

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 628 OF 2018  
(Subject – Correction in Date of Birth)**

**DISTRICT : JALNA**

**Smt. Sheelabai Bhaginath Bahirao,** )  
Age : 49 years, Occu. : Service, )  
(As Cook, Dr. Babasaheb Ambedkar )  
Government Boys Hostel, Bhokardan, )  
Dist. Jalna, )  
R/o Plot No. 23/B, Near Trimurti )  
Chowk, New Shantiniketan Colony, )  
Jawahar Colony, Aurangabad. )

**.. APPLICANT**

**V E R S U S**

- 1) **The Commissioner,** )  
Social Welfare, M.S., )  
Social Welfare Commissionerate, )  
3, Church Road, Pune. )
- 2) **The Regional Deputy** )  
**Commissioner,** Social Welfare, )  
Dr. Babasaheb Ambedkar Samajik )  
Nyay Bhavan, Behind Govt. Milk )  
Dairy, Besides Shivaji High School,)  
Aurangabad. )
- 3) **The Assistant Commissioner,** )  
Social Welfare, Dr. Babasaheb )  
Ambedkar Samajik Nyay Bhavan,)  
Oppo. Collector Office, )  
Jalna. )
- 4) **The Warden,** )  
Dr. Babasaheb Ambedkar Govt. )  
Boys Hostel, Bhokardan, )  
Dist. Jalna. )

**.. RESPONDENTS**

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**APPEARANCE** : Shri A.S. Deshmukh, Advocate for the  
Applicant.

: Shri V.R. Bhumkar, Presenting Officer for  
Respondents.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)**

**DATE : 14.12.2018.**

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**ORDER**

1. The applicant has challenged the communication dated 25.05.2018 issued by the respondent No. 1 rejecting her request to treat her correct date of birth as 04.12.1968 and prayed to quash and set aside the said impugned order by filing the present Original Application. The applicant has also sought direction to the respondents to treat her date of birth as 04.12.1968, which has been incorporated in service record in the year 2000 and to extend all service benefits to her.

2. The applicant is from reserved category. She has failed 7<sup>th</sup> Std. Her date of birth is 04.12.1968. She entered in services of the Government of Maharashtra in its Social Welfare Department as Cook in Class-IV / Group-D in view of the appointment order dated 08.08.1996 issued by the Social Welfare Officer, Aurangabad. In pursuance to the said order, she had

joined the services in Government Girls Hostel, Sillod on 16.08.1996. At the time of joining her duties, she was about 27 years, 8 months and 4 days old and she was within upper age limit of 33 years, which was prescribed for the reserved category at that time.

3. At the time of joining of her duties, she had submitted her school leaving certificate showing her date of birth as 04.12.1968 before the Warden, Government Girls Hostel, Sillod. While entering her date of birth in the service record, Smt. Meena Marotirao Surve, the then Warden, Government Girls Hostel, Sillod has committed mistake and recorded her date of birth wrongly as 04.12.1958 instead of 04.12.1968. The said mistake committed by the Warden was not within the knowledge of the applicant and she had no occasion to make enquiry about the same.

4. By the order dated 09.06.2000, she has been transferred to Jalna from Sillod. On 10.07.2000, she has been relieved by the Warden, Government Girls Hostel, Sillod viz. Smt. M.M. Surve and that time she had handed over the original service sheet, Last Pay Certificate (LPC) and other relevant documents to her for producing the same before the Warden,

Government Girls Hostel, Jalna. At that time, she realized for the first time that there was mistake in the service record in respect of her date of birth and her date of birth has wrongly been mentioned as 04.12.1958 instead of 04.12.1968. She has pointed out the said mistake to Smt. M.M. Surve, the then Warden, Government Girls Hostel, Sillod and requested to carry out the necessary correction in her service record on the basis of School leaving certificate produced by her. Smt. M.M. Surve, the then Warden Government Girls Hostel, Sillod realized her own mistake committed while recording the date of birth of the applicant in the service record and therefore, she carryout the correction in the service record of the applicant, as regards her date of birth and recorded her date of birth as 04.12.1968 and put her signature on the service record of the applicant accordingly. After correcting the service record of the applicant, Smt. M.M. Surve handed over the service record to the applicant for producing the same before the Warden, Government Girls Hostel, Jalna. Accordingly, the applicant has produced the record before the Warden, Government Girls Hostel, Jalna at the time of joining her duties. It is her contention that the mistake in the service record regarding her date of birth recorded was because of mistake of Smt. M.M. Surve and the same has been altered long back in the

