

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 5421 OF 2014

Ramesh S/o Kanhoji Pawar
R/o 29, Kasliwal Marval,
Beed Bye Pass, Aurangabad

.... Petitioner

V/s

1. The State of Maharashtra
Through the Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai 400 032.

2. The Executive Director
Godavari Marathwada Irrigation
Development Corporation, Jalna
Road, Aurangabad.

3. The Chief Engineer,
Water Resources Department,
Sinchan Bhavan, Jalna Road,
Aurangabad.

4. The Superintending Engineer,
Aurangabad Irrigation Circle,
Behind Old High Court, Aurangabad.

5. The Executive Engineer
Minor Irrigation Division No. 1,
Sinchan Bhavan, Jalna Road,
Aurangabad.

Respondents

Mr. Ajay Deshpande Advocate for Petitioner
Mr. Sham Patil Advocate for Respondent no. 2
Mr. S. S. Tope Additional Government Pleader for respondent nos.1 & 3 to 5

**CORAM : S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ**

RESERVED ON : 23/02/2015
PRONOUNCED ON : 08/05/2015

JUDGMENT: (Per: V. L. Achliya, J.)

Heard.

- 2) Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing at the stage of admission.
- 3) Being aggrieved by order dated 27/06/2014, passed in O. A. No. 259 of 2014, by Maharashtra Administrative Tribunal Bench at Aurangabad, the petitioner herein has preferred this writ petition.
- 4) In nut shell it is the say of the Petitioner that he joined the service as a junior engineer on 07/04/1980. On 22/10/2008 he was promoted as Sub-Divisional Officer in the cadre of Deputy Engineer. At the time of joining service his date of birth was recorded in service book as born on 30/06/1956. In the year 1990, after realizing that his birth date was wrongly recorded as 30/06/1956, in stead of 30/06/1957, the petitioner made representation to Executive Engineer M.I. Division No. 1 Osmanabad supported by documents such as school leaving certificate and S.S.C. Board examination certificate in which his date of birth recorded as 30/06/1957. It is the say of petitioner that on due verification of the record the Executive Engineer was pleased to correct his birth date in service record as 30/06/1957. In the year 2009, in an enquiry initiated in respect of complaint received as regards to the correct birth date of the petitioner, the enquiry officer come to the conclusion that the correct date of birth of petitioner is 30/06/1957 and accordingly he has submitted the report to concerned Authorities. Pursuant to that report of enquiry in the year 2012, the birth date of petitioner was corrected as 30/06/1957. It is the say of petitioner that without any justifiable reason or cause the respondents have initiated department enquiry. On 25/02/2014,

the respondent no. 1 served upon him the charge-sheet alleging therein that the petitioner has fabricated the service record in respect of his date of birth. Petitioner, though submitted detail explanation, but without waiting for the outcome of the departmental enquiry, by order dated 13/03/2014, the birth date of the petitioner recorded in service book as 30/06/1957 was unilaterally cancelled. Aggrieved by said action of the respondent, petitioner preferred O.A. No. 259 of 2014 before the Administrative Tribunal. However, the Administrative Tribunal dismissed the application. Being aggrieved by the said order, petitioner has preferred this writ petition.

5) We have heard Shri. Ajay Deshpande, the learned counsel for the petitioner, Shri. Sham Patil the learned counsel representing the respondent no. 2 and Shri. S. S. Tope, the learned Additional Government Pleader representing the respondent nos. 1 and 3 to 5. We have also perused the record and proceedings of O. A. No. 259 of 2014.

6) Mr. Deshpande, the learned counsel representing the petitioner, strenuously contended that the Tribunal has grossly erred in interpreting the Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. (Hereinafter referred as 'Said Rules') in its entirety which resulted into miscarriage of justice. He has contended that what exactly sought to be arrested by the Rule has been done by the respondents. They have unilaterally altered the date of birth of the petitioner at the fag end of service record which is against the purport of said Rule and settled position in law that no change in the birth date of the person in the service record be entertained at the fag end of service of Government servant. It is contended that what is applicable to Government servant is equally applicable to the respondent authorities. It is contended that not a single document placed on record by the respondents to justify recording of 30/06/1956 as a correct date of birth of the petitioner. On the contrary, the documents on record placed by the petitioner in the form of school leaving certificate, S.S.C. Board certificate and other documents fully support the claim of the petitioner that his correct birth date

is 30/06/1957 & same was rightly corrected. There was absolutely no justification on the part of respondents to have cancelled the same and treat the date of birth of the petitioner as 30/06/1956. The learned counsel has submitted that order passed by Tribunal is perverse and liable to be set aside.

