

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.229 OF 2020

DISTRICT : MUMBAI

Shri Dilip Babu Marale.)
Age : 53 Yrs., Working as Police Sub)
Inspector attached to R.A.K. Marg Police)
Station, Char Rasta, Sewree (W),)
Mumbai – 400 033 and residing at C/51,)
Sewree Police Line, Reay Road (E),)
Mumbai – 400 010.)...Applicant

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner of Police,)
Mumbai having office at Police)
Commissionerate, L.T. Marg,)
Opp. Crawford Market, Fort,)
Mumbai – 400 001.)...Respondents

Mr. A.V. Bandiwadkar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 13.08.2020

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JUDGMENT

1. The Applicant has challenged the order dated 4th March, 2020 passed by Respondent No.1 – State of Maharashtra, thereby rejecting the application for recording the correct date of birth in service record, invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

The Applicant is presently working in the cadre of Police Sub Inspector and attached to R.A.K. Marg Police Station, Sewree, Mumbai under the administrative control of Respondent No.2 – Commissioner of Police, Mumbai. He joined service as Police Constable on 14.04.1986 at Police Training School, Marol, Mumbai. At the time of entry in service, though he did not furnish his date of birth, the Police training School recorded his date of birth as 06.08.1962. The Applicant specifically contends that hundreds of Police Constables were selected and joined at Police Training School, Marol and he was simply asked to put his signature/thumb mark and name on first page of service book keeping other columns blanks. Accordingly, he wrote his name in his handwriting, only in service book and rest of the contents regarding date of birth, qualification, etc. were filled-in by the concerned officials of the Police Training School later on. In service record, his date of birth was recorded due to sheer mistake by the concerned official as 06.08.1962 though in fact, his date of birth as evident from School Leaving Certificate, S.S.C. Certificate, etc. is 01.06.1966. In contemporary service record viz. Certificate of appointment issued under Section 14 of Maharashtra Police Act, Identity Card issued by the Department and in other documents viz. School Leaving Certificate, S.S.C. Certificate, ITI Certificate, Aadhaar Card, Pan Card, Driving License, his date of birth is correctly recorded as 01.06.1966.

3. Having realized obvious error in recording date of birth by the Office, he made an application on 05.03.2013 for recording correct date of birth as 01.06.1966 supported with voluminous documentary evidence showing his date of birth as 01.06.1966. The proposal dated 11.07.2018 was forwarded to the Government by Additional Commissioner of Police wherein he observed that his real date of birth seems to be 01.06.1966. On receipt of said proposal, the Government by its letter dated 31.08.2018 directed the Director General of Police to take departmental action against the concerned official for recording wrong date of birth in service record and submit the report. Thereafter, the correspondence was exchanged in between the Government and the office of Director General of Police. As no decision was taken for longer period in the matter, the Applicant had initially filed O.A.1168/2019 for correction in date of birth. As there was no decision by the Government, the Tribunal disposed of O.A. by order dated 29.11.2019 thereby directing the Government to take decision within three months and communicate the same to the Applicant. Ultimately, the Government by impugned order dated 04.03.2020 rejected the claim of the Applicant mainly on the ground that no application for correction in date of birth was made within five years as contemplated in Rule 38 of Maharashtra Civil Services (General Conditions of Services), Rules 1981 (hereinafter referred to as 'Rules of 1981' for brevity) and in this behalf, the Government referred to certain decisions of Hon'ble Supreme Court wherein correction in date of birth at the fag end of service is held impermissible. On this background, the Applicant has challenged the communication dated 04.03.2020. As he is retiring at the end of August, 2020 on the basis of wrong date of birth recorded in service book, the matter was taken up for final hearing at the stage of admission.

4. The Respondent No.1 filed Affidavit-in-reply at Page Nos.79 to 82 of Paper Book and Respondent No.2 - Commissioner of Police has filed Affidavit-in-reply at Page Nos.83 to 96 *inter-alia* denying the entitlement of the Applicant for change in date of birth. The O.A. is resisted mainly

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on the ground that the Applicant failed to make an application within five years in terms of 'Rules of 1981', and therefore, correction at the fag end of service is not permissible.

5. Here before going ahead, it would be pertinent to note that the mistake occurred while recording the date of birth of the Applicant in service record is not seriously disputed. Furthermore, though the Applicant has made specific and categorical pleading in Para No.6.14 of O.A. that he was simply asked to write his name in service book and rest of the contents, particularly date of birth, etc. were filled-in by the office behind his back, there is no specific denial to this pleading. Even after filing reply, the Applicant has again filed Sur-rejoinder reiterating his contention to which no Sur-rejoinder is filed. Indeed, in Para No.38 of reply, the Respondent No.2 admitted recording of wrong date of birth in following words.

