

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.676 OF 2015

DISTRICT : KOLHAPUR

Shri Bhagavan Mahadeo Patil,)
Age 56 years, occ. service, R/o Flat No.12,)
Lakshdeep Nagar, 339, E Ward, Shahupuri,)
Kolhapur 416001)..Applicant

Versus

1. The Development Commissioner (Industries),)
Directorate of Industries, New Administrative)
Building, In front of Mantralaya, Mumbai-32)
2. The Dy. Director (Estt.),)
Directorate of Industries, New Administrative)
Building, In front of Mantralaya, Mumbai-32)
3. The State of Maharashtra,)
Through its Secretary,)
Industry, Energy & Labour Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman

DATE : 19th September, 2016

J U D G M E N T

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents. Perused the papers.

2. The applicant's version in the present OA is as follows:

- (a) The applicant's date of birth recorded in birth and death register kept in the village is 17.10.1959.
- (b) The applicant was admitted in primary school at village Wadi Bayani, Taluka Shirala, District Sangli. In the school register applicant's date of birth is recorded as 2.6.1957.
- (c) Based on the same school record the applicant's date of birth was recorded in SSC Certificate as 2.6.1957.
- (d) On 20.9.1984 applicant's date of birth was entered in service record based on his SSC Certificate as 2.6.1957.
- (e) After about 3 years and before expiry of 5 years of entry in government service i.e. within five years from entry in employment which period is prescribed by Rule 38 of the MCS (General Conditions of Services) Rules, 1981, the applicant has submitted an application for correction in date of birth from 2.6.1957 to 17.10.1959.
- (f) He has relied on certified copy of birth and death register maintained by the village office for the change sought by him.
- (g) The applicant submitted the following reminders:
 - (i) Dated 10.9.1990 Exhibit 6 page 31
 - (ii) Dated 26.3.1992 Exhibit 8 page 34
 - (iii) Dated 17.8.1995 Exhibit 9 page 35
 - (iv) Dated 23.8.2001 Exhibit 11 page 38
 - (v) Dated 5.11.2003 Exhibit 12 page 40
 - (vi) Dated 15.5.2006 Exhibit 13 page 42
 - (vii) Dated 29.10.2007 Exhibit 14 page 44

- (viii) Dated 16.2.2010 Exhibit 15 page 45
- (ix) Dated 10.5.2011 Exhibit 16 page 46
- (x) Dated 21.11.2011 Exhibit 17 page 47
- (xi) Dated 4.5.2012 Exhibit 18 page 49
- (xii) Dated 28.5.2013 Exhibit 19 page 50.

- (h) It is seen that applicant's request was examined by the department, various documents were collected and applicant's request was rejected.
- (i) The rejection was communicated to the applicant by letters dated 1.1.2012 and 27.12.2013.

3. The applicant filed OA No.730 of 2014 challenging the decision of the Government rejecting applicant's request for correction in entry regarding date of birth in the service records.

4. This Tribunal decided the said OA on 8.4.2015 and gave following directions:

"16. In view thereof the impugned communication dated 27.12.2013 is hereby quashed and set aside. The respondents are directed to decide the application on merits on the basis of documents submitted on record and the observations of this Tribunal in this regard and take a decision and communicate the same to the applicant within one month from the date of this order. The respondents should ensure that they adhere to the time frame because it has been brought to the notice of this Tribunal that the applicant is retiring on 31.5.2015."

5. After judgment of this Tribunal dated 8.4.2015 the request of applicant has been reexamined by the department and thereafter by the impugned order dated 15.6.2015 the applicant's request has been rejected.

6. In the present OA the said impugned order dated 15.6.2015 has been challenged.

7. The applicant has placed sole reliance on the entry made in the birth and death register of village Wadi Bayani, Taluka Shirala, District Sangli showing applicant's date of birth to be 17.10.1959.

