

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.117 OF 2016

DIST. :Ahmednagar

Radhabai w/o Tukaram Zade,
Age.55 years, Occu. : Service,
R/o Samajik Vanikaran Vibhag,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai - 32.
(Copy to be served on C.P.O.,
MAT at Aurangabad)
2. The Chief Conservator of Social
Forest (Territorial Nashik), Nashik.
3. Deputy Director of Social Forest
Department, Ahmednagar,
Dist. Ahmednagar.
4. Social Forest Officer,
Kopargaon, Div. Kopargaon,
Dist. Ahmednagar.

-- RESPONDENTS

APPEARANCE :- Shri P.A. Bharat, learned Advocate for the
applicant.

: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

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

Date : 31.08.2017.

ORDER

1. By filing the O.A. the applicant has prayed to quash and set aside the order dated 28.9.2015 passed by the Dy. Director of Social Forest Department, Ahmednagar rejecting her appeal and the order dated 30.9.2015 passed by the Social Forest Officer, Kopargaon, Dist. Ahmednagar relieving her on attaining age of superannuation and also prayed to direct the respondents to forward her age certificate for verification issued by the Medical Officer to the superior authority and to reinstate her on her post on which she was working.

2. The applicant was appointed as a Labourer in Class (D) category by the appointment order dated 2.12.2013 in the pay scale of Rs. 4440 – 7440 and was posted at Kopargaon, Tq. Kopargaon, Dist. Ahmednagar by the order dated 7.12.2013 and since then the applicant was working in the office of the res. no. 4. At the time of joining the service, the res. no. 4 directed her to undergo the medical exam. Accordingly the applicant had undergone for the medical exam before the Civil Surgeon, Govt. Medical Hospital, Ahmednagar on 26.12.2013. Civil Surgeon, Govt. Medical Hospital, Ahmednagar issued the medical certificate of the applicant in which her age on the said date i. e. on 26.12.2013 was shown as 48 years. It is the contention of the

applicant that, she is illiterate lady and her date of birth is not registered anywhere and therefore she does not possess any official record in respect of her birth date. While preparing the service record a wrong entry of her birth date was taken in the service book. When she learnt about it, she filed an application on 10.4.2015 to the res. no. 3 for correction of her birth date recorded in the service book. According to the applicant, in the PAN card her date of birth is recorded as 1.6.1967 and according to the said date of birth her age is 48 years while in the AADHAR card her year of birth is shows as 1965. It is contention of the applicant that, the res. no. 3 had issued a communication dated 22.4.2015 to the applicant mentioning that on verification of the record, they found that the date of birth mentioned in the service book of the applicant is correct. Thereafter again the applicant had undergone for medical examination before the Medical Officer, Ahmednagar, who issued the certificate dtd. 3.8.2015 mentioning her age as above 55 years.

3. It is her contention that, she preferred appeal before the res. no. 2 on 5.8.2015 and challenged the communicated dated 22.4.2015 received from the respondent No. 3. The res. no. 2 directed the res. no. 3 to forward documents in respect of date of birth of the applicant to the superior authority of the Civil

Surgeon of Govt. Medical Hospital i.e. at Pune and to submit the report thereof. Thereafter the applicant approached the res. no. 3 with a request for forwarding her age certificate for verification as per the directions of res. no. 2, but the res. no. 3 without verification of the certificate submitted a report to the res. no. 2. Thereafter, the applicant again submitted one more application to the res. no. 2 on 26.8.2015 with a request to direct the res. no. 3 to forward her age certificate after verification as per earlier directions as the res. no. 3 had not followed the earlier directions.

4. The applicant submits that, the res. no. 2 issued the communication to the res. no. 3 on 6.8.2015 and directed him to forward both the age certificates of the applicant to the superior authority of the Civil Surgeon of Govt. Medical Hospital i.e. at Pune and submit the report. But the res. no. 3 has not taken any steps in pursuance to the communication dtd. 6.8.2015. Therefore, the applicant approached the Tribunal by filing O.A. no. 600/2015 seeking direction to consider her claim. During the pendency of the said O.A. the res. no. 3 issued order dtd. 28.9.2015 and rejected the application of the applicant. Thereafter on 30.9.2015, the res. no. 4 relieved the applicant on the ground that she has attained the age of superannuation. In view of the said order, the O.A. no. 600/2015 came to be disposed

on 27.1.2016. Therefore, the applicant has filed the present O.A. challenging the orders 28.9.2015 passed by the Dy. Director of Social Forest Department, Ahmednagar and the order dated 30.9.2015 passed by the Social Forest Officer, Kopergaon, Dist. Ahmednagar. It is her contention that the respondents have not considered the certificates issued by the Civil Surgeon, Ahmednagar mentioning that her age was 48 years at the time of verification. It is her further contention that the respondents have not considered the 2 certificates issued by the Civil Surgeon, Govt. Medical Hospital, Ahmednagar. Not only this, but they have also not considered her date of birth recorded in the PAN card and AADHAR card and therefore they have wrongly passed the impugned order. Therefore she approached the Tribunal and prayed to set aside the impugned orders.

