

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1096 OF 2018

DISTRICT : Mumbai

Shri Vijay K. Chaudhari)
Age :46 years, Dy.Secretary (Fisheries))
Agriculture, Animal Husbandry, Dairy Develop.)
Fisheries Dept., R/at. Dreams, 2B-705, LBS)
Marg, Bhandup-West, Mumbai 400 078.).... **Applicant**

Versus

1. The State of Maharashtra, through)
Addl. Chief Secretary, Finance Dept.)
Mantralaya, Mumbai 400 032.)
2. Principal Secretary, Water Resources)
Department, Mantralaya, Mumbai 32.).....**Respondents**

Shri D. B. Khaire, Advocate for Applicant.

Smt. Archana B.K., Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.01.2020.

JUDGMENT

1. Heard Shri D. B. Khaire, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.
2. This is second round of litigation wherein Applicant has again challenged his claim of correction in Date of Birth in service record though his claim was earlier rejected in first round of litigation.
3. The Applicant had joined Government service on the post Agriculture Extension Officer in Zilla Parishad, Raigad on 09.10.1997. At the time of entry in service, his date of birth was recorded as 01.06.1971 on the basis of School Leaving Certificate produced by him. Later, he made application on 17.11.2000 addressed to Government for change in date of birth as 17.10.1972 in place of 01.06.1971



recorded in service book. The application made by the Applicant was processed by the Government and stands rejected by order dated 10.02.2003 informing that the request for change in date of birth cannot be accepted in absence of reliable evidence of date of birth sought to be corrected as required under Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules 1981 (herein after 'Rules 1981' for brevity). The Applicant has challenged the order dated 10.02.2003 by filing O.A.No.949/2004. The Tribunal dismissed the O.A.949/2004 by order dated 05.01.2006 on merit. Applicant did not challenge the said decision. However, he again filed an application on 26.08.2015 stating that his correct date of birth is 17.10.1972 and requested the Government to change the date of birth in terms of Notification dated 24.12.2008 issued by the Government. The said representation also stands rejected by impugned order dated 22.05.2018 stating that decision is, in this behalf, has been already communicated to the Applicant, and therefore, his application is not maintainable. The Applicant has challenged the order dated 22.05.2018 in the present O.A.

4. Shri D. B. Khaire, learned Counsel for the Applicant submits that earlier O.A.No.949/2004 was dismissed by the Tribunal on the ground that extract of birth register of village Ambhol, Tal. Akole, Dist. Ahmednagar does not figure the name of the Applicant amongst other reasons. He, therefore, submits that later, the Applicant has obtained fresh extract of birth register, showing his name against the entry in date of birth i.e. 17.10.1972. He further sought to contend that in view of amendments in 'Rule 1981' by Notification dated 24.12.2008, he got fresh cause of action to file the present O.A.

5. Per contra, learned P.O. submits that decision dated 05.01.2006 rendered by this Tribunal in O.A.No.949/2004 has attained finality, and therefore, now the Applicant cannot seek same relief by filing present O.A. as the issue is already decided on merit. She further submits that Applicant will not get fresh cause of action on the basis of order dated 22.05.2018 passed on Applicant's representation dated 26.08.2015 and Original Application deserves to be dismissed.

6. Undisputedly, the Applicant had joined service on 09.10.1997 and at the time of entry in service his date of birth was recorded as 01.06.1971 on the basis of School Leaving Certificate. He made an application to the Government on 17.11.2000 and sought correction in date of birth as 17.10.1972. It was considered and rejected by Government by order dated 10.02.2003. Material to note that Applicant made another representation to the Government on 17.05.2003 as well as on 06.12.2003 for clarification that there is no practice of recording name of the child in birth register while taking entry of date of birth as seen from the judgment delivered in O.A.No.949/2004. However, request of the Applicant was rejected by the Government by order dated 10.02.2003 which was challenged in O.A. No.949/2004.

7. While dismissing O.A.No.949/2004, the Tribunal had observed that Applicant has failed to show that entry in service book was made due to want of care on the part of some other person or it was an obvious clerical error so as to apply Rule 38(2)(f) of 'Rules 1981'. Admittedly, the Applicant has not challenged the judgment dated 05.01.2006 delivered in O.A.No.949/2004 and it has attained finality. If the Applicant was aggrieved by the decision then he was required to challenge the same before higher forum. However, he preferred not to challenge the same and consequently the decision rendered in O.A. No.949/2004 has attained finality. This being the position, the Applicant now cannot be allowed to raise same issue by filing present O.A. as it is hit by principle of *res judicata* embodied in Section 11 of Civil Procedure Code.

