

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.30 OF 2024**

**DISTRICT : PUNE**

Shri Dnyaneshwar Baban Katkar, )  
Age 55 years, occ. Police Inspector in the office of )  
Commissioner of Police, Pimpri-Chinchwad Police )  
Commissionerate, R/o Rushab Apartment, Sector-4, )  
Spine Road, Sant Nagar, Moshi, District Pune )..Applicant

Versus

1. The Director General and Inspector General of )  
Police, Old Council Hall, S.B. Marg, Mumbai-39 )
2. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai 32 )..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant  
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)  
RESERVED ON : 18<sup>th</sup> April, 2024  
PRONOUNCED ON: 2<sup>nd</sup> May, 2024

**J U D G M E N T**

1. The applicant who is working as Police Inspector prays for change in date of birth from 1.6.1966 to 24.12.1968 in the service book of the applicant and grant him all consequential service benefits.

2. The applicant joined the service as Police Sub-Inspector (PSI) on 5.11.1993. The date of birth of the applicant is shown as 1.6.1966 in the School Leaving Certificate (SLC) issued by Zilla Parishad Primary School, Shirur, District Pune. After being selected to the post of PSI on 5.11.1993 his date of birth is recorded as 1.6.1966 in his service book.

3. Ld. Advocate for the applicant pointed out that on one of his visit to native place during the course of family discussion there was a topic about the date of birth of the applicant and other siblings. At such time his father in an informal discussion expressed serious doubt about the date of birth of the applicant being mentioned as 1.6.1966 in the SLC to be corrected stating that according to him the date of birth of the applicant was 24.12.1968 considering the date of birth of other siblings. Ld. Advocate for the applicant states that applicant's father had two wives viz. Smt. Sarubai and Smt. Indubai and there are total 6 siblings including the applicant out of the two wed locks. The applicant is the son out of the first wedlock through his mother Smt. Sarubai. The names of other siblings are (1) Kum Anusaya (DOB 1.6.1959), (2) Ms. Kunda (DOB 1.1.1965), Kum. Harnabai (DOB 1.6.1968), (4) Laxman (DOB 1.7.1979) and (5) Sanjay (DOB 8.10.1981). He further stated that on the basis of this informal discussion in the family he submitted an affidavit of his father indicating the date of birth of the applicant being 24.12.1968. Ld. Advocate for the applicant pointed out that Kum Anysaya and the applicant are the children from first wedlock whereas Kunda, Harnabai, Laxman & Sanjay are children from the second wedlock. Ld. Advocate for

the applicant submits that from the aforesaid dates of birth of the total 6 siblings it is clear that the date of birth of Kum Harnabai is 1.6.1968 whereas that of the applicant is 24.12.1968. Thus there is hardly gap of 7 months between the date of birth of Harnabai and that of the applicant. That, however, this is on account of the fact that the applicant was born from first wife of his father whereas Harnabai was born from second wife of his father. Thus, Kum. Harnabai is the step-sister of the applicant.

4. Ld. Advocate for the applicant stated that accordingly the applicant made an application dated 29.5.1995 to the Additional Commissioner of Police requesting for change in date of birth in the service book from 1.6.1966 to 24.12.1968. He further submitted reminders dated 8.1.1996, 19.11.1996 and 29.11.1996 requesting for change in date of birth in the service book.

5. Ld. Advocate for the applicant stated that the applicant approached the Village Gram Panchayat requesting them to issue a certificate in his favour of his date of birth being 24.12.1968. However, vide certificate dated 21.9.2021 he was informed by the said Village Gram Panchayat through the Registrar that the said village Gram Panchayat has started maintaining the required birth and death register only from the year 1969 which was probably on account of the Act called as the Registration of Births and Deaths Act, 1969 coming into force. He also approached the Tahsildar, Shirur, District Pune by application dated 4.1.2022 with a request to issue the birth date extract of the applicant. The Tahsildar vide reply dated 10.1.2022 after inspection of the record informed that there is no such entry about the date of birth of the applicant being 24.12.1968 in the register viz. Gav Namuna 14 (old birth death register).

6. Ld. Advocate for the applicant stated that the applicant then approached the Court of Ld. Judicial Magistrate First Class (JMFC),

Ghodnadi by filing Criminal Misc. Application No.347/2021 on 21.9.2021. The Ld. JMFC passed an order dated 19.1.2022 and the directed the Gram Panchayat of the village to effect an entry of the date of birth of the applicant being 24.12.1968 in the birth death register of the office of the said village. The applicant then placed on record these documentary evidence along with application dated 23.10.2023 to respondent no.1 requesting for change in date of birth, but to no avail.