8. In present OA applicant has challenged impugned order on various grounds. Those are summarized below:

- (a) The authority has misread, misconstrued and misapplied Rule 38 of the MCS (General Conditions of Services) Rules, 1981.
- (b) The authority have given undue weightage to fact of applicant's age to be 4 years 11 months and 26 days on the date of taking admission to first standard and that this amounts to taking "benefit" of date already on record which is sought to be substituted.
- (c) The authority has given undue weightage to the SSC certificate and school record. In comparison thereto the authority should have given weight of the evidence available to the birth register. Truthful and correctness whereof was not disputed.
- (d) Higher weightage should have been given to entry in birth and death register by virtue of reported judgment of Hon'ble Bombay High Court in **VASUDHA GORAKHNATH MANDVILKAR VERSUS CITY AND INDUSTRIAL DEVELOPMENT CORPORATION OF MAHARASHTRA LTD., 2008 BCR 417 = 2008 Mh.L.J. 147**, which has got binding effect and that wherever there is variance in the date of birth mentioned in the SSC certificate or School Leaving Certificate, the date is entered in the birth register, the entry made in the birth register must be accepted, is the correct position of law.

9. Present OA is opposed by keeping sole reliance on the text of impugned order and affidavit in reply.

10. In these premises, it would be useful to refer to respective pleadings.

11. The averments which pointedly describe the challenge are contained in ground para No.7(M) and 7(N). It would be useful to refer to the test. Paras 7(M) and 7(N) reads as follows:

“7(M).The Applicant states and submits that the Tahsildar is the statutory authority for entering the dates of birth and death. The Deaths and Births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are even admissible in evidence in terms of Section 35 of the Indian Evidence Act. The entries made in the said record would prevail over an entry made in the school register. Therefore, there is no reason for the respondent to reject the request of the Applicant.

7(N). The Applicant states and submits that he has made the application within a period of 5 years after entering into service. Hence, it was incumbent upon the respondents to consider the said request rather than throw the same on the ground that the change should have been effected within 5 years. Even as per GR of Govt. dated 24.6.1992, 3.3.1998 the request of the applicant should have been accepted since the said request is made within 5 years. The condition precedent for correcting date of birth has been fulfilled i.e. making application within 5 years, the said application should not have been rejected on the ground that the change should have been effected within 5 years. It is also provided in the said GR dated 3.3.1998 that the date of birth mentioned in the revenue record should be preferred as against the school record.”

(quoted from page 10 and 11 of the paper book)

12. Respondents' reply to the averments contained in para 7 (M) and 7(N) as given in the affidavit in reply reads as follows:

“19. With reference to para 7(M), it is stated that regarding change of birth date issue GR dated 3.3.1998 (copy annexed to OA as Exh.33) at point no.3 states that:

“दुरुस्त करण्यात येणा-या जन्मतारखेमुळे संबंधित कर्मचारी शाळेच्या, विद्यापीठाच्या, महाराष्ट्र लोकसेवा आयोगाच्या परीक्षेस, निवडमंडळाच्या परीक्षेस शासकीय सेवेत प्रवेश करण्यासाठी विहित केलेल्या वयोमर्यादेनुसार अपात्र ठरतो किंवा कसे याबाबतही तपासणी करावी.”

- 19.1 In the light of above provision if applicant's birth date is considered as 17.10.1959 as claimed by him he becomes ineligible to get admission in 1st standard on 12.10.1964 because if relied on this birth date his age is only 4 years 11 months 26 days when he was admitted on the above date. And as per GR provision cited above it is directed to verify this fact. Therefore, there is sound reason to rely on school record which mentions his birth date as 2.6.1957.
- 19.2 To decide the claim of the applicant respondent no.2 sought some information from school of the applicant and respective Tahsildar office, Shirala vide letter dated 20.5.2015. However, Tahsildar Shirala in reply dated 1.6.2015 stated that there is no record available about criteria used to enter name in year 1957 to 1960 Birth Record Register.
20. With reference to para 7(N), it is stated that the Applicant had lodged OA No.730 of 2014 regarding his contention about change of his birth date in that matter all the facts mentioned in this point were considered and Hon'ble Tribunal issued order dated 8.4.2015 (Copy annexed to OA as Exh.32). The order directs the respondent to take decision about birth date of the applicant. Accordingly the respondent has taken decision vide their order dated 17.6.2015 (Copy annexed to OA as Exh.1)."