5. The respondents filed affidavit in reply and contended that the applicant was appointed as a Labourer in Class-D category by the appointment order dated 2.12.2013 in the pay scale of Rs. 4440 to 7440 and was posted at Kopergaon, Dist. Ahmednagar by the order dated 7.12.2013 under the scheme framed for regularization of the services of the daily wagers who had worked for 240 days in each year during the particular years. The applicant was directed to undergo a medical test in the Govt.

Hospital, Ahmednagar for the purpose of her fitness. Accordingly the Civil Surgeon, Govt. Medical Hospital, Ahmednagar examined the applicant and issued the certificate on 27.9.2000, wherein the age of the applicant is shown above 45 years. Accordingly the proposal for regularization of applicant in the service has been forwarded to the Govt. as per the scheme dated 16.10.2012. Accordingly, her age has been recorded in the service book. On 10.4.2015, the applicant had sent application to the res. no. 3 for correction of her date of birth in service book as recorded in the PAN card & AADHAR card.

6. It is their contention that in the PAN card the date of birth of the applicant is mentioned as 1.6.1967 and in the AADHAR card the year of birth is mentioned as 1965. The respondents verified the documents on record and came to the conclusion that as per the record available with them, the date of birth of the applicant is 27.9.1955 and accordingly the said fact has been communicated by the res. no. 3 to the applicant vide letter dtd. 22.4.2015. Thereafter the applicant had undergone the medical examination and obtained the medical certificate on 3.8.2015 from the Medical Officer, Govt. Medical Hospital, Ahmednagar, wherein her age is above 55 years. It is the contention of the respondents that the applicant challenged the order dtd. 22.8.2015 by filing application

/ appeal to the res. no. 2. The res. no. 2 directed the res. no. 3 to forward both the certificates of the applicant regarding her age to the higher authority by its letter dtd. 6.8.2015. Thereafter the applicant filed O.A. no. 600/2015 seeking direction to the respondents to consider the appeal preferred by the applicant at the earliest and to forward the age certificate of the applicant to the higher authority. During the pendency of the O.A., the res. no. 2 rejected the appeal of the applicant by the order dtd. 28.9.2015. It is their contention that the applicant has completed 60 years of age, she was relieved on 30.9.2015 as she had attained the age of superannuation. It is their contention that the applicant has not produced any reliable evidence in support of her date of birth. She has produced 2 different medical certificates of her age and, therefore, the res. no. 2 after verifying the record came to the conclusion that her date of birth is 27.9.1955. The res. no. 2 rightly rejected the appeal of the applicant. It is their further contention that the respondents have rejected the application of the applicant in view of the provisions of rule 38 (2) (E) of the M.C.S. (General Conditions of Services) Rules, 1981. There is no illegality in the impugned orders. Therefore, they prayed to dismiss the O.A.

7. I have heard Shri P.A. Bharat, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have also perused the documents produced on record.

8. Learned Advocate for the applicant has submitted that the applicant was appointed as a Labourer in Class (D) category by the appointment order dated 2.12.2013 in the pay scale of Rs. 4440 – 7440 and was posted at Kopargaon, Tq. Kopargaon, Dist. Ahmednagar by the order dated 7.12.2013. He has submitted that the date of birth of the applicant was not recorded in any record. The applicant is an illiterate lady. While preparing service book of the applicant her date of birth has wrongly been recorded as 27.9.1955. He has submitted that the applicant learnt about the mistake committed by the respondents while recording her date of birth in the service book in the year 2015. Therefore, she requested the respondents for correction of her date of birth by submitting the application and at that time she relied on her PAN card & AADHAR card, wherein her date of birth is recorded as 1.6.1967 and 1965 respectively. He has submitted that while joining the service, the applicant had undergone the medical examination and accordingly the Civil Surgeon issued medical certificate mentioning her age as about 48 years. He has

submitted that, thereafter she has undergone another medical examination conducted by the Medical Officer, Govt. Medical Hospital, Ahmednagar, who issued certificate on 3.8.2015 mentioning her age above 55 years. She has produced all the documents before respondents. But the respondents have not considered the said documents and they have wrongly held that she was born in the year 1955. He submitted that the res. no. 2 has also not considered the said aspect while deciding her appeal and has wrongly rejected the same by passing the impugned order dated 28.09.2015. The respondents relieved the applicant from 30.9.2015 on rejection of her appeal. He has submitted that when the record regarding date of birth of the applicant is not available, the respondents ought to have relied on the opinion tendered by the Civil Surgeon / Medical Officer of Govt. Medical Hospital, Ahmednagar and on the basis of it they ought to have held that the applicant has born on 1.6.1967 as mentioned therein. Therefore, he prayed to allow the O.A. by considering the above said documents.

