

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.252/2024****WITH C.A.No.565/2023 (S.B.)**

Bhaurao Ramsingh Chavhan,

Aged about 57 years, Occu: Service,

R/o Juna post. Pomali Tq. Umarkhed, Dist. Yavatmal.

Applicant.

Versus

1) The State of Maharashtra,
Through its Principal Secretary,
Social Welfare Department,
Mantralya, Mumbai 400032.

2) The Commissioner,
Social Justice Department,
Maharashtra State Pune-411001.

Respondents

Shri N.B.Karade, Sarthak Choudhari, Ld. Counsels for the applicant.

Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 18th April, 2024.

JUDGMENT

Judgment is reserved on 5th April, 2024.

Judgment is pronounced on 18th April, 2024.

Heard Shri N.B.Karade, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. The applicant has impugned order dated 23.02.2022 (Annexure - C) passed by respondent no.1 rejecting the proposal forwarded by respondent no.2 to change his date of birth from 05.04.1966 to 12.09.1967. The O.A. and C.A.No.565/2023 for condonation of delay of 230 days were filed on 18.10.2023. On 06.03.2024 order was passed pursuant to which the C.A. and O.A. were heard together. It is the contention of the applicant that the impugned order was communicated to him, from his relative he came to know about it and hence, there was delay in filing the O.A.. This contention has not been traversed by the respondents. It deserves to be accepted. Consequently, C.A. is allowed and delay in filing the O.A. stands condoned.

3. Case of the applicant is as follows. He joined the respondent department as per order dated 08.09.1997 on the post of Senior Social Welfare Officer at Chandrapur. On 19.01.1998 he submitted application before District Social Welfare Officer, Chandrapur for change in date of his birth. It was forwarded to the Divisional Social Welfare Officer, Nagpur Division, Nagpur on 27.05.1999. On 23.01.2015 Additional Commissioner, Social Welfare, Maharashtra State, Pune heard the matter. He inter alia observed and concluded as follows-

“श्री.बी.आर.चव्हाण, जिल्हा समाज कल्याण अधिकारी, जिल्हा परिषद अमरावती यांच्या जन्मनोंदीमध्ये बदल करण्याबाबत दि. 23.1.2015 रोजी मा.अतिरिक्त आयुक्त, समाज कल्याण आयुक्तालय.म.रा.पुणे यांच्याकडे ठेवण्यात आलेल्या सुनावणीचे इतिवृत्त

दिनांक 23.1.2015 रोजी मा. अतिरिक्त समाज कल्याण आयुक्तालय. म.रा. पुणे यांचे दालनात श्री.बी.आर.चव्हाण, जिल्हा समाज कल्याण अधिकारी, जिल्हा परिषद अमरावती यांच्या जन्मनोंदीमध्ये बदल करण्याबाबत सुनावणी ठेवण्यात आली होती. त्यानुसार सुनावणीसाठी खालील अधिकारी/कर्मचारी उपस्थित होते.

| अ. क्र. | अधिकारी/कर्मचारी यांचे नांव | पदनाम |
|---------|-----------------------------|---|
| 1. | मा.श्री.एम.एम. आत्राम | अतिरिक्त आयुक्त, समाज कल्याण आयुक्तालय, म.रा.पूणे |
| 2. | श्री. आर. सी. कदम | सहाय्यक आयुक्त (प्रशासन) समाज कल्याण |
| 3. | श्री. बी. आर. चव्हाण | जिल्हा समाज कल्याण अधिकारी, जिल्हा परिषद अमरावती. |
| 4. | श्री.डी. व्ही. वाघमारे | कार्यालय अधीक्षक |

