefits by extending service period by changing date of birth in the service record. Therefore, they have prayed to reject the O.A.

5. I have heard Shri P.S.Paranjape, learned Advocate for the applicant and Smt. Resha Deshmukh, learned Presenting Officer (PO) for the respondents. Perused documents placed on record by the parties.

6. Learned Advocate for the applicant has submitted that the applicant was born on 06-04-1962 at Village Mandva but his parents had not recorded his date of birth in birth register maintained by the Gram Panchayat. While admitting him in school his father has wrongly mentioned his date of birth as 06-05-1959 to increase his age. Said date of birth has been carried out in the school record as well as in the school leaving certificate. He has submitted that in the year 1983, the applicant got it corrected as 06-04-1962 instead of 06-04-1959 by notifying it in

government gazetted dated 13-10-1983. He has submitted that the applicant joined as a Police Constable on the establishment of respondent no.3 on 10-06-1986. While filling up his information in service book respondents have wrongly mentioned his date of birth as 06-04-1959 on the basis of school leaving certificate. He has argued that in the year 1989 i.e. on 15-09-1989 the applicant moved an application to the respondent no.3 for correction in his date of birth recorded in service record on the basis of gazette notification dated 13-10-1983 but the respondent no.3 has not paid heed to the representation filed by the applicant. He, therefore, again moved applications dated 15-09-1989, 20-05-1993, 18-04-1998 and 27-01-2006 to the respondent no.3 with a request to consider his representation dated 15-09-1989 but the respondents have not considered the same. He has submitted that the respondent no.3 in the year 2012 forwarded his application to the respondent no.3 which came to be rejected by respondent no.3 on 26-12-2016. He has further submitted that as the respondent nos.1 and 2 have not taken decision on the applications, the applicant had filed O.A.No.747/2013 before this Tribunal but later on he had withdrawn the

same on 16-12-2013 with liberty to move fresh application before the concerned authorities. He has argued that thereafter the applicant moved M.A.No.453/2014 under rule 13 of Birth and Death Registration Rules, 1969 before JMFC, Parbhani for giving direction to the Gram Sevak for taking entry of his date of birth in birth register maintained by the Gram Panchayat. Said application was allowed. He has submitted that thereafter again applicant moved representation dated 18-11-2014 with the respondent no.3 attaching the copy of the birth certificate issued by the Gram Panchayat but the respondents have not considered the said aspect and consequently on 26-12-2016 respondents rejected the application on the ground that he had not moved application for correction in date of birth recorded in service record within stipulated period of 5 years from joining government service.

7. Learned Advocate for the applicant has further submitted that the applicant has moved application in the year 1989 but the respondents had not taken decision on it. He has submitted that in the year 1983, notification was published in the official gazette regarding change in the date of birth of the applicant. He has attached copy of the

same to his earlier representations. He has submitted that applicant then got recorded his date of birth in Gram Panchayat record on the basis of order passed by JMFC, Parbhani in M.A.No.453/2014 and produced the extract of birth register before respondents.

8. It is further submitted on behalf of the applicant that the respondents have not considered the fact that the applicant has moved the application for correction of his date birth recorded in service record for the first time in the year 1989 i.e. on 15-09-1989, and thereafter, again moved applications dated 20-05-1993, 18-04-1998 and 25-01-2006 but the respondents had not considered those applications. Therefore, he was compelled to file another application in the year 2012 which had been rejected by the respondents by communication dated 26-12-2016 on the ground that it was not filed within 5 years from the date of joining services. He has argued that respondents have not considered the aspect that the applicant requested the respondents immediately after joining service within 5 years i.e. in the year 1989 and prayed to correct the date of birth recorded in service record. He has submitted that as the

respondents have not considered the earlier applications, the impugned order is not proper and legal.

9. Learned Advocate of the applicant has further argued that his date of birth has been recorded as 06-4-1959 in service record on the basis of School Leaving Certificate or S.S.C Certificate. He has submitted earlier that date of birth of the applicant was not recorded in the Gram Panchayat record, therefore, he got recorded his date of birth in Birth & Death Register of Gram Panchayat Mandva in view of the order passed by the JMFC, Parbhani in M.A.No.453/2014. The applicant had produced copy of the same before the respondents. But the respondents had considered the said document also. He has submitted that said document will prevail over the copy of the School Leaving Certificate or SSC Certificate and more weightage will have to be given to the birth record recorded in Birth & Death Register as it is a public document. In support of his submission, he has placed reliance on the judgment in the case of **Smt. Vasudha Gorakhnath Mandvikar V/s. The City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO)** in **Civil Writ Petition No.6962 of 2006** decided by the Hon'ble High

Court of judicature of Bombay on 17-04-2008 wherein it is observed in paragraph 14 as under:

"14. Consequently whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, carrying the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted, such certified copy issued by a public authority would stand nullified."