year 2000. But in the year 2012, she learned that her wrong date of birth i.e. 01.12.1958 is still continued in other service record and therefore, on 03.09.2012, she had submitted an application to the Warden, Government Girls Hostel, Jalna for taking necessary steps for correction of her date of birth recorded in other service record, as per the correction made in the service record in the year 2000. In the month of March 2013, the Social Welfare Officer, Jalna issued a letter calling her explanation regarding her claim for correction of date of birth. In response thereto, she had given explanation on 18.07.2013, stating that her case did not fall under Instruction No. 1 under Rule of 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. It is her contention that it was a mistake committed by the department while recording her date of birth in the service record and therefore, she requested to maintain service record correctly.

5. On 21.04.2015, the respondent No. 1 had issued a show cause notice to Smt. M.M. Surve, the then Warden, Government Girls Hostel, Sillod calling her explanation as to why the action should not be taken against her for indulging in misconduct by correcting date of birth of the applicant without

approval of Head of the Department. Smt. M.M. Surve, had filed her reply to the said notice on 07.05.2015 and admitted that she had committed the mistake while recording the date of birth of the applicant in service record due to oversight, which was corrected by her and therefore, she prayed to pardon her.

6. The respondent No. 3 had not taken any steps in respect of the application submitted by the applicant. The applicant has relied on the affidavit of Smt. M.M. Surve dated 28.06.2017 and produced the same before the respondent No. 2. Thereafter, respondent No. 3 submitted proposal to the respondent No. 2 on 02.01.2018 for correction of date of birth of the applicant recorded in the service record. The said proposal was forwarded by the respondent No. 2 to the respondent No. 1 vide communication dated 01.02.2018. The respondent No. 1 had not taken action against Smt. M.M. Surve for misconduct, though show cause notice was issued to her. But on 25.05.2018, the respondent No. 1 issued a communication to the respondent No. 2 and directed respondent No. 2 to convey the applicant that her proposal for correction of date of birth has been rejected, as it was not in accordance with the rules. On the basis of the communication received from respondent No. 1, the respondent

No. 2 informed the applicant about the decision of the respondent No. 1 by communication dated 09.07.2018. The applicant has approached this Tribunal being aggrieved by the communication of the respondent No. 1 dated 25.05.2018.

6. It is contention of the applicant that the impugned decision of the respondent No. 1 is against the provisions of Maharashtra Civil Services (General Conditions of Services) Rules, 1981. It is her contention that as the mistake was committed by the department while recording her date of birth in the service record and the same has been corrected by the concerned officer i.e. Warden, Government Girls Hostel, Sillod long back in the year 2000 in view of the provisions of Rule 38 (2)(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and the applicant was not responsible for it. It is her contention that recording of wrong date of birth in the service record was a apparent error on the part of Warden, Government Girls Hostel, Sillod and the same had been corrected within five years from her appointment i.e. in the year 2000. It is her contention that she filed the application for correcting other record on the basis of correction made in the service record in the year 2000. But the respondent No. 1 has wrongly rejected her application by issuing impugned communication. It is her contention that Smt. M.M.

Surve, the then Warden, Government Girls Hostel, Sillod had admitted her mistake and correction made by her in the service record, but the respondent No. 1 had not considered the said aspect and wrongly rejected her application and therefore, she prayed to allow the present Original Application and to set aside the impugned communication and to direct the respondents to record her date of birth as 04.12.01968 and to extend all service benefits to her accordingly.

