

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.908 OF 2023

DISTRICT: Palghar
Subject: Change in Date of Birth

Shri Shaligram Motiram Chim,)
Age: 49 yrs, Working as Jr. Clerk,)
Palghar Irrigation Division, Manor,)
Irrigation Sub Division Manor, Taluka)
& District : Palghar.)
R/o. At and Post : Parambi, Taluka)
Muktainagar, Dist. Jalgaon.).....**Applicant**

VERSUS

- 1] The State of Maharashtra, through)
Through the Secretary, Water)
Resources Department, Mantralaya,)
Mumbai 400 032.)
- 2) The Superintending Engineer, Thane)
Irrigation Circle, Thane (West).)
- 3) The Executive Engineer, Palghar)
Irrigation Division, Manor, Taluka &)
District : Palghar.).....**RESPONDENTS**

Shri U. V. Bhosale, learned Advocate for the Applicant.
Shri A. J. Chougule, learned Presenting Officer for the Respondent

CORAM : Shri Ashutosh Karmarkar, Member (J)

DATE : 14.11.2024

J U D G M E N T

1. The Applicant has prayed for quashing the order dated 08.02.2023 by which Respondent refused to correct the Date of Birth of Applicant in service records. He has also prayed to challenge the Date of Birth in service record as 11.06.1974 instead of 01.06.1971.

2. The Applicant was appointed as Clerk Typist vide order dated 04.03.2014 issued by Respondent No.2. He belongs to SC Category and was appointed in Handicapped Category. The Applicant has joined the said post on 30.04.2014. The Applicant states that his Date of Birth is recorded as 01.06.1971 in Service Book on the basis of School Leaving Certificate.

3. According to Applicant, the Applicant's parents were uneducated. Hence, his date of birth was wrongly recorded as 01.06.1971 in School records. Learned Advocate submits that Applicant's name was not found in birth record of the Village Parambi Gram Panchayat, Taluka Muktainagar, District Jalgaon where he was born. The Applicant further states that on the basis of Order of learned JMFC, Muktainagar, dated 07.09.2016, the date of birth of Applicant was recorded as 11.06.1974 in the records of Village Parambi, Tal. Muktainagar, Dist. Jalgaon. According to him, he has filed application on 22.04.2019 to Respondent No.3 for changing his Date of Birth in Service Record. It was forwarded by Sub Divisional Engineer, Irrigation Sub Division, Manor to Respondent No.3- Executive Engineer, Palghar Irrigation Division, Manor. The Respondent No.3 has rejected the said application on 08.02.2023 by referring Rule 38 (2)(f) of Maharashtra Civil Services (General Conditions of Service) Rules, 1981, that there is no obvious clerical error in recording the date of birth of the Applicant. It is not Applicant's case that it was clerical error. The Date of Birth was recorded as per 'School Leaving Certificate' at the time of joining service. After joining service, he learnt that his date of birth is wrongly mentioned in Service Records. The second ground

for rejection of his application by referring of G.R. dated 11.06.2010 is improper as the said G.R. cannot be applied retrospectively.

4. The Applicant has filed petition on the ground that application for change in Date of Birth was filed within five years from joining his service. Secondly, the parents of Applicants were uneducated and they were not aware of procedure for recording Date of Birth. The learned JMFC has ordered to record the date of birth as 11.06.1974.

5. The Respondents have filed their reply. According to them, the Date of Birth of Applicant was recorded on the basis of 'School Leaving Certificate'. Though, they have received the Order of learned JMFC, Muktainagar, dated 07.09.2016, the documentary evidence on which basis, said order came to be passed, were not received. The Applicant has not fulfilled the criteria of minimum age while getting admission in primary school as per G.R. dated 11.06.2010. As per the guidelines in the Circular, the date mentioned in 'Birth and Death Register' shall be considered, only if, entry is taken at the time of birth.

6. Learned Advocate for Applicant has submitted that as per his contention in petition. He has relied in case of **Mr. Krushnat Swaruprao Nagnath V/s the State of Maharashtra & Ors in O.A.No.371/2015, dated 29.01.2016** before this Tribunal and submitted that the facts in that case are identical.

