

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 956/ 2018 (S.B.)

Laxman S/o Bhikaji Taur,
Aged about 61 years, Occupation: Retired,
R/o at post Janbhora, Tah. Sindkhedraja, Dist.Buldhana.

... APPLICANT.

// V E R S U S //

- 1) The State of Maharashtra,
Through it's Secretary,
Education and Sport Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner (Education),
Education Commissionerate (M.S.),
Central Building, Pune.
- 3) The Education Officer (Secondary),
Zilla Parishad Buldhana,
Tah. & Dist. Buldhana.

... RESPONDENTS.

Shri S.N. Gaikwad for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 22/11/2024.

J U D G M E N T

Heard Shri S.N. Gaikwad, learned counsel for the
applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under:

The applicant was posted in Military Service on the post of Hawaldar. He was released from the Military service on 31/05/1990. When he was appointed in Military Service the, wrong entry of his date of birth was mentioned as 04/09/1953 instead of 02/07/1957. However, when the applicant was re-employed with the respondents on the post of Taluka Samadeshak, he was rightly given the date of birth, but considering the date of birth as 04/09/1953, the respondent authority has taken into consideration the wrong date of superannuation i.e. on 30/09/2011.

3. It is submitted that without any notice, the applicant is pre-maturely retired by not taking into account the date of birth of the applicant as 02/07/1957.

4. The respondents have wrongly taken into consideration his date of birth as 04/09/1953. Therefore, applicant has filed the present O.A. for the following reliefs:

“ (i). allow the instant original application with costs;

(ii). be pleased to direct the respondent no.2 i.e. the Commissioner, Education department, Pune and the respondent No. 3 i.e. the Education Officer (Secondary) Buldhana to consider the date of birth as 02.07.1957 and regularize the pension and release all consequential / pensionery benefit arising from the same,

(iii). pleased to direct respondent no.2 i.e. the Commissioner, Education department, Pune and the respondent No. 3 i.e, the Education Officer (Secondary) Buldhana after treating the date of superannuation i.e. 31.07.2015 release the salary of the applicant from 30.09.2011 to 31.07.2015 and also direct to give the interest of 18% on its benefits.

5. The O.A. is strongly opposed by the respondents. It is submitted that the applicant himself scored the date of birth in the service book, therefore, he was prosecuted by the Police for the offence punishable under Sections 420, 468, 471 r/w Section 34 of Indian Penal Code. Though, the applicant was acquitted in the criminal case, but his date of birth which was mentioned in the earlier service book is not disputed by the applicant. The same date of birth was entered in the service book of the applicant. Therefore, he is rightly superannuated. It is further submitted by the respondents that the applicant has committed forgery by scoring the date of birth in the service book. The applicant had given date of birth in his military service as 04/09/1953. The applicant retired from the military service and thereafter he was employed with the respondents as a Ex-military man on 09/06/1997. The applicant himself committed forgery and therefore he cannot say that his date of birth is wrongly recorded in the service book. Hence, O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel Shri S.N. Gaikwad has pointed out the documents, i.e., the school leaving certificate and extract of school register. In both these documents, the date of birth of applicant is recorded as 02/07/1957. The applicant has also filed the service book which shows that there is some scoring in respect of date of birth in the service book itself.

7. The applicant was prosecuted for making forgery, etc. in the service book. The applicant was acquitted by the Judicial Magistrate First Class on the ground that offence is not proved beyond reasonable doubt.

8. From the naked eye it is very clear that, there is some scoring in the service book. Though, it was not proved before the Judicial Magistrate First Class, but a prudent man can say that there is some scoring in the service book.

9. There is no dispute that, applicant had mentioned his date of birth in his earlier service as 04/09/1953. The applicant could have corrected the date of birth long before getting service with the respondent. The applicant now cannot say that his date of birth as 04/09/1953 is wrongly recorded in the service book. The applicant himself is admitting that in military service his date of birth was recorded as 04/09/1953. The applicant could have continued more

service in the Military, but because of the date mentioned in the service book as 04/09/1953 he was retired earlier.