7) On the other hand, Mr. Tope, the learned Additional Government Pleader supported the order passed by the Tribunal. He has contended that the order passed by Tribunal is well reasoned and same has been passed on due appreciation of rival contentions in the light of material placed on record. He has submitted that there is absolutely no illegality and perversity in the order passed by the Tribunal. The learned Additional Government Pleader has submitted that the petitioner has entered into service in the year 1980. At the time of entering into service, on the basis of disclosure made by the petitioner, his date of birth was recorded as 30/06/1956 in service book. It is pointed out that petitioner has endorsed his signature on first page of the service book wherein the particulars in respect of the birth date of petitioner were recorded. The learned Additional Government Pleader pointed out that the date of birth which was originally recorded as 30/06/1956 was tampered. By making overwriting, the figure '6' has been altered as '7' so as to make the birth date of petitioner as 30/06/1957. It is pointed out that the fabrication of record is visible from naked eye. It is further pointed out that the said alteration made was not countersigned by any authority. The learned Additional Government Pleader has further pointed out that the service record was further tampered and the date of birth which was initially altered as 30/06/1957 again altered by endorsing the date of birth of petitioner in same column as 30/06/1959. Not only this, the birth date which was recorded in words as "Thirtieth June Nineteen Fifty Six" was altered as "Thirtieth June Nineteen Fifty Nine" by altering the word 'six' by word 'nine'. Similar alteration was made in the service book on its internal page 16. It is contended that petitioner has made deliberate attempt to alter the birth date in the service book with ulterior motive to continue in the service beyond the age of superannuation . The learned Additional

Government Pleader has further pointed out that the department has conducted in depth enquiry into the matter. During the course of enquiry, it was found that the school record of the petitioner was also tampered. In the school leaving certificate the birth date was altered as 30/06/1959 in place of 30/06/1957. Similarly from the extract of birth and death register of village Jambhora, issued by Tahsil office at Sindhkhed Raja, it was found that the date 05/12/1957 altered as 05/12/1959. In another document of school record, the date of birth altered and shown as 30/06/1959. In view of enquiry conducted in the matter, and after taking into consideration that the Executive Engineer who made entry as to correction of the birth date of petitioner as 30/06/1957 in the year 2012 had no authority to make such correction, the respondents have cancelled that entry and decided to restore the birth date of petitioner as originally recorded as 30/06/1956. The learned Additional Government Pleader has further pointed that as provided under instruction no. (1) of Rule 38 (2) of Maharashtra Civil Services Rules 1981, no request of Govt Servant for alteration/correction of entry regarding date of birth as recorded in service book of Government servant can be entertained after a period of five years from the date of entry in Government service. The learned Additional Government Pleader has further pointed out as provided under Sub Rule (3) of Rule 38 of said Rules, any relaxation as to directives contained in instruction no. (1) of Rule 38 (2) can be entertained only after the case of such individual Government servant is referred to the General Administration Department and Finance Department of the State through concerned Administrative department. It is submitted that while altering and correcting the date of birth of the petitioner in the year 2012 by the Executive Engineer, no such procedure, as provided under Sub Rule (3) of Rule 38 of said Rules was followed. The Executive Engineer who made that entry acted beyond his competence and authority and corrected the birth date as 30/06/1957 which was originally recorded as 30/06/1956. Department has further found that said birth date was again illegally altered as 30/06/1959. So also, it was found that the petitioner has manipulated the various records

pertaining to his birth date. False and fabricated documents were created by petitioner for ulterior motive to continue in service and to show that his date of birth is on 30/06/1959 and to derive other service benefits on the basis of those false and fabricated documents. It is therefore, contended that the action on the part of the respondents is legal and the order passed by the Tribunal calls for no interference in exercise of Writ Jurisdiction of this Court. It is further contended that the conduct of the petitioner to manipulate and fabricate the record, being apparent from the face of record, no discretionary relief be granted in favour of petitioner in exercise of writ jurisdiction of this Court.

