

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5671 OF 2015

Bhagwan S/o Gulabsing Rajput

PETITIONER

VERSUS

The State of Maharashtra and others

RESPONDENTS

Mr.B.R.Waramaa, Advocate for the petitioner.

Smt.V.A.Shinde, AGP for respondent No.1.

Smt.C.P.Kutti, Advocate for respondent Nos. 2 and 3.

Respondent No.4 is deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/07/2015

PER COURT :

1. The petitioner has challenged the order passed by respondent No.2 / Education Officer dated 12/05/2015, thereby rejecting the application of the petitioner seeking correction of his date of birth.

2. The submissions of Mr.Waramaa on behalf of the petitioner are summarized as under :-

- a. His date of birth as recorded in the school record maintained by respondent No.3 / School is 01/05/1969.
- b. This date of birth 01/05/1969 has been consistently maintained in all the records pertaining to his pursuit of education upto his graduation in Law.
- c. Same date of birth is maintained in the registration with the

Bar Council of Maharashtra and Goa.

- d. The petitioner has never questioned his date of birth and had no reason to do so in all these 45 years.
- e. The High Court of Judicature at Bombay, which was arrayed as respondent No.4 in this petition, and subsequently deleted by seeking permission from the Division Bench of this Court vide order dated 25/06/2015, published an advertisement dated 30/06/2014, calling for applications for 17 available posts of "District Judge" in the Judicial Service of the State of Maharashtra.
- f. Age prescribed in the said advertisement indicates that the applicant should have completed 35 years, must not have attained age of 48 years in the case of candidates belonging to communities recognized as "*Backward*" by the Government for the purpose of recruitment and 45 years in the case of "*Others*" as on the date of publication of advertisement.
- g. The petitioner was barred by the qualifying age mentioned in Clause 2(c) of the advertisement No.A.5504/2014.
- h. From the information received from the elders in the family, the petitioner visited the Panchayat Samiti to scrutinize the birth and death record.
- i. On such scrutiny, it was revealed that he was born on 14/11/1969.
- j. The petitioner's date of birth is entered in the said record at Sr.No.44 on page No.9 indicating that he is the 7th child of his parents.
- k. His application was considered by the High Court, which was accompanied by his representation.
- l. He tendered an affidavit alongwith a copy of the birth certificate

that was obtained on 28/06/2014.

- m. By order dated 20/11/2014, the Registrar (Legal and Research) of the Bombay High Court permitted the petitioner, provisionally, to appear at the written examination for the post of "District Judge" by nomination subject to correction of his date of birth in his school record.
- n. On the basis of such permission granted, the petitioner was held provisionally eligible and he appeared for the written examination, in which he has qualified so as to participate in the oral interviews that are ending today.
- o. His name is at Sr.No.34 in the list dated 16/12/2014, published by the Registrar (Legal and Research) of the Bombay High Court.
- p. There is no record with the petitioner and respondent No.3 / School to indicate the basis of registering his date of birth as 01/05/1969 in the school record.
- q. His father had entered the said date while admitting the petitioner in school on 23/06/1975.
- r. This date of birth has been continued in all the records pertaining to the petitioner in the Higher Secondary School and upto his Graduation.
- s. His earlier application filed with the concerned authorities, seeking correction in the date of birth in the light of the directions given by the Registrar (Legal and Research) dated 20/11/2014, was rejected by order dated 10/12/2014.
- t. The petitioner approached this Court in WP No.3639/2015 which was allowed by the Division Bench of this Court by its order dated 07/05/2015.
- u. The Division Bench ordered a fresh decision on his application

on or before 11/05/2015.