“38. With reference to ground no.6.41 of the Original Application, I say that the Petitioner was very much aware of the wrong details entered in the service book, inspite, of this the Petitioner did not take any efforts to make the correction within the period of 5 years from the date of appointment of the Petitioner. In fact, the Petitioner realized in the year 2017 when his date of retirement was arriving near.”

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant strenuously referred to the pleadings as well as documentary evidence and sufficiently demonstrated that the date of birth as 06.08.1962 is outcome of sheer negligence and gross mistake on the part of concerned official of Police Training School, Marol. He has further pointed out that in entire service record except first page of service book, his date of birth is 01.06.1966 and the same is also recorded in ITI Certificate, Certificate of appointment issued by none other than Commissioner of Police under Section 14 of Maharashtra Police Act and other documents referred to above. He has further demonstrated that in fact, the date of birth recorded in service record as 06.08.1962 pertains to another Constable viz. Suresh Anuse, who also joined in the same batch. The extract of

service book of Suresh Anuse is at Page 122 of paper book wherein his date of birth recorded as 06.08.1962. He, therefore, submits that even if the Applicant has not made application within five years or thereafter within reasonable time, it is a case of recording of incorrect date of birth due to sheer negligence on the part of Department and not a case where the Applicant has furnished date of birth as 06.08.1962 and later on seeking correction as 01.06.1066. He, therefore, submits that when there is mistake on the part of concerned official in recording date of birth, in the facts of this particular case, non-making an application within five years does not matter. In this behalf, he placed reliance on the decision of Hon'ble High Court delivered in Writ Petition No.5518/2016 (State of Maharashtra Vs. Ganpat Salunkhe) decided on 21.07.2017 whereby decision given by this Tribunal in O.A.892/2014 in similar situation has been upheld.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer countered that even assuming that there was error in recording date of birth in service book, now change in date of birth at the fag end of service is not permissible in view of catena of decisions of Hon'ble Supreme Court. According to him, the Applicant having slept over his rights, now he cannot be allowed to claim change in date of birth at the fag end of service. He tried to contend that the Applicant has acknowledged that his date of birth is 06.08.1962 by affixing thumb mark, and therefore, belated claim is unsustainable. He submits that even if there is mistake on the part of Department in recording date of birth, all that, the Applicant can claim compensation by availing due process of law but no such correction can be entertained at the fag end of service.

8. Before dealing with the factual aspects, let us see the decisions referred by the learned P.O, which are as follows :-

(i) **(1993) 2 SCC 162 (Union of India Vs. Harnam Singh).**

The learned P.O. placed reliance on Para No.7 of the Judgment, which is as under :-

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"7. A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire."

It was a matter where to dates of birth were forthcoming. At the time of entering in service, the date of birth of Respondent was recorded as 20.05.1934. Initially, the Respondent was appointed as Peon when he had not completed S.S.C. Examination. However, later he passed Matriculation Examination and in the Matriculation Certificate, his date of birth was recorded as 07.04.1938. The entry in service book was taken about his passing of Matriculation Examination but his date of birth was not altered to correspond to the Matriculation Certificate and it continued to be as 20.05.1934. He applied for change in date of birth just before retirement but the claim was rejected on the ground that no application was made within five years from the date of entry in service. As such, the fact of this case reveals that at the time of entry in service, the Applicant himself has furnished his date of birth as 20.05.1934 and later on the basis of

Matriculation Certificate, he sought correction in date of birth. Therefore, in fact situation, his claim at fag end of service is held impermissible.

(ii) **(1994) 2 SCC 491 (State of Orissa & Ors. Vs. Brahamarbar Senapati)**. It was also a case of having two dates of birth, initially on the basis of information furnished by the employee, his date of birth was recorded as 18.05.1029 but later he found School Certificate wherein his date of birth was recorded as 27.06.1934. He applied for change in date of birth at the fag end of service. It is in that context, his claim was rejected by the Hon'ble Supreme Court with the observation that the Applicant was in possession of School Certificate showing date of birth as 27.06.1934, but he failed to produce it when he entered into the service. Therefore, in fact situation, his claim for correction in date of birth was rejected.