7. The respondent Nos. 1 to 3 have resisted the contention of the applicant by filing their affidavit in reply. They have admitted the fact that the applicant joined the service as Cook in Class-IV cadre in view of the order dated 08.08.1996 and accordingly, she joined her duties in the Government Girls Hostel, Sillod. They have not disputed the fact that Smt. M.M. Surve was the Warden of Warden, Government Girls Hostel, Sillod, when the applicant joined the service. Smt. M.M. Surve recorded the date of birth of the applicant in service record as 04.12.1958. They have admitted the fact that at the time of transfer of the applicant from Sillod to Jalna in the year 2000, for the first time she realized that the Warden, Government Girls Hostel, Sillod has recorded her date of birth wrongly as 04.12.1958 and pointed out

the said mistake to Smt. M.M. Surve and Smt. M.M. Surve corrected her date of birth as 04.12.1968. They have not disputed the fact that the applicant's claim regarding alteration of date birth had been rejected by the respondent No. 1 by the impugned communication. They have admitted the fact that the respondent No. 1 issued show cause notice to Smt. M.M. Surve on 21.04.2015, to which she had given reply and admitted the fact that she corrected the date of birth of the applicant in the service record on the basis of school leaving certificate of the applicant. They have not disputed the fact that the applicant has submitted applications dated 03.09.2012 and 18.07.2013 and requested for correction in her date of birth. The applicant identified the said mistake in the year 2012 and 2013 and therefore, her applications were time barred. It their contention that as per the provisions of Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, correction in the date of birth should be made within five years from the date of joining of the service by the Government servant. But the applicant had not filed the applications within stipulated time and therefore, the applications were time barred.

8. It is contention of the respondents that Smt. M.M. Surve had no authority or right to correct her own mistake

committed, while recording the date of birth of the applicant in the service record. She has made alteration in the date of birth of the applicant illegally and therefore, the respondent No. 1 issued a show cause notice to her. It is their contention that Smt. M.M. Surve had filed reply to the said show cause notice and after considering her explanation the respondents had decided to take appropriate decision on her application and they would take the action accordingly. They have not disputed the fact that the respondent No. 3 submitted the proposal to the respondent No. 2 for correction in the date of birth of the applicant. The respondent No. 1 rejected the said proposal and informed the respondent No. 2 accordingly by the said communication dated 25.05.2018. It is their contention that the said decision is in view of the provisions of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and there is no illegality in it.

9. It is contention of the respondents that the applicant has taken the admission in the school in 4<sup>th</sup> Std. on 19.06.1992 and she left the school in the year 1993-94 and that time it has been shown that she was studying in 7<sup>th</sup> Std. It is their contention that it was not possible to complete education in short period and therefore, the documents produced by the applicant

seems to be fabricated. It is their contention that the said documents are not admissible for considering the proof of her date of birth as per Instruction No. 2 of Rule 38 of sub Rule 2 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and therefore, same cannot be relied on. It is their contention that the respondent No. 1 had rightly rejected the applications of the applicant and therefore, they prayed to reject the present Original Application.

10. The respondent No. 4 has filed affidavit in reply and resisted the contention of the applicant. The respondent No. 4 has relied on the affidavit in reply filed by the respondent Nos. 1 to 3. It is contended by the respondent No. 4 that his role is limited in the present matter and therefore, he is adopting the affidavit in reply of respondent Nos. 1 to 3 and prayed to reject the O.A.

11. The applicant has filed rejoinder affidavit and contended that the applicant took the education in Praudh Mahila Vidyalaya, Aurangabad. She took the admission in 4<sup>th</sup> Std. on 19.06.1992. The said school conducted the concise course and therefore, she took the admission therein. As per the curriculum in the school, she had undergone study for 4<sup>th</sup> to 7<sup>th</sup> Std. during the academic year and she left the school in the year 1994, when

she was studying in 7<sup>th</sup> Std. There was no manipulation of documents on her part and therefore, she prayed to allow the present Original Application.