- v. By the impugned order dated 12/05/2015, respondent No.2 rejected the claim of the petitioner on the ground that his date of birth 01/05/1969 has been consistently recorded and the Birth and Death Record of the Panchayat Samiti though indicates date of birth 14/11/1969, the name of the child is mentioned as "Suklal" and not the name of the petitioner, which is "Bhagwan".
- w. The petitioner's birth on 14/11/1969 was recorded on the same day in the said record and the name "Suklal" was formally mentioned since the naming ceremony of the petitioner was not conducted on the very first day of his birth.
- x. He is seeking correction in his birth date prior to his selection or commencement of service and not at the fag end of service.
- y. The impugned order of rejection has been delivered without considering the claim of the petitioner in proper perspective and without appreciating that a statutory record, which is the only record available to indicate the correct date of birth of the petitioner was available before respondent No.2.
- z. The petitioner is willing to file his affidavit to indicate that the name "Suklal" shown in the Birth Register is the petitioner himself, who has been later on named as "Bhagwan" and the Authorities may re-look into the entire issue and investigate the same to confirm the date of birth.
- aa. The affidavit would also indicate that if the record is found to be an act of forgery or the date of birth 14/11/1969 of "Suklal" s/o Gulab Mansaram Rajput is a different person, the petitioner would relinquish his position in the event he is selected to the post of "District Judge".

3. Mr.Waramaa has relied upon the judgments of the Supreme Court, which are as follows :-

- (a) *Bharat Coking Coal Ltd., and others Vs.Chhota Birsa Uranw, 2014(4) Supreme 344;*
- (b) *Iswarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Ltd., and another, 2014(6) SCC 434;*
- (c) *Eastern Coalfields Ltd. and others Vs.Bajrangi Rabidas, 2013(12) Scale 96.*

4. The learned AGP, in deference to the order passed by this Court dated 30/06/2015, has produced the original Birth Register for the year 1969 pertaining to Betawad (Bk.) Gram Panchayat Betawad, Tal. Jamner, Dist. Jalgaon. The Block Development Officer Mr.Eknath Venkatesh Salunke, due to his personal difficulty has deputed Mr.Ravindra Baburao Teli, Jr.Clerk in Panchayat Samiti Office to carry the said register to this Court.

5. The learned AGP has perused page No.9 of the said register with the assistance of Mr.Teli. On specific instructions from Mr.Teli, on the basis of the instructions of Mr.Salunke, the learned AGP conveys the statement of the Officer Mr.Salunke that this record produced before the Court is the original register, which is genuine and the entry at Sr.No.44 indicating date of birth 14/11/1969 and name "Suklal" is the petitioner himself. He is the 7th child of Gulab Mansaram Rajput and Hirabai Gulab Rajput. She, however,

concedes that the date below the signature in column no.16 in row 44 is 28/11/1969.

6. The learned AGP, on instructions from the concerned Officers makes a statement on behalf of the said Officer that the entry is correctly shown and the petitioner is at Sr.No.44 with his date of birth as 14/11/1969.

7. Mrs.Kutti, learned Advocate appearing on behalf of respondent Nos. 2 and 3 submits that the date of birth of the petitioner is recorded as 01/05/1969 on the basis of instructions from his father. It will have to be investigated since the documents will have to be dug out to find out the basis of the entry of the birth date of the petitioner. It will have to be found out whether the father of the petitioner had placed any document on record while entering the name of the petitioner in the school. If this Court issues such directions to respondent No.2, the said investigation with the assistance of respondent No.3, can be done so as to arrive at the truth.

8. The Apex Court in the Bharat case (supra) has observed in paragraph No.4 to 8 as under :-

"4. The appellant in the present appeal has come before us seeking that the impugned judgment be set aside. The case of the appellant is, firstly, when a school leaving certificate is not a document mentioned in Implementation Instruction No. 76, the High Court was incorrect in substituting the same with the documents given in the said Instruction, thereby creating a situation which supersedes all other statutory documents like Form 'B' register. Secondly, the High Court should have considered that the date of birth recorded in Form 'B' register being a statutory document under [Mines Act](#) is binding and cannot be preceded by a non-statutory document and therefore, the inter alia holding of the High Court that School Leaving Certificate and Mining Sardar Certificate would take precedence over company records and other statutory documents is contrary to the judgment of this Court in [G.M. Bharat Coking Coal Ltd., West Bengal vs. Shib Kumar Dushad and Ors.](#)[1]. Thirdly, the appellant has challenged the exercise of jurisdiction by the High Court under [Article 226](#) considering that the respondent as workman could avail efficacious remedy from the forum under the [Industrial Disputes Act](#) and the respondent could raise such a dispute at the fag end of his career de hors the judgment in [Bharat Coking Coal Ltd. vs. Presiding Officer and Anr](#)[2]. Fourthly, that the documents on which the respondent has relied being School Leaving Certificate and Mining Sardar Certificate are not those mentioned in Implementation Instruction No. 76 for review of determination of date of birth with respect to existing employees and that the implementation of the impugned order would give way to many unscrupulous employees to procure