8) Mr. Sham Patil, the learned counsel representing the respondent no. 2 contended that the petitioner is trying to enlarge the scope of reliefs originally claimed before Tribunal. It is pointed out that in the application which was filed before the Tribunal, the petitioner has claimed the relief to quash the communication dated 01/04/2014 and 04/04/2014 and direction to respondents to correct the date of birth of the petitioner as 30/06/1957 with all consequential service benefits. The learned counsel has pointed out that the decision of the respondents, communicated to petitioner vide letter dated 13/03/2014 of cancellation of the entry of his birth date recorded as 30/06/1957 in the service book and restoring the original date of birth is 30/06/1956 was not challenged before the Tribunal. However in the present petition, same has been challenged by the petitioner. The learned counsel has also submitted that the order passed by the Tribunal is perfectly legal and calls for no interference in exercise of Writ Jurisdiction of this Court.

9) We have carefully considered the submissions advanced by the learned counsel for the petitioner, respondent no. 2 and Additional Government Pleader for the State in the light of record and proceedings of the case and more particularly in the light of decision rendered in the matter by the Administrative Tribunal. We are of the view that the decision rendered by the Tribunal is based upon due appreciation of documentary evidence placed on record by both the sides as well

as relevant Rules, Regulations and settled position in Law as regards to scope of interference in such matter relating to birth date of the Government servant laid down in catena of cases decided by Hon'ble Apex Court as well as this Court. While exercising the writ jurisdiction by this Court, against the Judgment/order passed by the Tribunal, High Court is not expected to act as a Court of Appeal and to sit in appeal over the Judgment/order passed by Tribunal. The reasons and findings recorded by the Tribunal can be set aside, if same are found to be perverse and resulted into miscarriage of justice. We are of the view that the Judgment and order passed by the Tribunal is well reasoned and passed on due consideration of entire facts of the case and material placed before the Tribunal for its consideration. According to us, no case is made out by petitioner to interfere with the impugned Judgment and Order passed by the Tribunal in exercise of writ jurisdiction.

10) It is apparent from the face of the record that the service record of the petitioner has been altered and fabricated for the benefit of the petitioner. There is no dispute as to the fact that when the petitioner joined the service in the year 1980, immediately thereafter, the service book of the petitioner was prepared. The fact is also not in dispute that in the service book, the date of birth of the petitioner was originally recorded as 30/06/1956, both in words as well as figure and the petitioner has endorsed his signature on same page on which the entry in respect of date of birth was recorded. Since the petitioner has joined the Government service, the inference can safely be drawn that before joining the service, he must have disclosed his birth date supported by document to fulfill the criteria of age and entries in respect of birth date of petitioner must have been taken on the basis of his disclosure. It is no where the case of the petitioner that the initial entry was recorded without the knowledge of the petitioner. Petitioner also got promoted during the passage of time. As per the say of the petitioner in the year 1990, he first time got knowledge that his birth date was wrongly recorded as 30/06/1956 as against his correct date of birth 30/06/1957. He got

corrected the same in the year 1990. It is pertinent to note that in the service book, there is no such entry recorded of correction of birth date in the year 1990 in accordance with the procedure laid down and too by the competent authority. As pointed out by the learned Additional Government Pleader, in normal course, no such correction is permissible after five years of joining of service as provided in Instruction No. (1) Rule 38 (2) of said Rules. Such correction can be carried out only after the administrative department concerned on consideration of such representation of Government servant refers the matter to General Administration Department and Finance Department of State seeking relaxation from Instruction No. (1) of Rule 38 (2) of said Rules, in the matter of such Government servant as provided under Sub Rule 3 of Rule 38 of said Rules. Rule 38 (2) Instruction (1) & (3) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 reads as follows.

“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

- (a) The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;
- (b) In the case of a Government servant the year of whose birth is known but not the date, the 1st July should be treated as the date of birth;
- (c) When both the year and the month of birth are known, but not the exact date, the 16th of the month should be treated as the date of birth;
- (d) In the case of Government servant who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment;

(e) When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in rule 12 should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deducted accordingly;

(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;

Instruction.--- (1) 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.

(3) All cases relating to alteration of dates of birth or Gazetted Government servants and such of the requests of Non-gazetted Government servant as are proposed to be entertained on merits in relaxation of instruction No. (1) above, should invariably be referred to the General Administration Department and the Finance Department through the Administrative Department concerned.”

No such procedure as per rules quoted above appears to have been followed at any point of time in the matter of petitioner at the instance of petitioner. The correction which was carried out in the year 2012, appears to be made without following the procedure prescribed under the Rules. Therefore, the Department was fully justified in cancelling the action on the part of Executive Engineer to correct the date of birth of petitioner as 30/06/1957 and restoring the birth date which was originally recorded as 30/06/1956.