12. I have heard Shri A.S. Deshmukh, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

13. Admittedly, the applicant was appointed as a Cook by the order dated 08.08.1996 in Social Welfare Department. The post of Cook is a Class-IV/Group-D post. By the said order, the applicant has been appointed as Cook in the Government Girls Hostel, Sillod and she joined her duties on 16.8.1996. Admittedly, one Smt. M.M. Surve was warden of the Government Girls Hostel, Sillod at time. Admittedly, on joining her duties, the service record i.e. service sheet has been maintained by Warden, Government Girls Hostel, Sillod. There is no dispute about the fact that on the basis of information and documents submitted by the applicant, the date of birth of the applicant initially has been recorded as 04.12.1958. Admittedly, the applicant has been transferred from Sillod to Jalna by the order dated 09.06.2000. Accordingly, she has been relieved from Government Girls Hostel,

Sillod on 10.07.2000 and that time, the service record including the original service sheet, Last Pay Certificate (LPC) and other documents had been handed over to the applicant to produce the same before the Warden, Government Girls Hostel, Jalna. There is no dispute about the fact that the applicant for the first time realized the mistake committed by the Warden, Government Girls Hostel, Sillod, while recording her date of birth in her service record and it was recorded as 04.12.1968 instead of 04.12.1958 and she pointed out the said mistake to Smt. M.M. Surve. Smt. M.M. Surve realized her mistake and accordingly she corrected the service record i.e. date of birth of the applicant and handed over the original record to the applicant. Admittedly the date of birth of the applicant in other record has recorded as 04.12.1958. Admittedly, in the year 2012 i.e. particularly on 03.09.2012, the applicant had submitted an application to the Warden, Government Girls Hostel, Jalna for the first time for taking necessary steps for making correction in her date of birth recorded in the service record and thereafter, submitted another application on 18.07.2013 with the same request. The respondent No. 2 forwarded the proposal to the respondents for making correction in the service record. But the respondent No. 1 rejected the said proposal by the impugned communication dated

25.05.2018 (Annexure A-13, page No. 41). On the basis of said communication, the respondent No. 2 informed the applicant accordingly, by communication dated 09.07.2018 (Annexure A-14, page No. 42).

14. Learned Advocate for the applicant has submitted that at the time of joining the service, the applicant had produced school leaving certificate issued by the Proudh Mahila Vidyalaya, Aurangabad as proof of her date of birth. As per the said document, the date of birth of the applicant is 04.12.1968. The Warden, Government Girls Hostel, Sillod on the basis of said certificate had recorded the date of birth of the applicant in the service record, but she had mistakenly recorded the date of birth of the applicant as 04.12.1958 instead of 04.12.1968. The applicant was not knowing the said fact. He has submitted that for the first time the applicant came to know about the mistake of the then Warden, Government Girls Hostel, Sillod, when she had been transferred to Jalna and she brought the said mistake to the knowledge of Smt. M.M. Surve, the then Warden, Government Girls Hostel, Sillod. Smt. M.M. Surve, realized her mistake and she corrected the date of birth of the applicant as 04.12.1968 instead of 04.12.1958 in the service record and handed over the

original record to the applicant to produce the same before the Warden, Government Girls Hostel, Jalna. He has submitted that the mistake had been occurred because of Warden, Government Girls Hostel, Sillod and the applicant was not responsible for it. He has submitted that the said mistake has been committed because want of due care on the part of Warden, Government Girls Hostel, Sillod and therefore, the Warden, Government Girls Hostel, Sillod has rectified the said mistake on her own accord in view of the provisions of Rule 38 of Sub Rule 2(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. He has submitted that the Warden, Government Girls Hostel, Sillod was the competent authority to record entry regarding the date of birth of the applicant in the service record and to make alteration in it and therefore, the said mistake has been rectified by her in the year 2000. But in other service record, the wrong date of birth i.e. 04.12.1958 continued and therefore, in the year 2012, the applicant had moved an application for correction of the record on the basis of alteration already carried out in the service record by the Warden Government Girls Hostel, Sillod in the year 2000. He has submitted that the respondent No. 2 had not considered the said aspect and has wrongly rejected the proposal of respondent No. 3.

He has submitted that alteration in the date of birth has been recorded long back in the year 2000 and therefore, the provisions of Instruction Nos. 1 and 2 of Sub Rule 2 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 have been inserted in the Rules w.e.f. 24.12.2008. Therefore, the same are not attracted in this case and the case of the applicant has to be governed by the old rules. He has submitted that as per the old rules, the Head of the Office i.e. Warden, Government Girls Hostel, Sillod was the competent authority to correct the alteration in the date of birth of the applicant and therefore, alteration carried out by her is legal one. He has submitted that since the alteration has been carried out by the competent authority, the respondent No. 1 has no authority to reject the subsequent application for keeping the other record up to date on the basis of alteration carried out already.

