

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.134 OF 2024

DISTRICT : NASHIK

Shri Ramchandra Baburao Tadge,)
Age 59 years as per DOB 1.6.1964 &)
Age 58 years as per DOB 21.3.2966,)
Lecturer in Civil Engineering Department at)
Government Polytechnic Nashik,)
R/at 100 Digambar HSG Soc. Amrutdham,)
Panchwati, Nashik)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai)
2. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai)
3. The Secretary,)
Finance Department, Mantralaya, Mumbai)
4. The Director of Technical Education, Mumbai-1)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 2nd May, 2024

PRONOUNCED ON: 3rd May, 2024

J U D G M E N T

1. By this OA the applicant prays for change in date of birth from 1.6.1964 to 21.3.1966 in the service book of the applicant. The applicant also prays for setting aside the order dated 22.6.2023 passed by respondent no.1 rejecting his request for change in date of birth in the service record.

2. Ld. Advocate for the applicant submits that the applicant was appointed on 29.7.1994 as Lecturer in Civil Engineering and working in Government Polytechnic, Nashik. The date of birth of the applicant was recorded as 1.6.1964 in the service book on the basis of his School Leaving Certificate (SLC). Ld. Advocate pointed out that the date of birth of the applicant was recorded by the school authorities as 1.6.1964 without any supportive documents. He referred to Gaon Namuna No.14 maintained by Vehelgaon, Tal. Nandgaon, District Nashik of the year 1966 which proves that date of birth of the applicant is 21.3.1966. However, the date of birth was not mentioned in the birth register of the year 1966. As a consequence, the applicant filed Regular Mukadama before the Ld. JMFC, Nandgaon, District Nashik as per the Registration of Birth and Death Act, 1969. The Ld. JMFC passed an order dated 4.4.2015 declaring the date of birth of the applicant as 21.3.1966 and accordingly on 16.5.2015 the Gram Sevak of Vehelgaon, Tal. Nandgaon, District Nashik issued the birth certificate of the applicant as of 21.3.1966. Ld. Advocate

for the applicant pointed out that applicant had applied in a private college viz. K.K. Wagh College of Engineering, Nashik for the post of Lecturer on the basis of documentary evidence to prove his date of birth as 21.3.1966. Moreover, he pointed out that the Aadhaar Card, PAN Card and ID Card shows the date of birth of the applicant as 21.3.1966.

3. Ld. Advocate for the applicant pointed out that as per Rule 38(2)(f) of the MCS (General Conditions of Services) Rules, 1981 the applicant had applied for change in date of birth within a period of 5 years from the date of joining the service. He made representations dated 2.2.1995, 20.7.1995, 24.9.1996 and 18.2.1998. Ultimately on 22.6.2023 the respondent no.1 rejected the request of the applicant on the ground that there was no obvious clerical error while recording the date of birth of the applicant. In support of his contentions, he relied on the following judgments of the Hon'ble Bombay High Court:

(1) W.P. No.2345/2015 decided by the Hon'ble Bombay High Court, Bench at Aurangabad on 22.4.2016 in **Shriniwas Prabhakar Karve Vs. The State of Maharashtra & Ors.**

(2) W.P. No.1696/1990 decided by the Hon'ble Bombay High Court on 22.6.2000 in **Sitaram K. Jawale Vs. MHADA & Ors.**

(3) W.P. No.6962/2006 decided by the Hon'ble Bombay High Court on 17.4.2008 in **Smt. Vasudha Gorakhnath Mandvilkar Vs. CIDCO.**

4. Ld. Advocate for the applicant therefore prays that the impugned order dated 22.6.2023 be set aside and the date of birth of the applicant in the service book be changed from 1.6.1964 to 21.3.1966.

5. Ld. PO opposes the contentions raised by the Ld. Advocate for the applicant and she relied on the affidavit in reply dated 8.4.2024 filed by Amol Vinayak Nyayanit, Assistant Director (Technical) in the office of Joint Director of Technical Education, Regional Office, Nashik. She fairly conceded that application for change in date of birth was made within a period of 5 years from the date of joining of the service. However, she pointed out that the date of birth of the applicant was recorded as 1.6.1964 in the service book on the basis of record given by the applicant. She refers to Rule 38(2)(f) of the MCS (General Conditions of Services) Rules, 1981 and pointed out that there was no obvious clerical error while recording the date of birth of the applicant and hence his representation has been rightly rejected.

6. I have considered the submissions of both the sides. In this case it is important to look at Rule 38(2)(f) of the MCS (General Conditions of Services) Rules, 1981 which reads as under:

“38. Procedure for writing the events and recording the date of birth in the service book.-

(2) While recording the date of birth, the following procedure should be followed:

(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.”