(iii) **(1995) 4 SCC 172 (Burn Std. Co.Ltd. Vs Dinbandhu Majumdar)**. It was also a case of two dates of birth. At the time of entry in service, the Applicant himself made declaration and furnished his date of birth as 25.04.1931 but later he found some new material and on that basis sought change in date of birth at the fag end of service. Therefore, in fact situation, the claim was rejected.

(iv) The decision of Hon'ble Supreme Court dated 09.04.1997 delivered in the matter of Union of India Vs. C. Rama Swamy & Ors.). I have gone through the Judgment which shows that, at the time of entry in service itself, the employee furnished School Leaving Certificate showing the date of birth as 17.06.1939 and the declaration to that effect was also made in that application made for appearing in civil service examination. Later, the employee sought correction in date of birth as 15.06.1941. The Hon'ble

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Supreme Court held that in such situation, the principle of estoppel would apply and belated, the claim for change in date of birth was rejected.

(v) **(2000) 8 SCC 696 (G.M. Bharat Coking Coal Ltd. W.B. Vs. Shibkumar Dushad & Ors.)**. The learned P.O. placed reliance at Para No.17 of the Judgment, which is as follows :-

“17. The date of birth of an employee is not only important for the employee but for the employer also. On the length of service put in by the employee depends the quantum of retiral benefits he would be entitled to. Therefore, while determining the dispute in such matters courts should bear in mind that a change of the date of birth long after joining service, particularly when the employee is due to retire shortly, will upset the date recorded in the service records maintained in due course of administration should not generally be accepted. In such a case the burden is heavy on the employee who comes to the court with the case that the date of birth in the service record maintained by the employer is untrue and incorrect. The burden can be discharged only by producing acceptable evidence of a clinching nature. We are constrained to make this observation as we find that in a large number of cases employees who are on the verge of retirement raise a dispute regarding correctness of the date of birth entered in the service record and the courts are inclined to pass an interim order for continuance of such employee beyond the date of superannuation on the basis of the entry of the reason that the court in passing such an interim order grants a relief to the employee even before determining the issue regarding correctness of the date of birth entered in service record. Such interim orders create various complications. Anticipated vacancy for which the employee next in the line has been waiting does not materialize, on account of which the junior is denied promotion which he has all along been led to believe will be his due on the retirement of the senior.”

In this matter also, two Certificates showing different dates of birth were forthcoming initially at the time of entry in service on the basis of information submitted by Respondent himself, his year of birth was shown as 1932. However, after 20 years, the Respondent claimed that his date of birth was 09.02.1946. There was no formidable and unquestionable evidence that his date of birth was 09.02.1946, as the documents relied by him found not creditworthy. Furthermore, as per his claim of date of birth as

09.02.1946, he would have been 14 years of age when he joined service. Therefore, his claim found totally unsustainable was rejected.

(vi) **(2004) 3 SCC 394 (State of Punjab & Ors. Vs. S.C. Chandha)**. In this matter, the Respondent initially joined Punjab Institute of Textile Technology, Amritsar on 11.07.1983 and that time, on the basis of information supplied by him, his date of birth was recorded as 19.06.1944 in service record. In H.S.C. Examination also, his date of birth was recorded as 19.06.1944. After his appointment in Punjab Institute of Textile Technology, he worked as Senior Officer in several public sector undertakings and date of birth was continued as 19.06.1944. Later on 19.01.1993, he was absorbed as Treasury Officer in the Department of Finance (T & A), Punjab. Chandigarh. By Notification dated 21.06.1994, the amendment was made in Punjab Civil Services Rules giving opportunity to the employees already in service to change the date of birth within a period of two years from the date of Notification. It is on this background, the Respondent made an application on 26.07.1995 to change the date of birth as 13.12.1945. The Department conducted enquiry in view of Notification and ultimately, his claim was rejected. As such, it was a case where the date of birth was furnished by the Respondent himself on the basis of School Leaving Certificate, but it was sought to be changed without producing any other contemporaneous record to show that his date of birth recorded as 19.06.1944 was wrong. Therefore, in fact situation, his claim for change in date of birth was rejected.

(vii) **(2005) 12 SCC 201 (Coal India Vs. Ardhendu B. Bhattacharjee & Ors.)**. In this case also, at the time of entry in service, the Respondent furnished date of birth as 30.12.1938 on the basis of School Leaving Certificate. Later, he made an application on the basis of Matriculation Certificate stating that his

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date of birth was 26.01.1943. He pleaded that, at the time of admission in School, his father declared wrong date of birth. In this fact situation, the claim made for change in date of birth at the fag end of service was rejected. Furthermore, there was no evidence as to on what basis, the date of birth as 26.01.1943 was recorded in duplicate Matriculation Certificate relied by him for change in date of birth.