(quoted from page 92 and 93 of the paper book)

13. In view of rival pleadings and contentions it is necessary to have a look at, scrutinize and analyze the impugned order.

14. It transpires from impugned order that the competent authority has examined the matter on two points as is seen recorded in the impugned order. Relevant text is quoted for ready reference as follows:

- “३. महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती)(सुधारणा) नियम २००८ नियम ३८ पोटनियम (२)(ए) मधील जन्मतारीख बदलाविषयक अर्जाची छाननी करतेवेळी तपासावयाचे निकष श्री. पाटील यांचेबाबत पुढीलप्रमाणे आहेत:

नियम	निकष	अभिप्राय
(एक)	शासकीय कर्मचार्याने शाळेत प्रवेश घेताना, शासकीय सेवेत प्रवेश करताना, अंतर्भूत करावयाच्या जन्मतारखेपेक्षा वेगळी जन्मतारीख नोंदवून फायदा घेतलेला नाही.	श्री.बी.एम. पाटील यांनी दावा केलेल्या जन्मतारखेपेक्षा वेगळी जन्मतारीख (दि.०२.०६.१९५७) नोंदवून प्राथमिक शाळेत प्रवेश घेतलेला आहे.
(दोन)	अशा रीतीने फेरबदल केलेली जन्मतारीख, कोणत्याही शाळेत किंवा विद्यापीठात प्रवेश घेण्यासाठी किंवा महाराष्ट्र लोकसेवा आयोगाच्या ज्या परीक्षेला तो बसला होता किंवा शासकीय सेवेत प्रवेश करण्यासाठी ज्या दिवशी तो अशा परीक्षेला प्रथमतः बसला किंवा तो ज्या तारखेस शासकीय सेवेत प्रवेश केला त्यासाठी त्याला अपात्र ठरविणार नाही.	फेरबदल करावयाच्या तारखेनुसार (दि.१७.१०.१९५९) श्री. पाटील हे प्राथमिक शाळेत इयत्ता पहिलीत प्रवेश घेताना (दि.१२.१०.१९६४) त्यांचे वय ४ वर्ष ११ महिने २६ दिवस असे होते. तथापि, तत्कालीन वयाचे निकषानुसार (सहा वर्षे) सदर प्राथमिक शाळेत प्रवेशासाठी श्री. पाटील अपात्र ठरतात.

(quoted from page 21 and 23 of the paper book)

15. The reasons recorded in fourth para of impugned order are sheer replication of the comments quoted in the foregoing excerpt contained below the right hand column titled as “अभिप्राय”, and hence it shall not be of any use and purpose to refer or quote that finding and any further discussion thereon.

16. Thus, the impugned order reveals as follows:

- The authorities have examined the probability of applicant's claim that is his date of birth is 17.10.1959 to be correct.
- If applicant's claim is that he was born on 17.10.1959, his exact age at the entry in first standard would be 4 years 11 months and 26 days which is below 6 years and on this ground applicant's claim that he was born on 17.10.1959

appears to be highly improbable. Hence, the applicant is not entitled for correction as claimed.

17. The stand taken by the respondents in the affidavit in reply is purportedly based on the principles laid down in Rule 38 and Government Circular dated 3.3.1998 copy whereof is on record at Exh.35 at page 80 of paper book. It is pertinent to note that the respondents have refrained from asserting specific plea and reply whatsoever, to the averments contained in Para 7(M), relating to the aspect of evidentiary value of entry in birth and death register made by the village officer in due course.

In answer to averments contained in para 7(M) and 7(N) of the OA, the respondents have given an evasive and an inchoate reply.