श्री.बी.आर. चव्हाण यांची सरळसेवेने वरिष्ठ समाज कल्याण निरीक्षक या पदावर जिल्हा समाज कल्याण अधिकारी, जिल्हा परिषद चंद्रपूर येथे नियुक्ती झाली असून ते संचालनालयाचे आदेश क्र. 2230 दि. 8.9.1997 नुसार दि.30.10.1997 रोजी रुजू झालेले आहेत. श्री. चव्हाण यांनी दि. 19.1.1998 च्या अर्जानुसार जन्मनोंदीमध्ये बदल करण्याबाबतचा मूळ प्रस्ताव जिल्हा समाज कल्याण अधिकारी जि.प. चंद्रपूर यांचेकडे दिलेला होता व सदरचा प्रस्ताव विभागीय समाज कल्याण अधिकारी, नागपूर विभाग, नागपूर यांचेकडील पत्र क्र. 2623 दि. 27.5.1999 अन्वये पुढील कार्यवाहीसाठी संचालनालयाकडे सादर केला असून सदर प्रस्ताव संचालनालयास दि. 3 जून 1999 रोजी प्राप्त झालेला आहे. या संदर्भात संबंधित श्री. चव्हाण ते ज्या ठिकाणी कार्यरत होते अशा कार्यालयाकडे प्रस्तावातील आवश्यक त्या कागदपत्रांची मागणी संचालनालयामार्फत वेळोवेळी करण्यात आलेली असून त्याची पूर्तता श्री.चव्हाण यांनी केलेली असल्याचे आयुक्तालयातील नस्ती क्र. 1 व 2 मधील कागदपत्रावरून दिसून येते.

- 1) श्री.बी. आर. चव्हाण यांच्या शाळा सोडल्याच्या दाखल्यामध्ये जन्मदिनांक 5.4.1966.
- 2) महाराष्ट्र राज्य माध्यमिक व उच्च माध्यमिक शिक्षण मंडळ नागपूर यांचेकडील दि. 2 जानेवारी 1985 च्या माध्यमिक शालांत प्रमाणपत्रामध्ये जन्म दिनांक 5.4.1966 नमूद आहे.

3) तहसिलदार व कार्यकारी दंडाधिकारी उमरखेड यांनी दि.29.06.1990 रोजी दिलेल्या वय, राष्ट्रीयत्व व अधिवास प्रमाणपत्रामध्ये जन्मदिनांक ५.४.१९६६ नमूद आहे.

4) उप मुख्य लेखा परिक्षक (कनिष्ठ) स्थानिक निधी लेखा महाराष्ट्र राज्य, चंद्रपूर यांनी दि. 3.6.1997 रोजी दिलेल्या प्रमाणपत्रामध्ये श्री. चहाण यांचा जन्मदिनांक 5.4.1966 नमूद केलेला आहे.

5) श्री. चव्हाण यांच्या मुळ सेवापुस्तकातील जन्मदिनांक नोंद दि. 5.4.1966 नमूद आहे.

महाराष्ट्र शासन सामान्य प्रशासन विभाग (सेवेच्या सर्वसाधारण शर्ती) नियम 1981 च्या नियम 38 खालील सूचना क्र. 1 व 3 नुसार कार्यवाही करण्याबाबत असलेल्या तरतुदीनुसार श्री. चव्हाण यांनी मौजे जमुना गांव नं. 112 ता. उमरखेड जि. यवतमाळ येथील कोटवार बुकातील जन्मनोंदीची नक्कल सादर केली असून या नोंदीमध्ये श्री. चहाण यांच्या जन्माचा दिनांक नावांनिशी दि. 12.9.1967 नमूद आहे. सदरची नक्कल ही सदरच्या कार्यालयाकडून सी.आर.नं. 1098/96 दि. 17.9.1996 रोजी प्राप्त झाल्याचे कागदपत्रांवरून दिसून येते.

महाराष्ट्र शासन राजपत्र मे 11,2000/ वैशाख शके 1922, भाग दोन पृष्ठ क्र. 956 मध्ये भाऊराव रामसिंग चव्हाण उर्जांनगर कॉलनी चंद्रपूर यांच्यासमोर सी 928 मध्ये 5.4.1966 ऐवजी अक्षरी बारा सप्टेंबर एकोणिसशे सदुसष्ट असा उल्लेख केलेला आहे.