(viii) **(2005) 11 SCC 465 (U.P. Madhyamik Shiksha Parishad & Ors. Vs. Rajkumar Agnihoti)**. In this case, the Respondent himself declared his date of birth while entering in service on the basis of H.S.C. Certificate, but at the fag end of service, he discovered that his date of birth was recorded incorrectly. In fact situation, the claim having made at the fag end of service was rejected.

(ix) **AIR 2006 SC 2735 (State of Gujrat & Ors. Vs. Vali Mohamed D. Sindhi)**. In this matter, the Respondent was appointed on the post of Police Constable in 1947 and at the time of appointment, he furnished his birth of year as 1923. He was to retire w.e.f. 01.11.1981. On receipt of retirement order, he made an application for change in date of birth in service record contending that he was born in the year 1928 and not in 1923. As there was no material of conclusive nature to establish that he was born in 1928, the belated claim for change in date of birth was rejected. Indeed, the Hon'ble Supreme Court observed that, unless clear case on the basis of material which can be held to be conclusive nature is made out by the Respondent, that too, within reasonable time as provided in Service Rules, the Court/Tribunal should not issue direction to change the date of birth on the basis of material which can make such claim only plausible. It has been further observed that before any such direction is issued, the Court/Tribunal must be fully satisfied that there has been real

injustice to the person concerned and his claim for correction in date of birth has been made in accordance with the procedure prescribed in Service Rules.

(x) **(2010) 14 SCC 423 (State of Maharashtra Vs. Gorkjnath S. Kamble) & Ors.)**. In this case, the Respondent was appointed as Assistant Teacher on 13.02.1978 and on the basis of H.S.C. Certificate, his date of birth was recorded as 02.06.1949. Later on 23.05.2004, the Respondent made an application complaining that, in fact, his correct date of birth in the record of Tahasildar is 03.05.1951 and sought correction in service record. As such, it is a case where the employee himself made declaration on the basis of H.S.C. Certificate informing his date of birth as 02.06.1949, but later come with some other material that his real date of birth was 03.05.1951. As the claim was found not made within five years in terms of 'Rules of 1981', the claim made at the fag end of service has been rejected by Hon'ble Supreme Court.

(xi) **(2011) 9 SCC 664 (State of M.P. Vs. S. Premlal Shrivastava)**. In this matter, the Respondent was appointed on the post of Police Constable in the year 1965 and he declared date of birth as 01.06.1942. Later in 1990, he made representation to change in date of birth, which was rejected. The Hon'ble Supreme Court maintained the order of rejection of his claim with the observation that no evidence has been placed on record by the Respondent to show that his date of birth recorded as 01.06.1942 was due to negligence of some other person. As such, in fact situation, the belated claim held impermissible.

(xii) **(2016) 15 SCC 781 (Life Insurance Corporation of India & Ors. Vs. R. Basavraj)**. The Respondent in this case entered into service on 19.11.1986 and his date of birth was recorded as 03.02.1943 on the basis of School Leaving Certificate. After 10

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years, the Respondent asked for change in date of birth as 16.02.1945. It was not accepted by the L.I.C. The Respondent then filed Civil Suit No.190/1997 for declaration with regard to his date of birth without impleading L.I.C. in the matter. The said Civil Suit was decreed in 1998. Thereafter, he filed Writ Petition claiming the relief in accordance to decree which was dismissed. When the matter went up to Hon'ble Supreme Court, the order of rejection was confirmed with the finding that, at the time of entry in service, the Applicant himself furnished his date of birth, that too, on the basis of School Leaving Certificate, and therefore, his claim was found untenable.

(xiii) The Judgment of Hon'ble Supreme Court in **Civil Appeal No.1009/2020 arising out of SLP(Civil) No.20627/2019 (Bharat Coking Coal Ltd. & Ors. Vs. Shyam Kishore Singh) decided on 5th February, 2020**). In this matter, at the time of entry in service, the Applicant has given his date of birth as 04.03.1950 and same date was given in Provident Fund Nomination Form filled in the year 1998. He joined service in 1987. After 30 years of joining service, he made representation in 2009 for change in date of birth. After four years from retirement, he availed judicial remedy seeking change in date of birth. Therefore, in fact situation, his claim was rejected.