such documents and take advantage of the same. Fifthly, the respondent while signing the Form 'B' register at the time of appointment had verified his date of birth as February 15, 1947 on his joining on January 1, 1973 and later on his transfer in 1983; since he is a supervisory staff capable of reading and writing and understanding English his verification amounts to acceptance and his raising of dispute in 1987, fourteen years after is incorrect. Sixthly, the appellant has challenged the reliance placed on the School Leaving Certificate by the respondent on the grounds that the same was issued on October 12, 1979 six years after his appointment and as the Mining Sardar Certificate was based on the same reliance on it is also doubtful; furthermore, since both the documents were issued after the date of employment they cannot form basis of correction of date of birth; furthermore, the appellant has challenged the correctness of the School Leaving Certificate on the grounds that the alleged Certificate was not verified by the District Education Commissioner; that the attendance register for relevant period when the respondent allegedly attended school was not available and the verification was with respect to one Sri Birsa Prasad Uranw; it is further submitted that these discrepancies which were covered by legal inspector of company (who was duly charge- sheeted) in collusion with the respondent make the school leaving certificate dubious. Finally, it was submitted that the respondent has raised the issue at the fag end by means of a belated writ i.e. thirty years after appointment and after twenty years (as claimed by him) of his knowledge.

5. *Per contra*, the respondent has denied the averments of the appellant and has submitted that he has not disputed his date of birth at the fag end of his service as found by the learned Single Judge. It has been submitted that the respondent joined service on March 31, 1973, when his date of birth was recorded as February 15, 1947 basis of which is not clear; that subsequently in 1986 he cleared his Mining Sardarship and was given a Mining Sardar Certificate where his date of birth was recorded as February 6, 1950 same as in his School Leaving Certificate; that subsequently in 1987, on noticing the incorrect date of birth and other details in his service records, the respondent immediately submitted an application for the correction of his date of birth as February 6, 1950 and other minor corrections in his service records. On receiving no information regarding the same on inquiry from his superiors, he was given the impression that the necessary corrections were made in the service records and the respondent was surprised to receive his superannuation order in 2006 on the basis of the incorrect date of birth being February 15, 1947.

6. In these circumstances, the respondent has contended, firstly, that it is not the case that the respondent disputed date of birth at the end of service, instead he had disputed the same way back in the year 1987, it is the employer who disputed the same at the fag end by creating the impression that claim of respondent for correction of date of birth was accepted when, in reality, it was not and even the learned Single Judge has

concluded that the rectification was not sought at the fag end. Secondly, it was contended that the respondent has relied on two documents for correction of his date of birth as February 6, 1950, namely the statutory Mining Sardar Certificate and the School Leaving Certificate. Thirdly, it has been contended that in light of the policy contained in part (B) of Implementation Instruction No. 76, the appellant as per clause (i)(a) accepted the School Leaving Certificate but it was contended before the High Court that as the same was issued in 1979 and as the workman joined service in 1979, the certificate was thus, 'not issued' prior to the date of employment and therefore cannot form the basis of correction of date of birth. However, this contention was rejected by the High Court, which held that the school records were created prior to joining and a copy issued on a subsequent date does not create a difference as the date of issue of certificate refers to the date when the relevant record was created on the basis of which the certificate has been issued. In addition to the same, it has also been submitted that the appellate court had granted time to the appellant to verify the genuineness of the School Leaving Certificate and in response through a supplementary affidavit, the appellants have admitted the school leaving certificate to be genuine, thus contended by the respondent that as the School Leaving Certificate was found to be genuine, it warrants no interference. Fourthly, it has been contended by the respondent that his claim for correction was not considered on the basis of the Mining Sardar Certificate which as claimed has been given by the Central Government and was submitted by him, which is also mentioned as a basis

for correction of date of birth in Clause (i)(b) in Part B of Implementation Instruction No. 76. It is further submitted that the appellant did not give any reason as to why the Mining Sardar Certificate was rejected by them. Finally, the respondent has submitted that he was made to retire prematurely and not allowed to work inspite of favourable orders from the High Court; furthermore, the respondent filed a contempt petition but was not allowed to work by the petitioners on the pretext of pendency of matter before higher courts. It is also the case of the respondent that he was not gainfully employed anywhere else during that period.