श्री. चव्हाण यांनी त्यांचे स्वतः चे, घरातील भाऊ व बहिणींचे जन्म रजिस्टर नक्कल सादर केले असून त्यांच्या नावांसमोर 12.9.1967 जन्मतारखेची नोंद असल्याचे तहसीलदार उमरखेड यांच्या स्वाक्षरीचे कागदपत्र सादर केलेली आहेत.

वरील सर्व कागदपत्रांचे अवलोकन केले असता शासन निर्णय 27.9.1994 मधील नियम 38 सूचना क्र. 1 व ३ मध्ये नमूद केल्याप्रमाणे श्री. चव्हाण यांच्या जन्मतारीख दि. 5.4.1966 ऐवजी 12.9.1967 अशी सुधारणा करण्याबाबत कार्यवाही करण्यात यावी असा सुनावणीमध्ये निर्णय घेण्यात आला.

सद्यस्थितीत श्री.वी.आर. चव्हाण जिल्हा समाज कल्याण अधिकारी, जि.प. अमरावती या पदावर कार्यरत असल्याने महाराष्ट्र शासन वित्त विभाग शासन निर्णय क्र. सेनिवे-1001/130/सेवा- 4 दिनांक 2 जून 2003 चे जोडपत्र परिशिष्ट - एक मधील अक्र २ मधील 38 (2) (एफ) २ नुसार श्री. चव्हाण यांच्या सेवाविषयक बाबी संदर्भात शासनाकडे आवश्यक त्या कागदपत्रासह प्रस्ताव सादर करण्याबाबत सूचित करण्यात आले."

4. With covering letter dated 20.03.2015 (Annexure – A) the proposal was forwarded by respondent no.2 to respondent no.1. The applicant pursued the matter *inter alia* by making a representation (Annexure – B). The proposal was rejected by the impugned order dated 22.02.2022 without assigning any reason and inspite of the fact that the applicant had furnished reliable documents to change his date of birth from 05.04.1966 to 12.09.1967. Hence, this O.A..

5. Stand of respondent no.2 is as follows. It is true that the applicant applied for change in his date of birth on 19.01.1998. While securing previous employment he had not taken such steps. By letters dated 06.04.2009 (Annexure R-2) and 06.05.2010 (Annexure R-3) the applicant was called upon to furnish documents in support of his request. He did not immediately respond. His date of birth was entered in service book as per documents furnished by him. Thus, in recording the date of birth there was neither any inadvertence nor was it a case of clerical error. Thus, bar of Rule 38(2)(f) of the M.C.S. (General Conditions of Services), 1981 would be attracted. The applicant has approached this Tribunal when he is on the verge of retirement. He did not pursue the matter and slept over his rights. Under the

circumstances, the O.A. is liable to be dismissed. From the extract of births and deaths register the answering respondent could not gather names of parents of the applicant.

6. With his additional affidavit the applicant has placed on record copy of letter dated 19.08.1999 submitted by him for correction of his date of birth, affidavit of his father and a Certificate that Ramsingh Hari Chavhan and Ramsu Hari (Bagari) were one and the same (Annexures A-1, A-2 and A-3, respectively). He has also placed on record at Annexure A-5 his reply dated 06.08.2009 to letter dated 06.04.2009.

Said reply states-

“तसेच संदर्भ क्र.१ च्या पत्रात उल्लेख केले त्या मुद्यांचा खुलासा खालील प्रमाणे -

(२) शासन निर्णय दि.२७/९/१९९४ मध्ये नमुद केल्याप्रमाणे माझ्या जन्म मृत्यु नोंदवहीमध्ये माझा जन्म दि.१२/९/१९६७ नोंदविलेला असून माझे नाव भाऊराव असे नमुद केलेले आहे.