10. The applicant has not taken any action to correct his date of birth in the earlier service record. His date of birth was shown as 04/09/1953 in the Military service. This fact is not disputed by the applicant himself.

11. The learned counsel for applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Hari Singh Vs. State of Bihar & Ors. (2000) 10 SCC,284***. The material portion of the Judgment is reproduced below -

"1. Leave granted.

2. The appellant entered government service and in the service-book his date of birth is recorded as 1-12-1943. On that basis he would have superannuated on 30-11-2001. The competent authority however has passed an order retiring the appellant from service treating his date of birth to be 17- 7-1936. This order is on the basis that when the appellant entered for training in 1961, his date of birth being 1943 he could not have got that training, inasmuch as he had not completed 19 years of age, as required under the rules. The learned counsel for the appellant however controverts this position, inasmuch as, according to him, it is only for a substantive appointment and not for training. We are not however delving into an inquiry on this aspect inasmuch as, in our opinion, the impugned order of the Government cannot be sustained as concededly the Government never put the employee on notice to indicate that the date of birth as entered in the service-book is incorrect though it could have done so. Since no notice has been given to the employee

concerned for accepting a date of birth other than the one entered in the service-book, the impugned order of retirement cannot be sustained. We set aside the impugned order altering the date of birth of the appellant. The appellant must be deemed to be continuing in service until duly superannuated in accordance with law.

3. This appeal is accordingly allowed.”

12. From the reading of the Judgment it is clear that the date of birth was mentioned in the service book. Prior to the date of birth mentioned in the service book, that employee Hari Singh was retired. Therefore, cited Judgment is not applicable.

13. In the present O.A., the date of birth of applicant was mentioned as 04/09/1953. The applicant himself made scoring on the date of birth in the service book. The applicant was prosecuted along with others. Though, the applicant was acquitted by the Criminal Court that does not mean that the applicant is having different date of birth. Any prudent man can say from the perusal of the service book filed on record that there is a scoring in respect of date of birth. Hence, the applicant cannot say that his date of birth was wrongly recorded in the service book by respondent authority. After the scoring, there is over writing on the date and year. Hence, the applicant cannot say that his date of birth was recorded as 2nd July, 1957.

14. The cited judgment is on different footing. In the cited Judgment, the employee / petitioner was retired before the date of

birth recorded in the service book. In the present O.A., the applicant is retired on the basis of the date of birth mentioned in the service book as 04/09/1953. The applicant cannot say that the date of birth as 04/09/1953 is wrongly recorded in the service book. The applicant is well aware about his earlier service record in the Military. He is not disputing his date of birth as 04/09/1953 recorded in the Military service. The applicant is not disputing the criminal case filed against him. He was acquitted by the Criminal Court. The principle of criminal jurisprudence is very much different from the civil jurisprudence. To convict an accused in a criminal case, the prosecution has to prove the guilt of the accused beyond reasonable doubt. The theory of beyond reasonable doubt is established on the principle that, 'no innocent person shall be convicted. But the principle in civil jurisprudence is very much different. Therefore, the applicant cannot say that he is acquitted in Criminal Case No.106/2012 by the Chief Judicial Magistrate, Buldhana. Therefore, his date of birth as 04/09/1953 shall not be taken into consideration. The applicant was well aware about his earlier service record. There is a scoring in the service book maintained by the respondents. The applicant is prosecuted for the offence punishable under Sections 420, 468, 471 read with Section 34 of Indian penal code. The Judgment in the criminal case cannot be the basis to say that the applicant is not

responsible for scoring, etc. The applicant may or may not be responsible, but it is clear from the copy of service book filed on record that there is a scoring on the date of birth mentioned in this service book. The applicant was rightly retired by the respondent authority by taking into consideration his date of birth as 04/09/1953.

Hence, following order :-

ORDER

- (i) The O.A. is dismissed.
- (ii) No order as to costs.

Dated :- 22/11/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 22/11/2024.