7. *It is pertinent to note at this point that during the oral proceedings, this Court vide order dated July 4, 2013 directed the appellants as under:*

“List after four weeks to enable the counsel for the petitioners to produce the original and also photocopy of the Form ‘B’ register where it is alleged that the respondent had affixed his signature on the date of birth which was recorded as 15.02.1947.”

However, as found by us and pointed out by the respondent instead of filing the original Form ‘B’ prepared in 1973, at the time of joining of the respondent with designation as Explosive Carrier (which as claimed admittedly did not bear the signature of the respondent), filed a photocopy of the alleged Form ‘B’ dated January 27, 1987 which showed the designation of the respondent to be that of Mining Sardar. It has been submitted by

the respondent that his signature was taken on the alleged form on January 27, 1987 while handing over the photocopy of the same for necessary correction of the record.

8. *On the basis of the above, we find that within the given set of facts the dispute is regarding the manner in which the date of birth should be determined; whether the reliance should be placed on the set of records being the Mining Sardar Certificate and the School Leaving Certificate which state the date of birth to be February 6, 1950 or reliance should be placed on the extracts of the Form 'B' register which state the date of birth to be February 15, 1947. The position which emerges on the basis of the above is that after having joined service in 1973 when the Form 'B' register was filled and when it was filled once again in 1983 when the respondent was transferred, there were certain discrepancies regarding permanent address, father's name and date of joining. In 1987, when the appellant made available the details of all employees for verification of service records, the respondent raised the dispute regarding his incorrect particulars being the date of joining, father's name, permanent address and date of birth. Apparently, the above mentioned corrections other than date of birth were made. Thus, it is evident and correctly determined by the learned Single Judge that the dispute was not raised at the jag end of service or on the eve of superannuation but it was raised at the earliest possible opportunity in 1987 when the respondent became aware of the discrepancy. As the factum of when the dispute*

was raised is settled what remains to be determined is the issue of date of birth.”

9. The Apex Court thereafter concluded in paragraph No.9 as follows :-

“9. In the corpus of service law over a period of time, a certain approach towards date of birth disputes has emerged in wake of the decisions of this Court as an impact created by the change in date of birth of an employee is akin to the far reaching ripples created when a single piece of stone is dropped into the water. This Court has succinctly laid down the same in [Secretary and Commissioner, Home Department vs. R. Kirubakaran](#) (supra), which is as under:-

“7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of

retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their

applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.” The same approach had been followed by this Court while deciding on date of birth disputes irrespective of the relief being in favour of the workman or the employer. (See: [State of Punjab vs. S.C. Chadha](#)[3], [State of U.P. & Anr. v. Shiv Narain Upadhyay](#)[4], [State of Gujarat & Ors. v. Vali Mohd. Dosabhai Sindhi](#)[5], [State of Maharashtra & Anr. vs. Goraknath Sitaram Kamble](#)[6])”

10. Thus, the decision of the High Court in the Bharat Coking case (supra) was upheld by the Apex Court and the correction in the date of birth of Chhota Birsa Uranw was permitted.

11. In the Iswarlal Mohanlal Thakkar Case (supra), the judgment of the High Court was set aside by the Apex Court and the date of retirement was permitted to be corrected as was ordered by the Labour Court to meet the ends of justice. Paragraph Nos. 8 to 11