7. Ld. Advocate for the applicant relied on the following judgments:

- (1) CIDCO Vs. Vasudha Gorakhnath Mandevlekar (2009) 2 SCC (L&S) 319.
- (2) R.K. Jangra Vs. State of Punjab & Ors. (2009) 2 SCC (L&S) 117.
- (3) Ishwarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Ltd. & Anr. (2014) 6 SCC 434.
- (4) Gendalal Vs. Union of India & Ors. (2007) 15 SCC 553.

8. Ld. PO vehemently opposed the submissions made by the Ld. Advocate for the applicant. She relied on the affidavit in reply dated 23.2.2024 filed by Shrishail Chandappa Imade, Deputy Assistant to Director General of Police (Estt.), Mumbai. She pointed out that as per Rule 38(2)(f) of the MCS (General Conditions of Services), Rules 1981, the change in date of birth of the Government employee is possible only when there is a clerical error on the part of the Government Department and the application is made within five years from the date of entry of such Government employee in Government service. She further pointed out that the State Government had rejected the request of the applicant for change in date of birth. She states that application made by the applicant on 29.5.1995 and 29.11.1996 shows that while there is signature and date in the left hand side of the application, there is no stamp of the receiving authority. Further there is no signature or stamp on application

dated 8.1.1996. However, the application dated 29.11.1996 made to DGP, Mumbai bears the signature and stamp of receiving authority.

9. 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.”*

10. 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.

11. In this case it is important to examine the documentary evidence which the applicant has preferred as a basis for requesting change in date of birth. Admittedly, his SLC shows the date of birth as 1.6.1966. The same date of birth has been entered in his service book when he joined the service on 5.11.1993. The Tahsildar, Shirur in his reply dated 10.1.2022 has stated that on inspection of old birth death register of the

village the same does not contain any entry of date of birth of the applicant being 24.12.1968.

12. Ld. Advocate for the applicant relies on statement made in para 6.15 of the OA which reads as under:

*“6.15 The petitioner states that in course of time and more particularly in the month of May 1995 when there was a informal discussion of his father with him while being at native place i.e. the said Village, that it revealed that according to the father of the petitioner the correct date of birth of the petitioner must be 24.12.1968.”*

13. Ld. Advocate for the applicant submits that on the basis of this discussion the father of the applicant filed an affidavit dated 23.5.1995 on Non-Judicial Stamp Paper. No evidentiary value can be given to this statement.

14. On perusal of the record it is seen that application dated 29.11.1996 addressed to the respondent no.1 bears the signature and stamp of the receiving authority. However, it is seen that the applicant himself had given the documents on the basis of which his date of birth was given 1.6.1966 in the service book. The date of birth was recorded on the basis of documents produced by the applicant.

15. Ld. Advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in *CIDCO* (supra). In this case it was held that certificate issued by the Municipality could not be discarded on the ground that employee's birth took place prior to creation of municipality as certificate was issued on the basis of record maintained by the predecessor body of Gram Panchayat. However, the ratio can be distinguished. This judgment

states that birth and death register maintained by the statutory authority raised a presumption of correctness. However, in the present case there is no record of his date of birth in the Gram Panchayat. Ld. Advocate then relied on *R.K. Jangra* (supra). In this case the competent authority was directed to apply their mind to material furnished by the appellant. He then relied on *I.M. Thakkar* (supra). In this case it is held that birth certificate issued by the Municipal Corporation, a relevant documentary evidence preferable to school leaving certificate, in case of any discrepancy in date of birth. Ld. Advocate also relied on *Gendalal* (supra) wherein it was held that the Tribunal was not justified in non-suiting appellant on the ground of delay. The facts in these cases are different and hence these judgments are not applicable to the facts of the present case. However, in the present case the main evidence is affidavit of the father of the applicant which was based on an informal discussion in the family which has little evidentiary value.

16. 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."*

17. 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.

18. In **Union of India v. Harnam Singh, (1993) 2 SCC 162**, the Supreme Court has held:

*"A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on*

*grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, 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. The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.”*

19. Considering the totality of the facts and circumstances of the case, there is no merit in the OA and the same is dismissed. No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**2.5.2024**

Dictation taken by: S.G. Jawalkar.