9. All these Judgments referred to by the learned Presenting Officer are arising from the facts and circumstances of the case. However, nonetheless, the legal principles enunciated in these Judgments can be summarized as under :-

(a) It is obligatory on the part of Department to verify the date of birth of the concerned employee with reference to documentary evidence and to record such date of birth in service book.

(b) When once entry of date of birth has been made in service book, no alteration afterward is permissible unless it is found that the entry was due to want of care on the part of some person other than the Applicant or it is an obvious clerical error.

(c) As per Rule No.38(2)(f) of 'Rules of 1981' as amended w.e.f.24.12.2008, no application for alteration of entry of date of birth recorded in service book shall be entertained after a period of five years from the date of his entry in Government service.

(d) The correct date of birth of a Government servant may be determined, if he produces documentary evidence of the original Birth Register where his name and date of birth has been entered and such proof shall be considered as an unquestionable proof of date of birth.

(e) Where the Government servant makes an application for change in date of birth in terms of Rule 38(2-A) of 'Rules of 1981', the Department shall ensure that no undue advantage has been gained in School admission on the basis of date of birth earlier given by him and date of birth was altered could not make him ineligible for admission in School.

(f) If the Government servant asked for correction in date of birth at the fag end of service, the same is not permissible.

(g) There should be irrefutable and unquestionable evidence of date of birth for making any such alteration and the claim is required to be made in accordance to Service Rules.

10. Material to note that the present matter is governed by Rule 38 of 'Rules of 1981' which was amended in 2008 whereby limitation of five years for making an application for alteration of entry is introduced. Prior to amendment, there was no such fix time limit and earlier provision below Rule 38(2) of 'Rules of 1981' was as follows :-

"Instruction :- (i) Normally, no application for alteration of the entry regarding date of birth recorded in the service book or service roll of a Government servant should be entertained after a period

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of five years commencing from the date of his entry in Government service.”

11. Now turning to the facts of the present case, at the very threshold, material to note that the facts of the present case are very peculiar in nature and exceptional one. It needs to be emphasized and borne in mind that this is not a case where the Applicant himself has disclosed his date of birth as 06.08.1962 at the time of his appointment as Police Constable. This is also not a case where the Applicant has produced certain document/School Leaving Certificate showing date of birth as 06.08.1962 and on that basis, the date of birth was recorded as 06.08.1962. This is a case where the Applicant has categorically pleaded that he was simply asked to fill-in his name and rest of the contents were written by the concerned employee of Police Training School, Marol. As stated above, hundreds of constables were appointed and were sent to Police Training School where the first page of service book was written. At the cost of repetition, it is necessary to highlight that there is no counter denial to the specific pleadings made by the Applicant that he was simply asked to fill-in his name and he did not give his date of birth as 06.08.1962. The correctness of his contention is also borne out from the perusal of extract of service book, which is at Page No.45 of Paper Book. It is apparent from Page No.45 that the handwriting mentioning date of birth, etc. is different from the handwriting in which the name of the Applicant is written. As such, *ex-facie*, it is in the handwriting of two persons. The name of the Applicant is written by Applicant himself whereas the rest of the contents were filled-in by the office. While doing so, the date of birth was recorded as 06.08.1962. During the course of hearing, the original service book was also produced as per the direction of the Tribunal to find out whether any School Leaving Certificate showing date of birth as 06.08.1962 is forthcoming on record. However, no such School Leaving Certificate was found in service book.

12. Crucial to note that, in service book, it is mentioned that the date of birth as 06.08.1962 is written on the basis of School Leaving Certificate which itself is not forthcoming with service book. As stated earlier, it is nowhere the case of the Respondents that the Applicant furnished particular School Leaving Certificate and on that basis, the date of birth was recorded as 06.08.1962. Indeed, it was obligatory on the part of concerned employee of Police Training School to ascertain what date of birth is recorded in School Leaving Certificate when it is written that the entry of date of birth is taken on the basis of School Leaving Certificate. Furthermore, the name of the village of the Applicant is shown Bavchi in service book, which is admittedly incorrect. This goof-up committed by the Department is linked to School Leaving Certificate of another Police Constable Shri Anuse, who also joined in the same batch. The extract of service of Constable Anuse is at Page No.122 which shows his date of birth as 06.08.1962 and is shown resident of village Bavchi. As such, there is merit in the submission advanced by the learned Advocate for the Applicant that grave error was committed by Police Training School while recording date of birth of the Applicant in service book. During the course of hearing, pointed question was asked to the learned P.O. as to whether the Department have any documentary evidence in the form of School Leaving Certificate, Birth Certificate, etc. to show that his date of birth is 06.08.1962 and he fairly concedes that there is no such record with the Department. Suffice to say, there was sheer negligence on the part of Department while recording date of birth of the Applicant.