(पान क्र.१)

(३) शासन निर्णय दि.२६/९/१९९४ मध्ये नमुद केल्यानुसार माझ्या भावंडाचे जन्मनोंदीचे दाखले (पान क्र. २ते ७) यासोबत सादर करण्यांत येत आहेत.

४) माझ्या मुळ जन्मनोंदीची नक्कल (पान क्र.१) व सत्यप्रत (पान क्र.८) यासोबत सादर करण्यात येत आहे. तसेच सेवापुस्तकातील प्रथम पृष्ठाची सत्यप्रत (पान क्र. ९) यासोबत जोडण्यांत आलेली आहे.”

The applicant has also placed on record extract of Kotwar Book (Annexure A-6) in which his date of birth is recorded as 15.09.1967, and extracts relating to dates of birth of his siblings (Annexure A-7, collectively).

7. Annexure P-2 is copy of letter dated 30.08.2022 written by the applicant to respondent no.1 inviting attention of the latter to pendency of his application for change in date of birth. This letter *inter alia* refers to the application made by the applicant to the concerned Commissioner on 23.03.2021.

8. It may be reiterated that well within the period of five years after joining on the post the applicant applied for change in his date of birth. Decision on this application was taken by 23.01.2015. It was decided to forward proposal to respondent no.1. The proposal stated-

“वरील सर्व कागदपत्रांचे अवलोकन केले असता शासन निर्णय 27.9.1994 मधील नियम 38 सूचना क्र.1 व ३ मध्ये नमूद केल्याप्रमाणे श्री. चव्हाण यांच्या जन्मतारीख दि. 5.4.1966 ऐवजी 12.9.1967 अशी सुधारणा करण्याबाबत कार्यवाही करण्यात यावी असा सुनावणीमध्ये निर्णय घेण्यात आला

सद्यस्थितीत श्री. बी. आर. चव्हाण जिल्हा समाज कल्याण अधिकारी, जि.प. अमरावती या पदावर कार्यरत असल्याने महाराष्ट्र शासन वित्त विभाग शासन निर्णय क्र. सेनिवे-1001/130/सेवा- 4 दिनांक 2 जून 2003 चे जोडपत्र परिशिष्ट- एक मधील अक्र २ मधील 38(2) (एफ) २ नुसार श्री. चव्हाण यांच्या सेवाविषयक बाबी संदर्भात शासनाकडे आवश्यक त्या कागदपत्रासह प्रस्ताव सादर करण्याबाबत सूचित करण्यात आले.”

The proposal was forwarded to respondent no.1 on 20.03.2015. It was pending with respondent no.1 for more than 7 years. During this period the applicant was pursuing the matter as becomes apparent from pleading of respondent no.2 that he was repeatedly requesting the department to correct his date of birth. He also made

representation dated 23.03.2021 and 30.08.2022. All these circumstances show that the applicant had applied for change in his date of birth well in time and he was pursuing the matter in right earnest.

9. It is the contention of the applicant that extract of Kotwar register ought to have been relied upon and given primacy for changing his date of birth. In support of this contention reliance is placed on Judgment of Hon'ble Bombay High Court dated 17.04.2008 in Writ Petition No.6962/2006 (**Smt. Vasudha Gorakhnath Mandvilkar Vs. The City and Industrial Development Corporation of Maharashtra Ltd. SIDKO**) wherein it is held –

“That is the record of births and deaths maintained by the Municipal Authority within the limits of whose jurisdiction the Petitioner was born i.e. Panvel Nagar Parishad in the case of the Petitioner. The Petitioner has obtained her birth certificate issued by Panvel Nagar Parishad. It shows her birth date as recorded in the register of births maintained by the Parishad as 2nd October 1950. The birth certificate is the certified copy of the extract of a public document under Section 77 of the Indian Evidence Act, 1872 (Evidence Act). Such certified copy can be produced in proof of the contents of the public document of which it purports to be a copy. Consequently under Section 79 of the Evidence Act it carries a presumption as to its genuineness and is accordingly admissible in evidence. Under Section 79, the Court is therefore, also required to presume that the Officer by whom such document is purported to be signed as certified held the official character which is claimed in the document.