read as under :-

"8. We will first examine the award and judgment of the Labour Court. The Labour court while passing its award and judgment has given cogent reasons for the same. The labour court examined all the evidence on record and held that as per Ex.36 which is the certificate of birth given by the school for the brother of the appellant, Batuklal Mohanlal Thakker wherein his date of birth is written as 27/1/1937 and therefore, it is impossible that the appellant's date of birth would be 27/6/1937 as the difference would be only 5 months and so it is clear that when both the brothers joined the school, the Director/Principal had inadvertently written date of birth which revealed from Court's order and hence, the date of birth in the school record for the appellant was corrected to 27/6/1940 as per the court's order. The Labour Court further went on to observe that before the court order, as and when the applicant got the chance, he gave an application to the respondent organization vide letter dated 18.4.1987 requesting them to correct his date of birth as per documents enclosed – the statement of the Bhavnagar Electricity Company Ltd, his Identity card and copy of the LIC policy, all of which showed his date of birth as 27.6.1940, and to record the entry in the service records. The respondent did not accept the same and the appellant then got a court order dated 22.05.1987 which directed the entry of date of birth of the appellant as 27.6.1940 to be passed in the Birth & Deaths Register but in spite of this order, the respondent did not accept such judicial/court evidence or the government

documents. They neither cared to inform the appellant that they did not accept the documents nor did they give him any opportunity to defend his application and retired him arbitrarily by taking an ex-parte decision which is illegal and against the principles of natural justice. The Labour Court then went on to observe that in the case of other employees, the dates of birth were corrected on the basis of affidavits but in the case of the appellant, in spite of producing a court order and other documents, they were not accepted by the respondent and thus, this action of the respondent, retiring the applicant from service was illegal and unconstitutional and against the principles of natural justice. Thereby the reference of the appellant was accepted and the respondent was ordered to pay the appellant full salary along with all admissible ancillary benefits from the date he was retired till the date of his actual retirement as per his date of birth, and Rs.1,500/- towards costs of the matter.

9. *We find the judgment and award of the labour court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the labour court in its Award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour*

Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the Award of the labour court was based on sound and cogent reasoning, which has served the ends of justice.

It is relevant to mention that in the case of Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil[1], with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that- “The power of interference under Art.227 is to be kept to a minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.” It was also held that- “High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Art.227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it.” Thus it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.

In the case of Harjinder Singh v. Punjab State Warehousing Corporation[2], this Court held that, “20.....In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and

unjustifiably interfered with the award of reinstatement passed by the Labour Court with compensation of Rs.87,582 by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulation.”

10. The power of judicial review of the High Court has to be alluded to here to decide whether or not the High Court has erred in setting aside the judgment and order of the labour court. In the case of *Heinz India Pvt. Ltd. & Anr. v. State of UP & Ors.* [3], this Court referred to the position held on the power of judicial review in the case of *Reid v.*

Secretary of State for Scotland[4], wherein it is stated that :-
 “Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed.

As regards the decisions itself it may be found to be perverse or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through

account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of evidence.” Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the Award of the labour court. A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the [Indian Evidence Act, 1872](#) and the birth certificate mentioned the appellant’s date of birth as 27.6.1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent-board prematurely terminated the services of the appellant by taking his date of birth as 27.6.1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant’s elder brother was born on 27.1.1937 as per the School Leaving Certificate, and there cannot be a mere 5 months difference between the birth of his elder brother and himself. Therefore, it is apparent that the School Leaving Certificate cannot be relied upon by the respondent-board and instead, the birth certificate issued by the BMC which is the documentary evidence should

have been relied upon by the respondent. Further, the date of birth is mentioned as 27.6.1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by the BMC on the face of all these discrepancies as the same was issued on the order of the JMFC. The High Court has wrongly held that the appellant was estopped from raising the issue of his date of birth as he had signed the records in 1978 but he raised this issue only in 1987. The reason for this is clear that the respondent came out with a circular in 1987 that those employees who wished to change their date of birth in the records may do so by furnishing the necessary birth certificate and further, they can do it before they become 50 years of age. The appellant had not attained 50 years of age at the time he raised the contention regarding mistake in his date of birth. The High Court has not applied its mind in setting aside the judgment and award of the labour court in exercise of its power of judicial review and superintendence as it is patently clear that the labour court has not committed any error of jurisdiction or passed a judgment without sufficient evidence. The impugned judgment and order of the High Court deserves to be set aside and the award and judgment of the labour court be restored.