13. Indeed, astonishing to note that, on the very same page of service book (Page No.45) while writing qualification of the Applicant, his qualification is recorded as 'S.S.C. passed' from Hutatma Kisan Ahir Vidyalaya, Valwa, District Sangli. Here, interesting and significant to point out that in the said S.C.C. Certificate, on the basis of which the entry of S.S.C pass was taken, the date of birth of the Applicant is shown as 01.06.1966 which is at Page No.37 of P.B. Besides, there is also

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School Leaving Certificate issued by Hutatma Kisan Ahir Vidyalaya (Page No.36 of P.B.) wherein the date of birth recorded as 01.06.1966. It tallies with the reference of Register No.2578 recorded in service book while mentioning the qualification of the Applicant. As such, it is explicit that the Department had S.S.C. Certificate of the Applicant having date of birth as 01.06.1966 still in the column of date of birth, it is recorded as 06.08.1962. Suffice to say, it is outcome sheer negligence and casual approach of the Department adopted while recording date of birth of the Applicant. Had concerned official of Police Training School was vigilant and verified the documents produced by the Applicant, this situation could not have occurred. Unfortunately, the Applicant is made victim and had to suffer for the negligence on the part of concerned officer of Police Training School.

14. As stated above, at the cost of repetition, it is again necessary to point out that this is not a case of change in date of birth. Indeed, it is a case of direction to record correct date of birth. Thus where there is obvious grave error on the part of Department while recording date of birth, the question of limitation perhaps may not arise. The limitation of five years in the present case, in fact, does not arise, as the Applicant joined in 1986 and the limitation of period of five years for making application is introduced for the first time by amendment in 2008. In this behalf, a reference may be made to the decision of Hon'ble Bombay High Court in **2014(6) M.L.J. (Ashok P. Meshram Vs. Head Master, Z.P. High Court)**. The issue before Hon'ble High Court was regarding applicability of amended Rule of 2008. The Hon'ble High Court on comparison of old Rule and amended Rule held that Rule making authority has after amendment in 2008 prohibited the employees from making application for correction in date of birth after a period of five years from the date of entry in service, but since the amendment is not retrospective, it must be read as prospective. In that case also, no application was made within five years from the date of entry in service but it being governed by old Rules, it was held that the mistake on the

part of Applicant of not making an application within five years held cannot be utilized to punish him for all time to come when there is clear error in date of birth recorded in service book. Suffice to say, even if the application is not made within five years or within a reasonable period, it should not come in the way of Applicant where there is obvious error on the part of Department in recording the date of birth. There was no such fix period of limitation and application was required to be made normally within five years. True, the Applicant made representation for the first time on 05.03.2013 (Pave No.46 of P.B.) and not within reasonable time from the date of joining service. However, in the present situation, in my considered opinion, where there is obvious mistake and sheer negligence on the part of concerned official of the Department while recording date of birth, the Rule of limitation should not come in the way of Applicant and the Applicant should not suffer for it. Therefore, the Tribunal is required to adopt holistic approach so as to administer the justice where gross error of the Department is writ large and no fault can be attributed to the Applicant.

15. As a matter of fact, the mistake on the part of Department while recording date of birth is admitted by the Department itself, but now the Department come with a stand that the application is belated, and therefore, not maintainable. Such plea cannot be countenanced where obvious gross error is on the part of Department and no fault can be found with the Applicant. Indeed, at one point of time, having realized grave mistake on the part of Department, the Government by letter dated 31.08.2018 (Page No.58) asked Director General of Police to take appropriate action against the concerned employee for taking wrong entry in service book. However later, the Government took somersault and rejected the claim made by the Applicant for no valid reasons.

16. The Applicant has also produced various documents showing his date of birth as 01.06.1966. Now the document is forthcoming from the side of the Department showing his date of birth as 06.08.1962. The

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School Leaving Certificate (Page No.36 of P.B.), S.S.C. Certificate (Page No.37 of P.B.), I.T.I. Certificate (Page No.38-A of P.B.), Certificate of appointment issued by none other than Commissioner of Police under Section 14 of Bombay Police Act (Page No.39 of P.B.), Identity Cards issued by Department (Page Nos.40 and 41 of P.B.), Addhar Card (Page No.42), Pan Card (Page No.43 of P.B.) and Driving License (Page No.44 of P.B.) shows the date of Applicant as 01.06.1966. As such, there is formidable and unquestionable evidence that the date of the Applicant is 01.06.1966. Thus, the record clearly spells that the date of birth of the Applicant is 01.06.1966 and nowhere it is recorded as 06.08.1962. Indeed, the Department itself acknowledged his date of birth as 01.06.1966 in its own record except entry in service book as stated above.