6. It is, therefore, clear that for proof of the date of birth the certified copy of the birth certificate issued by the relevant Municipal

Authority is the ultimate document. The presumption under the law would hold good until it is rebutted.”

It was further observed –

“9. The Petitioner in this case has not only relied upon the birth certificate but also the birth record register in form specimen No.14 given by Panvel Nagar Parishad showing the record of her birth as well as the births of 2 other sisters Shashikala and Sunita, immediately preceding and succeeding her in birth. Consequently in this case it is seen that the certified copy of the public record tallies with the public records from which the extract is extracted. Hence, the presumption under Section 79 of the Evidence Act as to the genuineness of the certified copies is fortified by the actual public record.

10. The Petitioner has 7 siblings. The 8 children have been born between 1946 and 1964. The first 4, including the Petitioner, have been born at a distance of 2 years. The interpolation in the year of the Petitioner's birth in a form which she submitted at the time she was appointed in service has a bearing on the birth dates of the 2 sisters preceding and succeeding the Petitioner.

11. It is an admitted position that the first sister Shashikala is shown to have been born on 25th January, 1946. The Petitioner is the 2nd child. The 3rd sister Sunita is stated to be born on 2nd June 1950. The 4th sister Shailaja is born on 5th October 1952. We are not concerned with the births of the later children.”

It was also held –

“14. Consequently whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, carrying the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which the extract is made out and certified to be true by the relevant

authority. Only if it is so rebutted, such certified copy issued by a public authority would stand nullified.

15. The contents of private documents can be proved by primary or secondary evidence under Sections 61 to 65 in Chapter V of the Evidence Act. The proof of the contents of public documents can be by production of their certified copies under Section 77 in Chapter VI of the Evidence Act. Since the certified copies carry a presumption as to their genuineness under Section 79 of the Evidence Act, they need not be proved in evidence.”

In para 18 it was observed-

*“18. In the case of **Ravinder Singh Gorkhi Vs. State of U.P. (2006)5 Supreme Court Cases, 584** the proof as well as probative value of the birth certificate and a school leaving certificate have been considered. That was the case of the accused claiming juvenility under the Juvenile Justice Act. It was for him to prove his age. He sought to prove it by a copy of his school leaving certificate. It was sought to be proved through the Headmaster of the school who issued it. The certificate was not issued in the ordinary course of business of the school. It was a copy issued after 26 years of the student leaving the school. The Headmaster who issued it gave evidence that he had no personal knowledge regarding the date of birth of the student since he was not in school when the student was admitted. The Headmaster did not depose that it was a true copy of the original certificate also. The register maintained by the school, from which the certificate could have been issued after 26 years of the student leaving school, was not produced. It was held that the accused could not rely upon such a document to prove his juvenility or his date of birth.”*

In the instant case siblings of the applicant were born on 04.10.1952, 16.10.1954, 04.03.1957, 07.02.1960, 07.06.1962 and 01.04.1965.

In the facts and circumstances of the case the aforesaid ruling squarely applies. This ruling of the Bombay High Court was upheld by the Hon'ble Supreme Court by Judgment dated 15.05.2009 in Civil Appeal No.3615/2009 by holding as follows-

"The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. [See Birad Mal Singhvi v. Anand Purohit [AIR 1988 SC 1796]"

10. For the reasons discussed hereinabove the O.A. is allowed. The impugned order dated 23.02.2022 (Annexure –C) is quashed and set aside. The respondents are directed to correct the date of birth of the applicant in service record to 12.09.1967 forthwith. The C.A. is also disposed of. No order as to costs.

(M.A.Lovekar)
Member (J).

Dated – 18/04/2024.
*rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 18/04/2024.
and pronounced on