8. True, the Applicant had again made representation on 26.08.2015 to the Government and it came to be rejected by order dated 22.05.2018 which is challenged in the present O.A. Now the question is whether this subsequent order dated 22.05.2018 would give fresh cause of action to the Applicant to file present O.A. and answer is in negative. The claim of the Applicant for change in date of birth was already rejected by the Government by order dated 10.02.2003 and challenge to the same in O.A.No.949/2004 was unsuccessful. As such, the cause of action was

See above

accrued on 10.02.2003 whereby the request of the Applicant for change of date of birth was rejected and Applicant had already availed legal remedy by filing O.A.No.949.2004 which was dismissed on merit. Therefore, it cannot be said that Applicant got fresh cause of action by virtue of order dated 12.05.2018 passed by the Government on subsequent representation dated 26.08.2015 made by the Applicant. It is well settled that mere filing of representation and the decision thereon communicated does not get fresh cause of action. In this behalf, it would be apposite to refer the decision of the Hon'ble Supreme Court in State of *Tripurar & Ors. v/s. Arabinda Chakraborty & Ors,(2014) 6 SCC 460*. The Hon'ble Supreme Court held that period of limitation commences from the date on which cause of action arises for the first time and simply making representations in absence of any statutory provisions, the period of limitation would not get extended. Indeed, in the present case, the Applicant had already availed legal remedy on the basis of cause of action accrued to him on 10.02.2003 by filing O.A.No.949/2004 but he did not succeed. The decision in O.A.No.949/2004 has admittedly attained finality, and therefore, the present O.A. is hit by principle *res judicata* and the same is not maintainable.

9. The submission advanced by the learned Counsel for the Applicant that he got fresh cause of action because of certain amendments in 'Rules 1981' by Notification dated 24.12.2008 is fallacious and misconceived. By the said amendment, Instruction nos.1 and 2 in Rule 38 of 'Rules 1981' was substituted as follows :-

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 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.

(2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested Xerox copy of the concerned page of the original birth register where his name and time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.

(2A) At the time of scrutiny of the application, it shall be ensured that:-

- (i) no advantage has been gained in school admission, entry into Government servant by representing a date of birth which is different than that which is later sought to be incorporated;
 - (ii) the date of birth so altered would not make him ineligible for admission in any school or University or for the Maharashtra Public Service Commission examination in which he had appeared; or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered in the Government service.
- (2B) No application for alteration of entry regarding date of birth of the Government servant pending with the Government on the date of commencement of the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2006 shall be processed after the date of retirement of such Government servant and such application shall automatically stand disposed of as rejected on the date of retirement. Any such application made by the retired Government servant shall not be entertained."

10. I fail to understand how this amendment gives fresh cause of action to the Applicant in the present facts and circumstances of the present case, particularly when the issue is already adjudicated against the Applicant in O.A.No.949/2004. It appears that he wants to take benefit of instruction no.2 reproduced above which inter-alia states about weightage to be given to the extract of birth register maintained by local body. As per Instruction No.2, such entry of date of birth should be considered as unquestionable proof for change of date of birth in service record. Indeed, this issue is already decided in O.A.No.949/2004 and extract of date of birth produced by the Applicant was not accepted so as to correct the date of birth as 17.10.1972. As such, once the matter in issue is already decided on merit, the amendment by Notification dated 24.12.2008 will not give fresh cause of action to the Applicant to challenge the decision which has already attained finality.

11. Needless to mention that any change in law by amendment are always applicable to the subsequent period unless the amendment is retrospective. Otherwise the issue already adjudicated and decided by the Court/Tribunal which has already attained finality will be hanging in fire with no certainty. The legal position in this behalf is fairly settled that subsequent change in law will not revive old or stale claim which have been already adjudicated by the courts or tribunal and

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had attained finality. Suffice to say, the submission advanced by the learned Counsel for the Applicant in this behalf holds no water.

12. Apart, material to note that the impugned order dated 22.05.2018 is not fresh decision. Perusal of impugned order dated 22.05.2018 reveals that all that it was communicated to the Applicant that the decision was already taken, rejecting the application of the Applicant and there is no provision of appeal so as to entertain the second application dated 26.08.2015 made by the Applicant. As such, it is not fresh decision so as to give new cause of action to the Applicant.

13. True, after the decision in O.A.No.949/2004, it seems that the Applicant got his name inserted in the extract of birth register in view of findings and observations made by the Tribunal in the judgment of O.A.No.949/2004. However this could hardly give fresh cause of action to the Applicant. If there was any error in the decision of O.A.No.949/2004 then it ought to have been challenged by the Applicant before higher forum which he admittedly did not avail. In other words, the judgment delivered in O.A.No.949/2004 having attained finality is not open to be reassessed. Otherwise it would amount to reopening of O.A.No.949/2004 and to assess its correctness afresh which is not at all permissible in law.

14. The totality of the aforesaid discussion leads me to sum up that Original Application is without any substance and devoid of merit. Original Application, therefore, deserves to be dismissed.

ORDER

Original Application is dismissed with no order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J