17. This is not a case where the Applicant has gained any disadvantage by representing his date of birth as 06.08.1962. The Applicant has also produced School Leaving Certificate of Z.P. School, which is at Page No.126 of P.B. and extract of register of Z.P. School at Page No.127 wherein also his date of birth is recorded as 01.06.1966. The Applicant took admission in Primary School on 21.07.1972. Thus, he had taken admission on completion of six years and he did not gain any disadvantage by representing incorrect date of birth.

18. True, the burden rests heavily upon the Applicant while seeking declaration regarding claim of real date of birth and there should be unquestionable and irrefutable evidence of date of birth. That burden is satisfactorily discharged by the Applicant in the present case. Indeed, the Hon'ble Supreme Court in **Premal Shrivastava's** case (cited supra) by the learned P.O. observed that the Tribunal should be loath to allow correction in date of birth in service record at the fag end of service unless it is satisfied by irrefutable proof of date of birth and that real justice has been caused to the employee. In the present matter, there is no escape from the conclusion that there is manifest gross error

committed by the Department while taking entry of date of birth in service book. Thus, the heart of the matter is to ensure that justice is required to be done where no fault lies on the part of Applicant and the blame squarely falls on the part of Department. This view is reinforced in view of the decision rendered by this Tribunal in **O.A.892/2014 (Ganpat Salunkhe Vs. Deputy Commissioner of Police) decided on 06.08.2015** and confirmed by Hon'ble High Court in Writ Petition No.5518/2016 decided on 21.07.2017. In that case, Mr. Ganpat Salunkhe joined as Police Constable on 26.09.1981 and his date of birth was wrongly recorded as 26.09.1976. That would mean that he joined the Primary School at the age of 5 years. Thereafter, the entry was changed to 26.09.1956 and he was to retire at the end of September, 2014 on the basis of date of birth as 26.09.1956. He filed O.A.No.892/2014, but no interim relief was granted and consequently, he got superannuated on 30.09.2014. It was his case that he never represented that his date of birth was 26.09.1956. There was no material whatsoever with the Department to show that his date of birth was 26.09.1956. The O.A. was contested on the point of delay and the Department contended that at the fag end of service, alteration in date of birth is not permissible. The O.A. was heard on merit and allowed with the finding that there was no mistake on the part of Applicant and mistake was on the part of Department while recording date of birth. As the Applicant was already retired on attaining the age of superannuation, the directions were given to extend service benefits considering his date of birth as 26.09.1956. The matter was taken up before the Hon'ble High Court and the decision of Tribunal was confirmed. Para Nos.7 and 8 of the Judgment of Hon'ble High Court are material, which are as follows :-

"7. This is not a case where the respondent wanted a change in the date of birth. This is not a case where the respondent had given a particular date at the time of initial entry which was later on sought to be changed by him. In fact, the office of the petitioner itself had convincing material before them to show that the date of birth of the respondent was 26th September, 1960 yet wrong date was noted in the service book. The Learned Counsel for the petitioners, submitted that, after a period of 5 years from entry in Government Service, no change can be carried out in

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date of birth. To support this submission, reliance is placed on Instruction (1) to Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 which states as under :-

"(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 should be entertained after a period of five years commencing from his entry in Government Service."

8. *In the first place, the respondent had not given his date of birth as 26th September, 1956, nor had he preferred an application for alteration of the entry. There was no tangible material before the petitioners to record the date of birth as 26th September, 1956. On the other hand, as far as, the date 26th September, 1960 is concerned, there was ample convincing documentary material before the petitioners who were the custodians of his service book to show that the date of birth of the respondent is 26th September, 1960."*

The petitioners themselves have written an erroneous date of birth in the service book of the respondent without any material to support the same. On the other hand, there was ample material to show that the date of birth of the respondent was 26th September, 1960. In such case, the petitioners cannot be allowed to take advantage of their own wrong and the respondent cannot be made to suffer for something for which he was not responsible or accountable. The Tribunal took into consideration all the above facts and thereafter directed to enter in the relevant record, the respondent's date of birth as 26th September, 1960 instead of 26th September, 1956 and allowed the respondent to rejoin the duties with continuity of service and all service benefits including backwages from 1st October, 2014 till resumption of duties. Looking to the above facts, as discussed by us in detail, no error can be found in the order of the Tribunal. Hence, Rule is discharged."