11) We are not inclined to accept the contention of learned counsel for the petitioner that the restrictions contained in Rule 38 of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 to change the birth date in service record of Government servant beyond the period of 5 years is equally applicable to the respondent authorities and they cannot alter the date of birth, once corrected at the fag end of service tenure of Government servant. Rule 38 in fact lay down the procedure for writing the events during the service tenure of Government servant which also includes the procedure for recording the date of birth in the service book as well as duration in which Government servant can apply for correction or alteration of the entry regarding date of birth once recorded in service book. Instruction no. 1 of Rule 38 of the said Rule provides for outer limit within which the Government servant can make an application for alteration in birth date recorded in service book. Instruction no. 3 of Rule 38 provides for procedure to be adopted in entertaining the request received from gazetted or non-gazetted Government servant after prescribed period of 5 years from joining of Government service and which according to concerned administration department of Government servant deserves consideration. Instruction no. 3 of Rule 38 provides to refer such request for concurrence & clearance of General Administration & Finance Department of the State Government. Thus, in its entirety, Rule 38 and instructions contained therein are only applicable to the Government servant. There is no provision under said Rules which prohibits the Departmental Authorities from taking administration decision and consequential action wherein the Government servant is found to have indulged into an act of manipulation and fabrication of service record relating to his birth date.

12) Administrative decision taken by the respondents which in fact based upon the enquiry conducted in the matter as to tampering of service record by the petitioner with ulterior motive cannot be said to be contrary to Rules. It is pertinent to note that Department started enquiry into the matter when they

received the complaint that the service record of petitioner has been tampered by the petitioner. The birth date which was originally recorded was found to be altered from 30/06/1956 to 30/06/1957 and further altered as 30/06/1959. During the course of enquiry, the department authorities have found the case of fabrication of false record of birth date by the petitioner. The Tribunal has discussed in detail the various documents relating to different date of birth i.e. the documents showing the birth date of petitioner as 30/06/1956, 30/06/1957, 05/12/1957, 05/12/1959 and 30/06/1959 found during the course of enquiry conducted in the matter. It is pertinent to note that in respect of birth and death register maintained with the Tahsil office at Sindhkheda Raja, three extracts of birth date in respect of petitioner with different dates of birth or variation produced on record. As per the outcome of enquiry, in the birth and death register, one of the extract copy of birth certificate was issued on 26/03/2009, in which the date of birth of petitioner is shown as 05/12/1957 & in coloumn no. 5, same is also written in words. In another extract copy of birth and death register which was also issued by Tahsil office at Sindhkheda Raja on 11/10/2001, the date of birth is shown as 05/12/1957, however in coloumn no. 5, date of birth is not mentioned in words. In respect of same birth and death register, in another extract copy issued on 11/10/2001 and produced by the petitioner, the date of birth of petitioner is shown as 05/12/1959. However, date of birth is not mentioned in words, but date is found to be overwritten at three places. In the school leaving certificate, issued on 14/03/2007, by Shri Shivaji High School Jambhora the date of birth of the petitioner shown as 30/06/1959. In another copy of the school leaving certificate, issued by same school i.e. Shri. Shivaji High School Jambhora, the date of birth of petitioner is mentioned as 30/06/1957. In the another copy of extract of school admission register of Zilla Parishad Central Primary School Jambhora issued on 17/10/2003, the date of birth of petitioner is mentioned as 30/06/1959 & it was corrected at the instance of petitioner. Thus, in the light of outcome of such enquiry, the decision of the respondents to restore the original date of birth of the

petitioner in service record as 30/06/1956, cannot be termed as arbitrary and illegal. Based upon the outcome of such enquiry, the department has decided to initiate departmental enquiry proceeding against the petitioner and in the month of February 2014, charge-sheet appears to have been duly served upon the petitioner.

13) In view of the discussion made in the foregoing para, we are of the view that the order passed by the Tribunal calls for no interference. In the light of facts of the case, as it is apparent from the face of record that service record of petitioner has been tampered and false and fabricated documents were created to derive the benefit by petitioner, no indulgence can be made in favour of petitioner in exercise of extra ordinary writ jurisdiction under Article 226 of Constitution of India. We are therefore, not inclined to entertain this petition. Accordingly, the petition is dismissed with no order to costs. Rule discharged. Record and proceedings of O. A. No. 259 of 2014 be sent back to Tribunal.

(V. L. ACHLIYA, J.)

(S. V. GANGAPURWALA, J.)