

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.767 OF 2019**

**DISTRICT : KOLHAPUR**

Shri Ganapati Banda Kamalkar. )  
Age : 48 Yrs., Occu.: Service as Block )  
Education Officer, Panchayat Samiti, )  
Kagal, District : Kolhapur and residing at )  
A/P Malage (Budruk), Tal. Kagal, )  
District : Kolhapur – 416 219. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through its Additional Chief )  
Secretary, School Education & )  
Sports Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Commissionerate of Education, )  
School Education Department, )  
Govt. of Maharashtra, Through Joint )  
Director of Education [Administration) )  
Budget and Planning], having office )  
At Central Building, Dr. Annie )  
Bezant Road, Pune – 411 001. )
3. The Director of Education (Secondary) )  
M.S, Pune – 1. )
4. The Deputy Director of Education, )  
Kolhapur Region, Kolhapur, )  
Having Office at Hattimahar, )  
Ganji Galli, Somvar Peth, )  
Kolhapur – 416 002. )
5. The Education Officer (Primary), )  
Zilla Parishad, Kolhapur, having )  
Office at Zilla Parishad Building, )  
Nagala Park, Kolhapur. )...**Respondents**

**Mr. Utkarsh Desai holding for Shri P.S. Bhavake, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 06.09.2021**

### **JUDGMENT**

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985 challenging the communication dated 07.12.2018 whereby his application for correction of date of birth has been rejected by Respondent No.2 on the ground that it is not made within five years from the date of joining of service as contemplated in Maharashtra Civil Services (General Service Conditions) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity).

2. Undisputed facts giving rise to this O.A. are as under :-

(i) Initially, the Applicant was appointed as Assistant Teacher at Vidyamandir Bhadgaon, District : Kolhapur by order dated 18.12.1991. The said School was run by Z.P, Kolhapur (Respondent No.5).

(ii) At the time of entry in Z.P. service, the date of birth of Applicant was recorded as 01.06.1969 on the basis of School Leaving Certificate furnished by him.

(iii) The Applicant made an application to Respondent No.5 on 20.10.2008 for correction of date of birth in service record stating that his date of birth is wrongly recorded as 01.06.1969 instead of 01.09.1970.

(iv) The Respondent No.5, however, rejected the application made by the Applicant by order dated 05.11.2008 stating that the

Applicant was required to make an application for correction in date of birth in service record within five years from joining service as provided under Rule 38(2) of 'Rules of 1981', but it was made after 17 years, and therefore, no correction can be done.

(v) Later, the Applicant was appointed as Block Education Officer in Group 'B' post in Government service as a direct recruit as per the recommendations made by MPSC and accordingly joined on 05.07.2011.

(vi) The Applicant, therefore, again made an application addressed to Government (Respondent No.1) on 12.10.2012 for correction of date of birth in service record stating that since he joined Government service on 05.07.2011, the application is again being made within five years from the date of joining of Government service.

(vii) The Applicant then sent representations/reminders dated 08.11.2012, 27.11.2012, 23.04.2013 and 12.09.2016 requesting for correction in date of birth.

(viii) The Respondent No.2 – Commissioner of Education, School Education Department, however, rejected his applications by order dated 07.12.2018 stating that it is not permissible since being made after five years from the date of joining of initial service in Z.P, as provided under 'Rules of 1981'.

3. It is on the above background, the Applicant has filed the present O.A. challenging the order dated 07.12.2018 whereby his request for correction in date of birth stands rejected.

4. The Respondent Nos.1 to 5 filed Affidavit-in-reply *inter-alia* justifying the impugned order stating since the application was not made within five years from the date of joining of service, it is not maintainable under Rule 38(2) of 'Rules of 1981'.

5. The Respondent No.5 has also filed Affidavit-in-reply *inter-alia* stating that after entry in Z.P. service, the Applicant has not filed application for correction in date of birth within five years from the date of 20.10.2008 and it has been rightly rejected in accordance to 'Rules of 1981'.

6. Shri Utkarsh Desai holding for Shri P.S. Bhavake, learned Advocate for the Applicant sought to assail the impugned order dated 07.12.2018 *inter-alia* contending that in view of fresh appointment of the Applicant in Government service as Block Education Officer after joining the said post, he has made an application for correction in date of birth within five years, and therefore, it ought to have been considered by Respondent Nos.1 to 4 for correction in date of birth in service record. Thus, according to him, he has got new cause of action to file application afresh after his appointment as Block Education Officer in Government service. On this line of submission, he submits that the impugned order dated 07.12.2018 is unsustainable in law and prayed for direction for correction of date of birth in service record. However, when specific query was made to him about the period of Z.P. service, he fairly concedes that the appointment of the Applicant as Block Education Officer is in continuation of service for all purposes.

7. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer submits that the Applicant was required to make an application for correction in date of birth within five years from the date of Z.P. service, but he made an application after 18 years from the date of Z.P. service and it was rightly rejected by order dated 05.11.2018. She submits that even if the Applicant has been appointed through MPSC as Block Education Officer, it is in continuation of Z.P. service, and therefore, his appointment in Government service as Block Education Officer would not furnish fresh cause of action to make an application afresh for correction in date of birth. She, therefore, submits that once the application made by the Applicant has been already rejected being not in consonance with 'Rules

of 1981', the second application made by the Applicant after his entry in Government service is rightly rejected.

8. In view of submissions advanced at the Bar, the question posed for consideration is whether after the entry in Government service, the Applicant got fresh cause of action for correction of date of birth in service record and the impugned order suffers from any illegality. The answer, in my considered, opinion is in emphatic negative.

9. Indisputably, the Applicant was initially appointed as Teacher in Z.P. service on 18.12.1991 and for the first time, he made an application for correction of date of birth by application dated 20.10.2008 to Z.P. which was rejected by Z.P. by order dated 05.11.2008 (Page No.21 of P.B.). The said order was not challenged by the Applicant. Later, he was appointed as Block Education Officer by order dated 09.06.2011 but admittedly, it is in continuation of his earlier service rendered on the establishment of Z.P. This position is fairly conceded by the learned Advocate for the Applicant that it is treated as continuation of service for all purposes including pension purpose. It is further obvious from the fact that same service book prepared while his entry in Z.P. School has been continued after his appointment as Block Education Officer wherein his date of birth has been recorded as 01.06.1969. Admittedly, that time, it is on the basis of information supplied by the Applicant and on the basis of Leaving Certificate, his date of birth was recorded as 01.06.1969. The Applicant has also produced a copy of School Leaving Certificate wherein his date of birth is recorded as 01.06.1969 (Page No.17 of Paper Book). However, after 17 years of Z.P. service, he made an application on 20.10.2008, which was belated by 17 years, for correction of date of birth [Page No.19 of P.B.]. Along with the application, he had tendered Birth Certificate issued by Panchayat Samiti showing the date of birth as 01.09.1970. Thus, it appears that in Birth Register, his date of birth was recorded as 01.09.1970. Be that as it may, there is no denying that in School Leaving Certificate, his date of

birth was recorded as 01.06.1969 and Applicant himself furnished the record i.e. Leaving Certificate to that effect.

10. The procedure for writing and recording the date of birth in service book and its correction is governed by Rule 38 of M.C.S. (General Conditions of Service) Rules, 1981. It would be useful to reproduce Rule 38(2)(a) and (f) and the instructions as amended on 24.12.2008 which are as follows :-

**“38(2)(a)** : The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;

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

9. Now, turning to the facts of the present case, admittedly, the Applicant's date of birth has been recorded in service book on the basis of school record produced by him at the time of entry in service. As per Rule 38(2)(f) reproduced above, once an entry of age and date of birth is made in the service book, correction is not permissible 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. In the present case, the entry was taken on the basis of school record produced by the Applicant herself and this being the position, it cannot be said

that there was any error or want of care on the part of some person other than the Applicant. This being the position, no case is made out to change the date of birth in terms of Rule 38 of M.C.S. (General Conditions of Service), Rules, 1981.

10. The provisions of Rule 38 2(f) is considered by the Hon'ble Bombay High Court in **Ranjana Salakar Vs. State of Maharashtra reported in 2007(4) Maharashtra Law Journal 857**. Para No.5 of the Judgment is as follows :-

*“5. It is obligatory upon the department to correctly record the date of birth of an employee in the service book. While recording the date of birth, 5 O.A.32/2020 they have to follow the prescribed procedure. The entry made in the service record is treated as final. In terms of Clause (f) of Rule 38(2), when once an entry of age or date of birth has been made in a service book, no alteration of the entry should thereafter be allowed, unless the conditions stated therein are satisfied. In the present case, there was neither any clerical error nor mistake on the part of a person other than the individual in question. The instructions further postulate that normally no application for alteration of the entry regarding date of birth as recorded in the service shall be entertained after a period of five years commencing from the date of which entry is made in the service records. The petitioner did not take any steps for correction of her date of birth despite the fact that the entry in the service record was made by the petitioner in her own handwriting and signatures. The story put forward that the petitioner came to know of her correct date of birth during a discussion which took place in the year 2004 does not inspire confidence in the mind of the Court. The general rule is that entry once recorded in the service record has to be treated as final and any alteration thereto is an exception to the Rule. To meet the exception, the petitioner should strictly satisfy the ingredients of the provisions.”*