19. The conclusion of mine is further strengthened in view of decision of Hon'ble High Court reported in **2017(2) ALL MR 328 (Shriniwas Karve Vs. State of Maharashtra)** where in similar situation, having found that there was obvious error on the part of Department while recording the date of birth of the Applicant Shriniwas, directions were issued to correct the date of birth despite of non-making an application for correction in date of birth within five years or within reasonable time from entering into service. In that matter, the Petitioner joined as Lecturer in 1984 and in service book, the date of birth was recorded as 01.03.1957 instead of 16th January, 1958. The Petitioner realized the mistake in service book in 1993 for the first time, and therefore, made representation on 4th February, 1993. It was brought to the notice of Department that the

concerned official had mistakenly reported the date of another officer viz. John Gaikwad, who was selected and appointed along with the Applicant on the same day. The date of birth of John Gaikwad was 1st March, 1957 and mistakenly, same date was recorded in service book of the Petitioner. The claim of the Petitioner was strongly resisted on the ground of not making an application within five years. However, the Hon'ble High Court on examination of record found the date of birth as 01.03.1957 was recorded by the Department without verifying documentary evidence and it was due to want of care on the part of Department, it was found inadvertent clerical error made by concerned official. Accordingly, the Writ Petition was allowed subject to cost of Rs.25,000/- and pensionary benefits were granted. The Hon'ble High Court heavily came down on the Respondents with observation that the Petitioner was unnecessarily harassed and his date of birth ought to have been corrected by the Department itself in view of sheer mistake on the part of Department.

20. These two decisions are arising from similar situation alike present situation and are squarely attracted to the facts and circumstances of the present case. Suffice to say, the Applicant cannot be punished or allowed to suffer injustice in not making an application within five years, where there is ex-facie gross error and negligence on the part of Department while recording date of birth of the Applicant.

21. In so far as decision referred by the learned P.O. as discussed are concerned, in my considered opinion, in view of peculiar facts and circumstances of this case, none of the decision is helpful to the learned P.O. Those decisions are rendered in fact situation where there was a dispute of correct date of birth and fundamentally, the Government servant himself furnished the date of birth while entry in service but later he sought change in date of birth on the basis of some other Birth Certificate obtained later on. It is well settled principle of law in the matter of applying precedents that the Court/Tribunal should not place

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reliance on decision without discussion as to how the fact situation of the case before it fits in which the fact situation of the decision on which reliance is placed. Little difference in facts or single additional fact can make a lot of difference in the precedential value of a decision.

22. In the present case, the Applicant nowhere or at no point of time furnished his date of birth as 06.08.1962, but it was recorded by the Department due to sheer negligence and as such, this is not a case where the employee is seeking change in date of birth in strict sense so as to apply limitation of five years in terms of 'Rules of 1981' as stood before 2008.

23. Furthermore, as rightly pointed out by the learned Advocate for the Applicant that there is no observance of Rule 36 and Rule 41 of 'Rules of 1981' which *inter-alia* provides for maintenance of service book and necessity of obtaining declaration of Government servant each year to the effect that he has carefully gone through the entries made in service book and acknowledged to be correct one and by providing duplicate service book to a Government servant. In the present case, except bald statement of learned P.O, there is nothing on record to establish that the duplicate service book was furnished to the Applicant and he acknowledged correctness of the entries made therein year to year as contemplated in Rule 36 read with Rule 41 of 'Rules of 1981'.

24. The submission advanced by the learned P.O. that even if there is a mistake on the part of Department for recording date of birth, the remedy is to seek compensation only is totally fallacious and misconceived. It would be travesty of justice, if the Applicant is asked to go for another set of litigation where no fault can be attributed to him. He should not suffer for the grave mistake committed by the Department while recording date of birth.

25. For the aforesaid reasons, I am fully convinced that there is grave error on the part of Department while recording date of birth of the Applicant and it needs to be rectified to render complete justice to him. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 04.03.2020 is quashed and set aside.
- (C) The Respondents are directed to correct the date of birth of the Applicant as 01.06.1966 in place of 06.08.1962 and shall render related service benefits to him.
- (D) No order as to costs.

Sd/-


(A.P. KURHEKAR)
Member-J

Mumbai
Date : 13.08.2020
Dictation taken by :
S.K. Wamanse.