11. *In view of the aforesaid reasons, we allow the appeal, set aside the impugned judgment and order of the High Court and*

restore the award of the Labour Court, since the services of the appellant were prematurely superannuated taking his date of birth as 27.06.1937 instead of 27.06.1940, and therefore, he is entitled to full back wages and other consequential monetary benefits from the date of termination till the date of his correct superannuation considering his date of birth as 27.06.1940. The back wages shall be calculated on the basis of revised pay scale and the same must be paid by way of demand draft to the appellant within six weeks from the date of receipt of the copy of this order, failing which the respondent shall pay interest @ 12% per annum on the amount due, towards back wages and other consequential monetary benefits, from the date of the Award of the Labour Court till the date of payment."

12. It is apparent from the fact situation emerging from the case in hand that the date of birth of the petitioner was consistently recorded as 01/05/1969. It has been stated by respondent Nos.2 and 3 that the basis of the said entry will have to be investigated coupled with the genuineness of the record produced. Respondent No.2 confirms that the said record is genuine. He further submits that the birth register maintained by the Panchayat Samiti, Jamner for village Betawad (Bk.) in the period 01/04/1969 to 31/12/1969, does not indicate any other entry of the petitioner's birth at any place barring the entry at Sr.No.44 indicating the date of birth of the petitioner as

14/11/1969.

13. The interviews being conducted by the High Court of Bombay have commenced from 22/06/2015. The petitioner is to participate in the said interviews since he was not permitted to do so earlier as his petition for correction of date of birth was pending. Considering the factors as recorded above and the ratio laid down by the Apex Court in the cited reports, the petitioner would lose this opportunity with regard to the selection to the post of District Judge in the event this Court does not permit him to participate in the interviews.

14. It is apparent that respondent No.2 has passed a cryptic order without properly conducting an investigation into the matter. Ex-facie, it appears that he had little time at his disposal since the Division Bench of this Court ordered on 07/05/2015 that respondent no.2 shall decide the application of the petitioner on or before 11/05/2015. Mrs.Kutti, therefore, rightly submits that respondent No.2 had only 4 days available in between 08/05/2015 and 11/05/2015 and hence the impugned order dated 12/05/2015 was passed hurriedly. 09/05/2015 and 10/05/2015, were holidays.

15. In the light of the above, in my view, respondent No.2 needs to

be granted some time to carry out the investigation with the assistance of respondent No.3, to ensure that the investigation is carried out properly, I find it fit to direct the Chief Executive Officer of Zilla Parishad, Jalgaon to personally overlook these investigations so as to facilitate a proper decision on the application of the petitioner dated 27/11/2014, which is "Annexure I" to the petition paper book. Nevertheless, if no relief is granted to the petitioner, he is likely to be deprived of a last chance for the post of "District Judge". In the event his application 27/11/2014 is found to be without any merit, the selection of the petitioner would then be liable to be set aside. For this purpose, the statement of the petitioner that he would file an affidavit needs to be accepted in order to pass an equitable order.

16. As such, this petition is partly allowed. The impugned order dated 12/05/2015 is quashed and set aside with the following directions :-

- a. The petitioner is permitted to participate in the interviews scheduled today for the post of "District Judge".
- b. The petitioner shall file an affidavit, duly sworn before the Registrar (Judicial), Bombay High Court, Bench at Aurangabad, indicating that his participation in the selection process for the post of "District Judge" pursuant to the advertisement dated 13/06/2014, shall be subject to the

outcome of his application dated 27/11/2014 and his legal rights.

- c. In the event it is established that the petitioner's date of birth is 01/05/1969, the petitioner shall relinquish his position as a District Judge, if he is so selected.
- d. No equities will be created in favour of the petitioner by the permission granted by this Court for participating in the selection process.
- e. Since the concerned officer namely Mr.Eknath Venkatesh Salunke has conveyed through the Jr.Clerk Mr.Teli that the record produced before the Court is genuine and authentic, he shall have to face the consequences in the event it is concluded that the record is not genuine and authentic.
- f. Affidavit of the petitioner shall be tendered in this Court with a copy to the Registrar (General) of the High Court of Bombay, within a period of 10 days from today.
- g. The CEO, Z.P. Jalgaon shall personally overlook the scrutiny of the documents related to the claim of the petitioner, in the light of the directions of this Court.

(RAVINDRA V. GHUGE, J.)