In the said decision it is further observed in paragraph 25 as follows:

"25. It appears that the Petitioner has relied upon a circular dated 3rd March, 1998 of the General Administration Department of the Government of Maharashtra stating that whenever there is a variance in the date of birth and the school leaving certificate or the S.S.C certificate of an individual, the date of birth

recorded in birth- death record must be accepted. It is contended on behalf of the Respondents that, that circular is not applicable to them. Even if the circular is not applicable, the circular merely recites the correct position in law as aforesaid. It is merely clarificatory. It would remove doubts and can be used as a matter of convenience. It enunciates the correct position for law. It is not contrary to the position in law under the Evidence Act with regard to the proof of public and private documents and the legal presumptions which are available only to public documents."

10. He has submitted that the said judgment has been challenged by respondent CIDCO in the Hon'ble Apex Court. Hon'ble Apex Court has also upheld decision of the Hon'ble High Court in **Civil Appeal No.3615 of 2009 [arising out of SLP (Civil) No.20794 of 2008]** decided on 15-05-2009 wherein it is observed as follows:

"20. The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section

35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. [See Birad Mal Singhvi v. Anand Purohit [AIR 1988 SC 1796]."

11. Learned Advocate for the applicant has further submitted that similar issue was involved in O.A.No.676/2015 in the case of **Bhagwan Mahadeo Patil V/s. The Development Commissioner (Industries) & Ors.** decided on 19-09-2016 by the Principal Seat of the Tribunal at Bombay wherein it is observed by the Hon'ble Chairman as under:

"38. The result is that entry made in the birth register whenever it is proved by appropriate evidence, as well it is not disproved it will have to be acted upon. "

12. He has submitted that in view of the settled legal position extract of the Birth and Death Register showing date of birth of the applicant as 06-4-1962 will prevail over the entries in the School Leaving Certificate or S.S.C. Certificate as it is a public record. Therefore, it is just to

correct date of birth of the applicant as 06-04-1962 in place of 06-04-1959 already recorded in service record of the applicant by allowing the application.

13. Learned Advocate for the applicant has further submitted that respondents had not considered the said aspect, and therefore, the impugned order is not sustainable. He therefore, prayed to direct the respondent nos.2 and 3 to correct date of birth of the applicant accordingly in service record by allowing the O.A.

14. Learned P.O. has submitted that the alleged applications dated 15-09-1989, 20-05-1993, 18-04-1998 and 27-01-2006 had not been received to the respondents. Therefore, no question of deciding the same by the respondents arises. She has submitted that the applicant produced photostat copies of the applications at pages 20 to 23. She has argued that the said applications were addressed to Superintendent of Police, Parbhani but it was not mentioned through which office it has been forwarded to the Superintendent of Police. She has argued that the said applications bear stamp of the outward branch of Police Inspector, Traffic Branch, Parbhani as well as Police

Station, Nanalpeth Parbhani, it does not mean that the same have been forwarded by the concerned Police Stations/Offices. She has argued that had it been a fact that those applications were forwarded by concerned Police Stations then definitely there would have been forwarding endorsement on it but none of the applications has such forwarding endorsement. Therefore, it creates doubt regarding its genuineness. She has further argued that the application at Annexure A-20 has over-writing so far as the date mentioned on the same. She has submitted that the applicant has contended that he has collected Certified Copies of the said applications from the concerned offices but he had not produced the said copies as well as the office copies of the said applications before the Tribunal though it was directed to him to produce the same on record. She has submitted that respondents have informed that they have never received such applications, and therefore, said applications cannot be taken into consideration. She has argued that for the first time in the year 2012 respondents had received an application from the applicant which has been forwarded by the Superintendent of Police, Parbhani to Inspector General of Police on 11-10-

2012 (page 24) and the same came to be rejected by communication dated 26-12-2016 (page 67) as the applicant had not moved application for correction of date of birth in service record within 5 years of joining the service.

15. Learned P.O. has further submitted that the applicant has contended that he got notified correct date of birth in the government gazette in the year 1983 but he had not brought the said fact to the notice of the respondents while filling service record, and more particularly, at the time of taking entry of date of birth in service record in the year 1986 when he joined service on the establishment of the respondent no.3. She has argued that while filling service record, the applicant relied on the SSC Certificate for recording his date of birth as 05-04-1959, and accordingly, the service record has been maintained. She has argued that for the first time in the year 2012 the applicant filed the application for correction of date of birth in his service record when he was on the verge of retirement to get financial benefits and to get extended service period. Therefore, the respondents had rightly rejected his application vide communication dated 26-12-2016 and

therefore she supported decision of the respondents in that regard.