15. Learned Advocate for the applicant has further submitted that the provisions of instruction No. 3 of Sub rule 2 of Rule 38, as well as, Rule 38 (3) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 are not attracted in

this case and therefore, he prayed to quash and set aside the impugned order by allowing the present Original Application.

16. Learned Advocate for the applicant has submitted that the mistake occurred on the part of Warden, Government Girls Hostel, Sillod while recoding the date of birth of the applicant in the service record has been admitted by Smt. M.M. Surve, the then Warden Government Girls Hostel, Sillod and therefore, considering the said aspect, the respondent No. 1 ought to have allowed the proposal sent by respondent No. 3. In support of his submissions he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in case of **Mohd. Yunus Khan Vs. U.P. Power Corporation Ltd. and others** reported in **2008 DGLS (SC) 1399**. He has also placed reliance on the judgment delivered by the Supreme Court in case of **CIDCO Vs. Vasudha Gorakhnath Mandevlekar** reported in **2009 DGLS (SC) 937** and judgment of the Hon'ble High Court in case of **Ashok Pralhad Meshram and another Vs. Head Master, Zilla Parishad High School Bhandara and another** reported in **2014 BCI 459**.

17. Learned Presenting Officer has submitted that the applicant has manipulated the record regarding her date of birth. He has submitted that the correct date of birth of the applicant is

04.12.1958 and it has been correctly recorded in the service record of the applicant. He has submitted that Smt. M.M. Surve, the then Warden, Government Girls Hostel, Sillod had made alteration in the service record of the applicant regarding her date of birth, though she had no authority. Therefore, the alteration made by the Warden is not legal one and the applicant cannot rely on it. He has submitted that as per the service record, correct date of birth of the applicant is 04.12.1958. If any change or alteration in the date of birth recorded in the service record has to be made, then the District Head of the Department is the competent authority to correct the mistake in view of Sub Rule 3 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, if the mistake is clerical one. He has submitted that the case regarding alteration of date of birth has to be referred to the General Administration Department and the Finance Department to the Administration Department concerned in view of the provisions of Instruction No. 3 of Sub Rule 3 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. He has submitted that in view of G.R. dated 02.06.2003, the powers to make alteration in the date of birth of the non-gazetted employees are delegated to the Head of the Department, in cases of the employees who have filed the

application within five years from the date of their joining. He has submitted that in view of the said provisions, the respondent No.1 has rightly rejected the application of the applicant, as the applicant had not filed application within five years from the date of joining her service. He has submitted that there is no illegality in the impugned order and therefore, he supported the impugned order.

18. It is material to note here that the procedure for writing the events and recording the date of birth in the service book is provided in Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Sub rule 1 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 for attestation of the service book and the authority competent to record entries in the service book. Sub Rule 2 of Rule 38 provides the procedure to be followed while recording the date of birth in the service book. Sub Rule 2 (f) of Rule 38 specially provides that no alteration of the entry should afterward be allowed once an entry of age or date of birth has been made in the service book. It also provides that if the entry has been made due to want of care on the part of the some person other than the individual in question or is an obvious clerical

error then it can be corrected. Provisions of Instruction No. 1 to 2-B to Rule 38 (2) are substituted w.e.f. 24.12.2008. Instruction No. 1 to sub Rule 2 of Rule 38 provides that no application for alteration of entry regarding date of birth as recorded in the service record shall be entertained after a period of five years commencing from the date of his entry in the Government service. Instruction No. 3 to the said Rule 38(2) provides that all cases relating to alterations of dates of birth of Gazetted Government servants and non-Gazetted Government servant, should invariably be referred to the General Administration Department and the Finance Department through the Administrative Department concerned. The Sub Rule 3 of Rule 38 provides that the officers of a rank not lower than the Principal District Officer in the Department concerned may correct errors in the service record, which are obviously clerical. It also provides that cases in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority.