7. Thus, it is seen that as per rule when once an entry of age or date of birth has been made in the service book, no alteration of the entry should thereafter be allowed unless the conditions stated therein are satisfied. Normally, 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 the date of his entry in Government service.

8. It is noted that the date of birth of the applicant has been recorded in his service book as 1.6.1964 on the basis of record furnished by the applicant. As per abovementioned rule the change in date of birth is only permissible if there is clerical error or that the entry was due to want of care on the part of some person other than the individual in question.

9. Ld. Advocate for the applicant relied on the judgment of the Hon'ble Bombay High Court in *Shriniwas Prabhakar Karve* (supra). In this case the date of birth was wrongly recorded due to want of care on the part of the concerned officials. In this case there was an obvious clerical error. He then relied on *Sitaram K. Jawale* (supra). In this case there was no embargo to entertain the application after 5 years if it was merely a clerical error. Ld. Advocate for the applicant also relied on *Smt. Vasudha Gorakhnath Mandvilkar* (supra). In this case it was held that, whenever there is a dichotomy or difference between the dates of births of an individual, the date of birth reflected in the public records, which is the municipal records, would be the strongest possible evidence of such date. Rejection of public records on the ground of it having different handwritings in the dates and names, is incorrect.

10. The facts in the judgments relied by the Ld. Advocate for the applicant are different and hence these judgments are not applicable to the case in hand.

11. In this case I refer to and rely on the judgment and order dated 23.6.2023 passed by the Hon'ble Bombay High Court in **W.P. No.6976 of**

2023 State of Maharashtra & Ors. Vs. Sudhir Bhagwat Kalekar. Para 18 of the said judgment reads as under:

“18. The Tribunal ought not to have entertained the O.A. filed by Respondent two months before his retirement. The objective behind formulating rule/administrative instructions to bar correction of date of birth after five years of entry into service is to give finality and achieve certainty with regard to the rights of the Government Servants. The issue of correction of date of birth cannot be kept pending till the fag end of an employees’ retirement. This would create uncertainty, as has happened in the present case. The Tribunal has allowed the O.A. of the Respondent a month before his date of retirement thereby creating confusion and uncertainty. The pension papers of the Government Servant are processed well before his retirement with a view to ensure timely payment of retirement benefits to him. The anticipated vacancy created due to retirement is taken into consideration for various purposes like effecting promotions, effecting transfers, etc. Sometimes date of birth becomes a relevant factor for determining seniority of officers appointed/promoted on same day. In such circumstances, entertaining litigation filed couple of months before the date of retirement with the sole objective of seeking extension of tenure of service, would lead to uncertainty and chaos in the administration. An officer may casually make application for change of date of birth within 5 years of his entry in service (so as to meet technical requirement of the rules/administrative instructions) and not pursue the same for years together. He cannot then knock the doors of courts/tribunals at the fag end of service for correction of date of birth. The objective behind prescribing time limit for seeking correction of date of birth is required to be kept in mind. The objective is to achieve clarity and prevent uncertainty not only about the officer’s career but also in the area of administrative management. If an application for correction of date of birth is made within 5 years of entry into service and if the same is not acted upon, remedy in respect of such inaction must be exercised in a timely manner and filing of litigation at the fag end of service is required to be discouraged. Mere

rejection of request for change of date of birth by the employer before date of retirement would not revive the cause which got time barred by officer's failure to exercise remedies in a timely manner. Entertaining Respondent's for correction of date of birth OA instituted at the fag end of service on specious plea of rejection of request on 1 March 2023 would completely frustrate the objective behind prescribing time limit for seeking correction in date of birth under Rule 38. The Tribunal therefore ought to have avoided entertaining Respondent's application for correction of date of birth filed in March 2023 when he was slated to retire on 21 May 2023."

12. The Hon'ble Supreme Court has time and again held that applications for change in date of birth at the fag end of service cannot be entertained. Reference in this regard can be made to the judgments of the Hon'ble Supreme Court in (i) General Manager, Southeastern Coal Fields Ltd. V/s. Avinash Kumar Tiwari (2023) Live Law (SC) 124; and (ii) Bharat Cooking Coal Ltd. & Ors. V/s. Sham Kishore Singh (Civil Appeal No.1009/2020) decided on 5 February 2020.

13. In this case it is seen that the applicant has filed this OA on 2.2.2024 i.e. at the fag end of his career while he is due to retire on 31.5.2024.

14. In view of the above facts and circumstances of the case, I do not find any merit in the Original Application and hence the same is dismissed however with no order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
3.5.2024

Dictation taken by: S.G. Jawalkar.