16. On going through the documents on record, it reveals that the applicant joined service on 10-06-1986 on the establishment of respondent no.3. His Service Book has been maintained accordingly. In the service book at page 19 and 68 his date of birth has been recorded as 06-04-1959 on the basis of information and documents supplied by him. He relied on the extract of SSC Certificate while recording his date of birth (page 69) in service record. At that time, he had not informed the respondents that he was possessing Government gazette dated 13-10-1983 which he got notified his correct date of birth. According to the applicant he filed application for correction of the date of birth for the first time on 15-09-1989 and then he applied again on 20-05-1993, 19-04-1998 and 22-01-2006. The applicant has relied on the photostat copies of the said applications which are at page 20 to 23 of the paper book. On minute perusal of the same, it reveals that there is over-writing in the date mentioned in the left hand side margin of the document (page 20). Date on the top of the application (page 20) is not legible. It does not disclose

whether it has been forwarded to Superintendent of Police by the concerned authority. On going through the documents at page 20 to 23, it reveals that on the top of the applicants towards right hand side on the said documents there is stamp regarding outward number of the said applications. However, how outward number has been embossed on it that has not been explained by the applicant. Had it been a fact that it had been forwarded by the concerned Police Station to Superintendent of Parbhani then definitely the forwarding endorsement might have been made below the application or it would have been forwarded along with a separate letter. In that case, stamp of the forwarding officer ought to have been embossed below application or on separate page but the said documents show that outward number has been written on the top towards right hand side. Therefore, it creates doubt regarding its genuineness. Opportunity was given to the applicant to produce certified copies which he collected from the concerned offices but he failed to produce the same on record on one or the other ground. Not only this but attempt was made to collect original record i.e. inward register of the concerned department but it has been

submitted by the respondents that office record has been destroyed as per the provisions of Police Manual. Feeble attempt has been made by the applicant to show that he has produced original document before the Superintendent of Police in response to the letter dated 03-01-2017 but the respondents produced the letter of the applicant which shows that he produced photostat copies of those documents. This shows that the applicant has suppressed material documents which are required for just decision in the matter. Unless the applicant establishes that he moved application within 5 years of joining service for correction in his date of birth in service record, he is not entitled to get it corrected. But as stated above the applicant has not produced documents to show that he filed applications dated 15-09-1989, 20-05-1993, 18-04-1998 and 27-01-2016 with the respondents for correction in his date of birth recorded in the service record. Therefore, it cannot be said that he moved the application within 5 years of joining his service in view of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981.

17. Documents on record show that for the first time in the year 2012 applicant moved an application for correction

of date of birth recorded in the service record. Respondents had rejected the said application by communication dated 26-12-2016 (page 66) on the ground that it was not filed within 5 years of joining his service. Respondents have rejected the application filed by the applicant in the year 2012, in view of Rule 38 of the M.C.S. Rules, 1981. In my opinion, the said order is just, proper and legal.

18. It is material to note that, earlier the applicant has made attempt to get corrected his date of birth in the service record by filing O.A.No.747/2013 but thereafter he has withdrawn it. Thereafter, he moved an application before JMFC, Parbhani for recording his date of birth in Birth & Death Register of Gram Panchayat Mandva and that was allowed, and thereafter, his date of birth has been recorded in the Birth & Death Register of Gram Panchayat Mandva as 06-04-1962. On the basis of that he has claimed change in the date of birth recorded in the service record.

19. No doubt, in view of the settled principle laid down in the above stated decisions submitted on record by the learned Advocate for the applicant, Birth and Death

Register is public record and legal presumption is available to the public documents and it will prevail over the School Leaving Certificate and when there is variance between private document and extract of public record, the latter must prevail. It is settled legal position that entries made in the Birth and Death Register has got presumption of correctness as it has been maintained by the statutory authorities, and therefore, same is admissible in evidence and it will prevail over the entry made in the School register.

20. I have no dispute about the said settled legal principal. In the instant case, entry regarding the date of birth of the applicant has not been recorded by the Gram Panchayat Mandva in its ordinary course of business and it has been recorded in view of the direction given by the JMFC, Parbhani in the year 2014, that too when the applicant realized that the same is necessary for correction of his service record. Had it been a fact that said date of birth was recorded in Birth and Death Register by the parents of the applicant immediately after his birth, then it would have gained more weight. But it is not so done. Even if it is presumed that in view of the directions of the

JMFC Parbhani date of birth of the applicant has been recorded in the Birth and Death Register of Gram Panchayat of Village Mandva as 06-04-1962, it will not be helpful to the applicant in establishing that his real date of birth is 06-04-1962.

21. As discussed above the applicant has failed to establish that he filed application for correction of date of birth in his service record by filing the application within 5 years of joining service as provided under Rule 38 of the MCS (General Conditions of Service) Rules, 1981. Therefore, his application has been rightly rejected by the respondents by communication dated 26-12-2016. There is no illegality in the order dated 26-12-2016 issued by the respondents. Therefore no interference in it is called for. There is no merit in the O.A. Hence it deserves to be dismissed. In view of this O.A. is dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 03-07-2017.