9. Learned P.O. has submitted that the applicant has suppressed the material fact while submitting the application for correction of date of birth. She has not disclosed the fact that she has produced the medical certificate of the Civil Surgeon on

27.9.2000, wherein her age is mentioned above 48 years. The Govt. issued a Resolution in the year 2012 by which the services of the daily wage labourers, who had worked for 240 days in each year during the particular years. The applicants services are regularized in view of the said G.R. While sending the proposal for regularization the applicant submitted the medical certificate issued by the Civil Surgeon, wherein her age has been shown as 45 years. On the basis of the said medical certificate, the proposal for regularization of the applicant was forwarded to the Government as per the G.R. dtd. 16.10.2012. Accordingly, she was regularized in the service and appointed as a Labour in Class – D by the order dtd. 2.12.2013 and was posted at Kopargaon, Tq. Kopargaon, Dist. Ahmednagaron 7.12.2013. He has submitted that, on the basis of material supplied by the applicant, her date of birth was recorded in the service back as 27.9.1955. He has submitted that, thereafter the applicant filed application on 10.4.2015 to the res. no. 3 stating that her date of birth has to be corrected as 1.6.1967 on the basis entry in the PAN card. He has submitted that, the applicant has placed on record 2 different medical certificates issued by the Civil Surgeon & Medical Officer of Govt. Medical Hospital, Ahmednagar, though she was not referred by the respondents for the said medical examination. He has argued that, each certificate shows different age of the

applicant. The certificate issued by the Civil Surgeon shows that the applicant was above 55 years while other certificate issued by the Medical Officer on 26.12.2013 shows that she was about 48 years old. He has submitted that the applicant is not sure regarding her date of birth and therefore, in absence of any document, her contention cannot be relied upon and therefore, the respondents have rightly rejected her claim. Therefore, he prayed to reject the O.A.

10. On perusal of the documents on record, it reveals that the applicant was regularized in service in view of G.R. dtd. 16.10.2012. At the time of sending her proposal for regularization the applicant has placed medical certificate issued by the Civil Surgeon dtd. 27.9.2000 in which her age was shown as 45 years. Accordingly, a proposal for regularization was sent to the Govt. and thereafter she was appointed as a Class -IV employee and accordingly her date of birth was recorded in the service book as per the documents produced by her in the office of the respondents. The applicant was not holding AADHAR card and PAN card at the time of recording entry of her date of birth in the service book. The copies of the PAN& AADHAR cards produced by the applicant show that the PAN card was issued on 9.1.2015, wherein her date of birth is mentioned as 1.6.1967. It means that

the applicant has obtained the PAN card after filing the application with the respondents for correction of date of birth in the service book but the document on the basis of which her date of birth has been recorded in the PAN card, has not been produced on record. It seems that the applicant has created the record to suit her claim. Therefore, PAN card is not much useful to the applicant for establishing her date of birth as 1.6.1967. Likewise the AADHAR card shows that applicant has born in the year 1967. No specific date of birth of applicant is recorded in it. Therefore, the said document is not useful to the applicant in establishing her age. The applicant has obtained 2 different medical certificates showing different age, wherein her age has been shown as 48 years and above 55 years. Those are not the age certificates and those are the fitness certificates issued by the concerned Medical Officer / Civil Surgeon. Therefore those certificates are not much useful to the applicant in establishing her age as no test required for determination of her age had been conducted by concerned Medical Officer at that time. On the contrary, earlier age certificate produced by the applicant on 27.9.2000, wherein her ageif shown as 45 years is reliable one.

11. The res. no. 3 has rightly rejected the claim of the applicant for changing her entry regarding date of birth in that regard as the

applicant has failed to substantiate her claim by producing the cogent and reliable documents. The res. no. 2 has rightly rejected the appeal preferred by the applicant.

12. In view of the provisions of G.R. dtd. 3.3.1998 for changing or correction of the date of birth recorded in the service book, the concerned employee has to produce documentary proof, but no such proof has been produced by the applicant and, therefore, her application has been rightly rejected by the respondents. On the basis of the date of birth recorded in the service record, she has been rightly relieved by the res. no. 2 by passing order on 30.9.2015 as she completed 60 years of age. There is no illegality in the impugned orders passed by the res. no. 2 and res. no. 3 and therefore no interference is called for in the said orders. There is no merit in the O.A. Consequently the O.A. is dismissed with no order as to costs.

MEMBER (J)

ARJ-O.A. NO. 117-2016BPP (DATE OF BIRTH)