7. On the other hand, learned Presenting Officer has submitted that if the Applicant's Date of Birth is considered as 11.06.1974 as he is seeking, he cannot be admitted in 1st standard before June 1979/1980. He has referred

to correspondence by Deputy Executive Engineer, Palghar Irrigation Department addressed to Superintendent Engineer, Thane wherein it is mentioned that Applicant (page 28) got admitted in 1st Standard on 16.06.1978. So, he has submitted that Date of Birth of Applicant may not be the date of 11.06.1974 as claimed.

According to learned Presenting Officer, the ground mentioned in impugned order while rejecting the claim of Applicant are proper.

8. The question to be decided in the matter is whether the Date of Birth of the Applicant in Service Book can be changed as claimed.

9. It is undisputed that the Applicant was appointed as Clerk -Typist. It is also not disputed that he belongs to Scheduled Caste and was appointed in Handicapped category. The Applicant's prayer for change in Date of Birth in Service Book was refused by the Respondents vide impugned Order Exhibit A, page 10 by referring Rule 38 (2) (f) of the Maharashtra Civil Services (General Condition of Service) Rules, 1981. The Respondent has mentioned that there is no obvious clerical error. According to learned Advocate for Applicant, it is not their ground that there was clerical error while mentioning in service record.

10. It has to be noted that copy of extract of Service Book shows that date of birth of the Applicant is shown as 01.06.1971. Now, the Applicant wants to change it as 11.06.1974. The Respondents have come with the case that they have recorded the Date of Birth in Service Record on the basis of 'School Leaving Certificate'. The copy of one of the representations of Applicant (page 24) dated 04.11.2022 also shows that entry of Date of Birth of Applicant is taken on the basis of 'School Leaving Certificate'. The copy of 'School Leaving Certificate' (page 13 of OA) is on record which is obtained from concerned department where Applicant is serving. It also shows that Date of Birth of Applicant is 01.06.1971.

11. It is true that the Applicant seems to have filed application for change in Date of Birth within 5 years from the date of his appointment on 30.04.2014. He has filed said application on 22.04.2019 on the ground of order passed by learned JMFC. The representation of Applicant (page 24 of OA) revealed that even before obtaining order from the learned JMFC, the Applicant was aware that his birth date i.e.01.06.1971 in the Service Record is wrong. Rather than to approach department first, he proceeded to obtain order from the learned JMFC, Muktainagar.

Secondly, the order of learned JMFC (page 16 of OA) shows that application was filed by Applicant's elder brother for directing Gramsevak, Village Parambi to record Date of Birth of Applicant. At that time, Applicant was major. He has not dared to approach personally to learned JMFC to seek such relief. Order of learned Magistrate also does not reveal that Applicant in it has inquired with the Gramsevak to verify date of birth of this Applicant as 01.06.1971. Said order does not reveal as to whether evidence in the form of Affidavit of parent who are the best witnesses, were filed. The representation dated 04.11.2022 shows contention that Applicant was aware that date of birth 01.06.1971 was wrongly given at the time of admission in the School. But Applicant has not approached personally before learned JMFC and only after order of learned JMFC regarding registration of date of birth of Applicant as 11.06.1974, Applicant has moved application before the Respondents for change in Date of Birth. It does not reveal that there are Bonafides on the parts of Applicant.

12. Learned Presenting Officer has referred G.R. dated 11.06.2010 which was on the basis of provisions of Rights of children to Free and Compulsory Education Act, 2009 which says that a child completed 5 years is admitted in the 1st standard.

13. Learned Advocate for the Applicant submitted that no retrospective effect is to be given to this G.R. But Clause 5 of the said G.R. shows that even on the day of said G.R. the child was to be admitted in the 1st standard on completing age of 5 years. It is matter of common experience that earlier child used to be admitted in the 1st standard on completing his age of 5 years.

If it is accepted for a moment that date of birth of the Applicant was 11.06.1974 then Applicant could have got admitted in June 1979 in the 1st standard.