19. The said provisions of Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 are relevant and material and therefore, I reproduced the same:-

**“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.*

*3. Officers of Rank not lower than the Principal District Officer in the Department concerned may correct errors in the service book which are obviously clerical. Cases in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority.”*

20. On plain reading of the above said rules, it is crystal clear that once an entry of age or date of birth of the Government employee has been recorded in the service book, no alteration of said entry should be allowed later on, unless the entry was due to want of care of some person other than the individual in question or is an obvious clerical error. In view of Instruction No. 1 of Sub Rule 2 to Rule 38 such application for alteration of entry regarding the date of birth should be filed within a period of five years from the date of entry of the Government servant in the service. Sub Rule 3 to Rule 38 provides that if there was clerical mistake, then the said entry can be corrected by the Principal

District Officer in the Department concerned. While Instruction No. 3 to Sub Rule 2 of Rule 38 provides that, all cases relating to alterations of date of birth of Government servant, should invariably be referred to the General Administration Department and the Finance Department through the Administrative Department concerned. Sub Rule 3 to Rule 38 further provides that cases in which the correctness of the original entry is questioned on other ground other than a clerical mistake should be referred to a competent authority. By reading the above said conjointly, it is crystal clear that the Principal District Officer in the Department concerned may correct the error in the service book, which is obviously clerical error. But the provisions of Rule 38 (2) and instructions therein specially provide that the cases regarding alteration of date of birth of the Government employees should invariably be referred to the General Administration Department and the Finance Department through the Administrative Department concerned. Therefore, in view of the said provisions, the present case of the applicant ought to have been referred to the G.A.D. and the Finance Department and no other officer of the department concerned is empowered to make alteration in the date of birth of the applicant in the service record. Therefore, the Warden, Government Girls Hostel, Sillod,

who made so-called alteration in date of birth of the applicant recorded in the service record, is not competent authority to make such change and therefore, any change made by her is not in accordance with the Rules. The Warden was not vested with such powers to make changes in the entry regarding the date of birth. The Principal District Officer in the Department Concerned is the competent authority to correct entries in the service record, which are obviously clerical. But the powers to make alteration in the date of birth are vested with the G.A.D. and the Finance Department.

21. The respondent No. 1, who is the head of the department of the applicant, is also not competent to make such correction in view of Instruction No. 3 of sub Rule 2 to Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Therefore, the respondent No. 3 has no power to deal with the proposal regarding alteration of date of birth recorded in the service record of the applicant. The respondent No. 1 ought to have referred the proposal sent by the respondent No. 2 to the G.A.D. and Finance Department, in view of the instruction No. 3 of Sub Rule 2 of Rule 38 of the M.C.S. (General Conditions of Services) Rules, 1981, but the respondent No. 1 had not

considered the said provisions and decided the applications of the applicant, though he has no authority and therefore, the impugned order dated 25.05.2018 passed by the respondent No. 1 is without authority and therefore, it does not legal one. Hence, it requires to be quashed and set aside.

22. I have gone through the decisions referred by the learned Advocate for the applicant. I have no dispute regarding the principles laid down therein, but the facts in those cases are different than the facts in the present case and therefor, those decisions are not much useful to the applicant in this case.

23. As discussed above, the impugned order has been issued by the respondent No. 1 without authority and therefore, it requires to be quashed and set aside. The proposal sent by the respondent No. 3 on the basis of application of the applicant to the respondent No. 2 and which had been forwarded to the respondent No. 1, requires to be decided by the G.A.D. and the Finance Department as provided under Instruction No. 3 to Sub Rule 3 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The respondent No. 1 without following the said procedure decided the same illegally. Therefore, in my view, it is just and proper to quash and set aside the

impugned order and to direct the respondent No. 1 to forward the said proposal dated 02.01.2018 to the G.A.D. and Finance Department through proper channel for taking appropriate decision in the matter by allowing the present Original Application.

24. In view of the discussions in the foregoing paragraphs, the O.A. is allowed. The impugned order dated 25.05.2018 and the communication dated 09.07.2018 are hereby quashed and set aside. The respondent No. 1 is directed to send the proposal regarding correction of date of birth of the applicant in the service record to the G.A.D. and Finance Department in view of the provisions of Instruction No. 3 to sub Rule 2 of Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 within a period of eight days from the date of this order for taking appropriate decision as per rules, with a request to decide the same expeditiously as early as possible. There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 14.12.2018.**

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