18. Considering the reliance of the Government on Rule 38 and in particular Govt. Circular dated 3.3.1998, this Tribunal has to see as to whether the applicant's request for change in date of birth fulfilled the conditions prescribed in Govt. Circular dated 3.3.1998 and as whether the scrutiny and conclusion arrived at by the competent authority are just and legal.

19. A copy of Govt. Circular dated 3.3.1998 is kept on record at Exhibit 35 page 80 of the paper book. The said circular lays down various matters to be examined by the competent authority.

20. This Tribunal has examined the aspect referred to in Rule 38 and Government Circular dated 3.3.1998.

21. The text of circular dated 3.3.1998 which is quoted for reference in para 19 of the reply as well as other paras appears to be have been drawn from 3rd para of Govt. Circular dated 3.3.1998. Text of relevant lines is as follows:

“३. दुरुस्त करण्यात येणा-या जन्मतारखेमुळे संबंधित कर्मचारी शाळेच्या, विद्यापीठाच्या, महाराष्ट्र लोकसेवा आयोगाच्या परीक्षेस, निवडमंडळाच्या परीक्षेस शासकीय सेवेत प्रवेश करण्यासाठी विहित केलेल्या वयोमर्यादेनुसार अपात्र ठरतो किंवा कसे याबाबतही तपासणी करावी.”

(quoted from page 80 and 81 of the paper book)

22. Thus, though various conditions are prescribed in the circular dated 3.3.1998, State has relied only on condition emerging from para 3 thereof. The direction contained therein prescribes that competent authority should examine as to whether based on the date of birth which he wants to be recorded (in place of date already recorded), he would have been eligible for admission to the school, university, admission to an examination by public service commission or any selection board.

23. It is seen that after the competent authority examined applicant's case from that point of view prescribed in Govt. Circular dated 3.3.1998 and held as recorded in para 3 of the impugned order (as quoted in foregoing para no.14) to the effect that applicant took admission to 1st standard by representing his date of birth to be 2.6.1957. However, had date of birth of 17.10.1959 to be true, and would have been relied by the applicant on the date of admission i.e. 12.10.1964, his age on that date would have been 4 years 11 months and 26 days i.e. less than 6 years, and hence he would not be eligible for admission to the school.

24. In the aforesaid premises, this Tribunal has to find out:

- (a) As to whether taking admission to 1st standard when the applicant was 4 years 11 months and 26 days old, amounts to taking benefit which applicant would not be eligible according to the date of birth which he wants to be recorded.
- (b) What is the evidentiary value of the entry in birth register.

- (c) Whether applicant's claim that he was born on 17.10.1959 is legally proved?
- (d) Whether he is entitled for change in date of birth.

25. Next question of fact that arises for consideration is as to whether the entries made in the school register represented correct factual position.

26. Considering that the State has placed reliance on the register of the school showing admission of various students, this Tribunal has minutely examined various entries made in the said register which is titled as (प्रवेश-निर्गम रजिस्टर), photocopies of which 4 pages are kept on record by the Government at pages 105 to 108. The register contains entries from Sr. No.203 to 246. It reveals that barring few entries, by and large the date of birth of the candidates admitted in the school in year 1964 is either "1st or 2nd June" either of 1956-57.

27. The very fact of monotonous date of birth and year of birth of majority of students, tends to prove that the date of birth mentioned in the school register is not based on truth and fact, rather those are recorded in most random and rather on wholly tentative basis. This must have occurred because villagers were generally not keen in recording the birth. Therefore, it is evident that the entry taken in the school register is totally of a superfluous nature and does not carry any worth of evidence whatsoever.

28. The question as to whether applicant was not entitled for admission in first standard in 1964 will have to be decided on the basis of any statutory rule or circular etc to prove that in year 1964, a rule of law existed by which minimum age limit of 6 years was prescribed for admission to 1st standard in primary school.