14. Learned Presenting Officer has invited my attention to Clause ब(३) (page 29 of OA) which is communication by Deputy Executive Engineer Irrigation Department to Superintendent Engineer, Thane Irrigation Circle. It shows that Applicant got admission in 1st standard on 16.06.1978. Learned P.O. has also submitted that date of birth of Applicant is 01.06.1971 as per service record and his admission in 1st standard was possible in June 1978. Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 pertains to procedure for writing event and recording the date of birth in service book. Rule 38(2) says that date of birth should be verified with reference to documentary evidence and certificate recorded to that effect stating nature of documents relied.

15. It is not disputed that date of birth is recorded on the basis of 'School Leaving Certificate'. In this connection, para 4 of G.R. dated 03.03.1998 needs to be reproduced :-

“4. नियम 38(2) नुसार सेवापुस्तकात जन्मतारीख नोंदविताना सूचना क्रमांक २ मध्ये उल्लेख केलेले कागदोपत्री पुरावे तपासून जन्मतारीख निश्चित न करता शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रामध्ये नोंदविलेली जन्मतारीख सेवापुस्तकात नोंदविण्यात येते व नंतर जन्मतारीख बदलण्याचे प्रस्ताव

येतात असे निदर्शनास आले आहे. शासन आता असे आदेश देत आहे की, ज्यावेळी शाळा सोडल्याच्या प्रमाणपत्रात किंवा शालांत परीक्षा प्रमाणपत्रात दिलेली जन्मतारीख व जन्म-मृत्यू नोंदवहीत नोंदविलेली जन्मतारीख भिन्न असेल त्यावेळी जन्म-मृत्यू नोंदवहीत नोंदविलेली जन्मतारीख नियमानुसार स्वीकारून तिची सेवा पुस्तिकेत नोंद घेणे आवश्यक आहे. परंतु हा पुरावा ज्या कर्मचा-यांचे मूळ जन्म-मृत्यू नोंदवहीत नाव असेल व ही नोंद जन्माच्यावेळी घेतली असेल त्यांच्या बाबतीत ग्राह्य मानावा अन्यथा उपरोक्त नियम 38 मधील सूचना क्रमांक (2) (एक) नुसार जन्म दिनांकाची नोंद घेण्याबाबत कार्यवाही करण्यात यावी. जन्म-मृत्यू नोंदवहीतील उतारा तपासताना ही नोंद मूलतःच घेण्यात आली आहे, याची खात्री करून घेण्यात यावी. ही जन्मतारीख सेवापुस्तिकेत नोंदविल्यावर त्यामध्ये दुरुस्ती करता येणार नाही याची स्पष्ट कल्पना कर्मचा-यांस देऊन त्यावर त्याची सही घ्यावी.’’

16. It says that if date of birth in ‘School Leaving Certificate’ and date of birth in birth extract are different, then entry in birth extract is to be considered for taking its entry in the record. It is also clarified in the said clause that if entry of birth is taken in the Birth Register at the time of birth, then and then only the said entry of birth needs to be considered for recording in the service record.

In view of the discussion in the forgoing paras, it would be difficult to accept the prayer contention of the Applicant regarding change in Date of Birth in Service Record.

17. Learned Advocate for Applicant has submitted that Respondent has rejected the application of change in Date of Birth on the ground that there is no obvious clerical error while mentioning Date of Birth. Even if the ground for refusal of prayer is treated as improper for time being, ultimate result cannot be said to be improper.

18. It cannot be ignored that Service Book extract is also signed by the Applicant wherein his Date of Birth is mentioned. But he has raised contention that the said date is wrongly mentioned after long time of joining his job. The Applicant has also not made clear for not approaching learned JMFC for seeking entry of any birth in the birth record.

19. Learned Advocate for Applicant has relied in case of ***Shri Krishnath Swarup V/s the State of Maharashtra in O.A.No.371/2015*** of this Tribunal. The facts in that case appears to be different as in that matter copy of service book where the claimed date of birth 31.08.1958 appears to be have been recorded initially and has been scored of and replaced with another date. It appears that there is another question in it as to whether Krushnat and Mr. Swaruprao are one and the same person. So, this judgment will not be of much help to the Applicant.

20. The discussion in forgoing paragraphs lead me to say that Original Application needs to be dismissed. Hence, following order :-

ORDER

- (A) The Original Application is dismissed.
- (B) No Order as to Cost.

Sd/-

(Ashutosh N. Karmarkar)
Member (J)