

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2365 OF 2002

Devidas @ Ramchandra s/o
Zinga @ Nandlal Lohar,
Age 56 years, Occupation Service
working as Superintending Engineer,
Maharashtra State Electricity Board,
Khadka Bhusawal,
District Jalgaon.

Versus

1. State of Maharashtra

[As per leave granted by the
Hon'ble Court vide order dt.
16.07.2002, Respondent No. 1
deleted]
2. The Chairman/Director (Employees),
Maharashtra State Electricity Board,
Prakash Gadh, Mumbai.
3. The Chief Engineer,
Maharashtra State Electricity Board,
Nasik Circle, Ground Floor,
Vidhyut Bhavan, Nasik.
4. The Superintending Engineer,
Maharashtra State Electricity Board,
Khadka Bhusawal,
District Jalgaon.
5. Maharashtra State Electricity
Transmission Co. Ltd.,
Through its :
Superintending Engineer,
E.H.U.O. & M. Circle,
Sawlare Building,
New Bank of India,
Bhusawal.
6. Maharashtra State Electricity
Distribution Co. Ltd.,
Through Its :
Superintending Engineer,
O & M Circle, Jalgaon.

[Added Res. Nos. 5 & 6 as per leave
granted by the Hon'ble Court vide
order dt. 30.10.2014 & 17.11.2014]

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Mr. D. S. Bagul : Advocate for petitioner
Mr. S. V. Adwant : Advocate for respondent No. 5
Mr. Sanjay Munde : Advocate for respondent No. 6

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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 16th FEBRUARY, 2015

JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. According to the petitioner, his date of birth is 20.11.1945. The petitioner took education, became Electrical Engineer and got employment on 23.11.1970 as Engineer with the Maharashtra State Electricity Board. At the time of his appointment, he disclosed his date of birth as 20.11.1945. This date of birth was recorded by the employer in his service book. The petitioner then continued his work and in 2001, when he realized that he was about to retire after completing 58 years of age in the year 2003, he needed certain amount and therefore, he sought advance payment of 1/3rd of his gratuity amount. At that time, the superior officers of the petitioner realized that in the service book of the petitioner, his date of birth was not verified through authenticated documents. They demanded necessary documents from the petitioner and the petitioner submitted

such documents. The documents depicted different dates of birth. Therefore, the Chief Engineer of the Board held that the date of birth of the petitioner was not 20.11.1945 but was 12.10.1944. This resulted into a threat to the petitioner that he would retire at least one year prior to his scheduled date of retirement. Therefore, he filed this writ petition. At the interim stage, the petitioner was protected and the respondents did not succeed in retiring the petitioner in 2002. The petitioner continued in service till 30.11.2003 when he reached the age of superannuation.

2. The petition remained pending because certain retirement benefits of the petitioner are still withheld by the respondents. In the mean time, the petitioner's employer is now respondent No. 5. The subject matter, namely the date of birth of an employee, is discussed in Chapter II of the 'Maharashtra State Electricity Board Employees' Service Regulations'. The relevant Rule reads as under :

“9. (1) “An Administrative Office” is an office of the Board concerned with administration, more particularly referred to as Head Office, Circle Office, Administrative office attached to Power stations, Divisional Office and Sub Divisional Office, as distinct from the one engaged in power generation & transmission of power and as such excludes a Power Station and a Sub Station.

(2) “Age”

- (a) Age shall be computed from the date of birth, evidence of which shall be produce by the employee to the satisfaction of the Competent Authority at the time of employment or within such period as the competent Authority may direct, in any case within six months of appointment failing which his services shall automatically stand terminated after expiry of six months.
- (b) If the year of birth of an employee is known but not the exact month and date, 1st July of the year should be treated as the date of birth for the above purpose. If the month of birth, but not the exact date is known, the 16th day of the month should be treated as the date of birth.
- (c) If neither the year nor the month is known, a certificate from the Competent Medical Authority prescribed by the Board specifying the approximate year may be accepted for the purpose of fixing the age.

Note (i) Normally, no application for alteration of the entry regarding date of birth as recorded in the Service book of an employee should be entertained after a period of one year from the date of his entry in the Board's service.

Note (ii) Subject to the instruction No. (I) above, in deserving cases the correct date of birth of an employee may be determined in accordance with the directions given in the Eighteenth Schedule of the Maharashtra State Electricity Board Employees' Service Regulations.

Note (iii) All cases relating to alterations of date of birth of

employees as are proposed to be entertained on merits in relaxation of instruction No. (I) above, should invariably be referred to Head Office for advice.

Note (iv) Instruction No. (I) above should be brought to the notice of each employee at the time of his appointment and acknowledgement that he has read and understood the said instruction no. (I) should be obtained from him and such acknowledgement should be placed in his service book.”

3. No doubt, it is a fact that at the time of appointment in the year 1970, the date of birth mentioned in the record of the employer was as per the statement of the petitioner. It is seen that at that time the petitioner placed reliance on certain village record. It is also an admitted fact that the employer did not verify the correctness of this statement and correctness of the village record. The employer simply slept over this matter for next almost 32 years. Suddenly, they felt that they should examine this aspect and they started demanding documents from the petitioner. The petitioner submitted various documents and explained his position.

4. The above quoted Rule would amply show that it is generally an employee who would seek alteration of entry recording date of birth as recorded in the service book. The other way round is almost impossible. In the light of this, we must appreciate the facts of this

case. Note (ii) of the above Rule mentions that in 'deserving cases', the correct date of birth of an employee should be determined in accordance with the directions given in the 18th Schedule. This provision allows an Officer of the Board to collect evidence and come to a conclusion in respect of correct date of birth on an employee. This provision probably gave ample authority to the concerned officer of the Board to record his finding on this question of fact.

5. The question is, whether such provision could have been utilized in this case when the petitioner (employee) did not seek alteration of his date of birth? The answer has to be in negative. It was the responsibility of the employer to verify the correctness of the date of birth soon after the petitioner was appointed. This was not done for next 32 years, and so, to examine the correctness of date of birth, became impossible to the employer. They lost their right to enter into such question.

6. In view of this, the case in hand is not a 'deserving case' as contemplated by Note (ii). We also suspect, though we do not want to give any finding on it, that it could be a case of personal vendetta between the officers of the Board. The petition should therefore succeed.

7. In view of the above, the writ petition is allowed. Rule is made absolute in the above terms.

8. The petitioner should be given all the pensionionery benefits from the date of his retirement i.e. from 30.11.2003. If there are any arrears to be paid, the same shall be paid with interest at the rate of 6% per annum.

9. In view of disposal of writ petition, civil application No. 13158 of 2010 does not survive and the same stands disposed of.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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