29. Respondents have placed on record copy of letter dated 9.5.2015 which is part of Annexure R-3 suggesting that a letter was sent to Head Master, Zilla Parishad Primary School, Wadi Bayani, Taluka Shirala making enquiry as to what were the criteria for eligibility of admission. However, it is not stated that this letter was replied nor any copy of said letter is placed on record. In the aforesaid background it is clear that the respondent's claim that applicant ought to have completed 6 years age at the time of entry in Primary School based on speculation and said plea is not proved to be based on any statutory rule.

30. The respondents did not place on record any circular, letter, order or rule framed under Bombay Primary Education Act, Rules etc. if any, which may have prescribed minimum age to be observed as mandatory rule at the time of admission to 1st standard in a primary school, private school or of type whatsoever.

31. In absence of proving existence of such rules etc. the finding contained in impugned order to the effect that applicant has taken benefit of date of birth on which now he wants to rely, is in the nature of specific finding which is recorded in absence of positive and specific evidence.

32. Entry in the school register based on an incorrect date of birth which was taken decades before entry of applicant in Government service cannot by any stretch be regarded as taking benefit for the purpose of entry in school, much less entry in Government service or entry in qualifying examination.

33. On facts it is seen that the respondents had sent a letter which is part of Exhibit R-3 page 109 dated 29.5.2015 calling from the Tahsildar as to what are the yardsticks or directions relating to recording of date of

birth. No material seems to have come to the hands of the respondents. Else any such material could have been placed by them. The Tahsildar's communication Exhibit R-4 page 111 does not make any comment as to genuineness of the copy of birth register relied upon by the applicant therefore this has to be held on facts that applicant's reliance on the birth register is not disputed by the respondents as a fact of the matter.

34. While the respondents went on into a roving enquiry it was quite possible for them to test credibility of the birth register which has not been done.

35. It is thus evident that what is disputed by the State is the applicant's claim for his demand for correction of date of birth on legal grounds, including ground of estoppel, and in all these efforts the respondents have failed.

36. This Tribunal is bound by the precedent i.e. the judgment of Division Bench of High Court of Bombay in *Vasudha Gorakhnath Mandvilkar* (supra). Their Lordships have held as follows:

“25. It appears that the Petitioner has relied upon a circular dated 3rd March, 1998 of the General Administration Department of the Government of Maharashtra stating that whenever there is a variance in the date of birth and the school leaving certificate or the [S.S.C](#) certificate of an individual, the date of birth recorded in birth- death record must be accepted. It is contended on behalf of the Respondent s that, that circular is not applicable to them. Even if the circular is not applicable, the circular merely recites the correct position in law as aforesaid. It is merely clarificatory. It would remove doubts and can be used as a matter of convenience. It enunciates the correct position for law. It is not contrary to the position in law under the Evidence Act with regard to the proof of public and private documents and the legal presumptions which are available only to public documents.”

37. Respondents have not shown any precedent contrary to one relied upon by applicant, either of any High Court or Hon'ble Supreme Court.

38. The result is that entry made in the birth register whenever it is proved by appropriate evidence, as well it is not disproved it will have to be acted upon.

39. Though impugned order is written with lot of efforts, seems to have been written with a predetermined object and for justifying the pre-decided conclusion which was set aside by this Tribunal in earlier round.

40. All questions framed in para no.24 are answered in favour of applicant.

41. The applicant has, therefore, made out a case for interference in the impugned order. In the result, the OA succeeds.

42. The impugned order is hereby quashed and set aside. The respondents are directed to correct the date of birth recorded in his service book to 17.10.1959 in place of 2.6.1957.

43. In view that interim relief was not granted and applicant has been superannuated during pendency of OA, by treating his date of birth to be 2.6.1957, as a consequential relief the applicant shall be entitled to payment of difference between pension and pay to which he was deprived had he not been superannuated and all the consequential benefits which would accrue to him on account of his loss of opportunity to serve for about 2 years and 4 months.

44. In the facts and circumstances, parties are directed to bear their own costs.

**Sd/-
(A.H. Joshi, J.)
Chairman
19.9.2016**

Dictation taken by: S.G. Jawalkar.

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