11. The reference of decision of Hon'ble Bombay High Court in **Writ Petition No.8283/2006 (Parshuram Shinde Vs. Director General and Inspector General of Police) decided on 13<sup>th</sup> December, 2017** would be profitable in this behalf. In Para No.8, the Hon'ble High Court held as follows :-

*“8. We have considered the submissions advanced by the learned Counsel and have gone through the relevant documents and the order impugned with the assistance of the learned Counsel. In our opinion, the order passed by the Tribunal is a well reasoned order upon considering all the materials on record. We find that the applicant entered the service in 1971 and the entry as regards his date of birth was made in the*

service book on the basis of the school leaving certificate produced by the petitioner himself. Any change in the date of birth has to be made by making an application within a reasonable time from the date of entry in service. The Apex Court in the case of *State of Punjab & others Vs. S.C. Chadha*, (2004) 3 SCC 394, has stated the importance of the entry of the date of birth in the relevant register or service book. The Apex Court has categorically held that the rules which prescribe a procedure to be followed for changing the date of birth are with the sole object that request for change in date of birth should be made within a reasonable time and not on the eve of superannuation of such public servant.”

12. In **(2010) 14 SCC 423 (State of Maharashtra Vs. Gorakhnath S. Kamble)**, the Hon’ble Supreme Court considered series of its earlier decisions and held as under :-

*“17. In another judgment in State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal, (2005) 11 SCC p.477, the relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.*

*18. Two decades ago this Court in Government of A.P. & Anr. Vs. M. Hayagreev Sarma, (1990) 2 SCC p.682, has held that subsequent claim for alteration after commencement of the rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act, 1886, was not open. Reliance was also placed on State of Uttar Pradesh & Ors. Vs. Gulaichi (Smt.), (2003) 6 SCC p.483, State of Tamil Nadu Vs. T.V. Venugopalan, (supra), Executive Engineer, Bhadrak ( R & B) Division, Orissa & Ors. Vs. Rangadhar Mallik, (1993) Suppl.1 SCC p.763, Union of India Vs. Harnam Singh, (supra) and Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (surpa).*

*19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in **Secretary and Commissioner, Home Department & Ors. Vs. R. Kribakaran** (surpa) reads as under :-*

*“An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever.*

*According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."*

**20.** *In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the conclusion that no application for alteration of date of birth after five years should have been entertained."*

13. In **(2011) 9 SCC 664 (State of M.P. & Ors. Vs. Premlal Shrivas)**, the Hon'ble Supreme Court again reiterated as under :-

**“9.** *It needs to be emphasized that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he 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. No court or the tribunal come to the aid of those who sleep over their rights."*

14. Recently again, the Hon'ble Supreme Court in **2020(3) SLR 639 (SC) Bharat Coking Coal Limited and Ors. Vs. Shyam Kishor Singh**, reiterated well settled position that correction in date of birth at the fag end of service is not sustainable. In that case, the employee sought

change in date of birth mentioned in service record on the basis of some verification of date of birth from Bihar School Examination Board. However, the Hon'ble Supreme Court turned down the contention for change in date of birth being at the fag end of service.

15. Thus, it is no more res-integra that correction of date of birth in service record must be strictly in terms of Service Rules and no such correction is permissible belatedly at the fag end.

16. Admittedly, the Applicant did not make application within five years after entry in Z.P. service in 1991. He had applied for correction by application dated 20.10.2008 after 17 years and it was rejected on 05.11.2008 which has not been challenged by the Applicant. In other words, the claim for correction of date of birth has been already rejected while Applicant was in Z.P. service and that order had attained finality.

17. However, again after appointment as Block Education Officer, the Applicant attempted for correction in date of birth knowingly that his earlier application for correction in date of birth is already rejected being not in conformity with the 'Rules of 1981'. It also stands rejected by impugned order dated 07.12.2018 with the specific mention that the application was required to be made within five years during his service with Z.P. itself. Besides, there is specific reference in impugned order dated 07.12.2018 that 'Rules of 1981' are also applicable to Z.P. servants. This position is not controverted or challenged by the learned Advocate for the Applicant during the course of hearing when specific query was raised to him. Suffice to say, the submission advanced by the learned Advocate for the Applicant that Applicant got fresh cause of action after his appointment as Block Education Officer in Government service is totally fallacious and misconceived. His claim for correction in date of birth was already dealt with while he was in Z.P. service and it had attained finality. In other words, now it cannot be said that the Applicant has got fresh cause of action on the basis of impugned order

dated 07.12.2018, since the matter in issue has been already dealt with by the competent authority and had attained the finality. Suffice to say, this O.A. is nothing but an attempt to revive old and stale cause of action which is not permissible in law.

18. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned communication rejecting the claim of Applicant for correction in date of birth holds no water and O.A. is liable to be dismissed. Hence, the following order.

**ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 06.09.2021  
Dictation taken by :  
S.K. Wamanse.

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