

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5280 OF 2014

Kadu Nathu Dhake
Age 67 years, Occu-Nil
R/o 1 Mitra Nagar, Near
Khajyamiya Darga, Jalgaon
Taluka & District Jalgaon

.. PETITIONER

Versus

- 1] The State of Maharashtra
Through Secretary,
Urban Development and
Water Conservation
Department, Mantralaya,
Mumbai-32
(Copy served on G.P.
High Court, Aurangabad)
- 2] The Zilla Parishad
Jalgaon, Through Chief Officer
Jalgaon.
- 3] Executive Engineer
Public Work Department
Zilha Parishad, Jalgaon

..RESPONDENTS

...
Shri S.P.Brahme,Adv. for petitioner
Shri A.S.Shinde,AGP for Respondent State.
Shri M.K.,Goyanka,Adv. For respondent no.2

...

**CORAM : S.V.GANGAPURWALA &
V.L.ACHLIYA,JJ.
DATE : 28th January, 2015.**

ORAL JUDGMENT ; [PER S.V.GANGAPURWALA,J.] :

Rule. Rule returnable forthwith. With consent of parties, Petition is taken up for final hearing.

2] Mr.Brahme, learned counsel submits that date of birth of the petitioner in the service record is sought to be changed after the petitioner has retired from service. Even as per the school record and also as per the entry made in the service book at the time of entry in service, date of birth of petitioner is 3/6/1947. Learned counsel submits that for all purposes in service, petitioner's date of birth is considered as 3/6/1947. However, during the fag end of his service career, the same is sought to be changed to 12/3/1945. The petitioner on 28/10/2005, was superannuated with retrospective effect treating the date of birth as 12/3/1945.

3] The petitioner even filed an Appeal before Divisional Commissioner who held that the date of birth of the petitioner is 3/6/1947 and the order dated 28/10/2005 was quashed. However, in Revision filed before respondent no.1 by respondent no.2, the revision was allowed. The petitioner filed Writ Petition No.2230/2012. The Writ Petition was restricted to the relief of refund of Rs.3,46,980/- and the petitioner was granted liberty to agitate the issue in respect of correction in date of birth before

appropriate forum and in accordance with provisions of law or Rules governing the same. The respondents were directed to refund the amount of Rs.3,46,980/-. According to the learned counsel if as per the Service Regulation, petitioner is not entitled to change his date of birth after five years of the entry in service, same would also apply to the respondent-employer. The petitioner's real date of birth is 3/6/1947 and the same also can be testified by school record.

4] Mr.Goyanka, learned counsel submits that as per the school record, the date of birth of the petitioner is 12/3/1945, the same came to the knowledge of the respondents subsequently, as such steps were taken. According to the learned counsel, no illegality has been committed by the authorities in deciding the matter. The learned counsel further submits that the petitioner is relying on the affidavit of his father and not on the school record.

5] We have considered submissions canvassed by the learned counsel for respective parties. It is not disputed that at the time of entry in service, the petitioner's date of birth in the service book was recorded as 3/6/1947. The petitioner worked till the age of superannuation, considering his date of birth as 3/6/1947 and after retirement, his date of birth is sought to be changed by the employer in the service record as 12/3/1945 that is with retrospective effect. The learned counsel for respondent submits that in service book, both the dates of birth i.e. 3/6/1947 and 12/3/1945 were mentioned, as such confusion occurred.

6] In fact, if the respondent considered date of birth of the

petitioner as 12/3/1945, the respondents would not have given employment to the petitioner as on the date of giving employment, the petitioner would have been over aged. As such, respondent considered date of birth of the petitioner at the time of entry in service as 3/6/1947 and the same was continued till the date of superannuation.

7] It would be too late in the day for the respondents to contend that the date of birth in the service book ought to have been considered and recorded as 12/3/1945.

8] In light of that, the impugned order dated 2/9/2013 is quashed and set aside. The date of birth of petitioner shall be considered as 3/6/1947 by respondent-employer in the service book and shall be given all the service and retiral benefits considering the date of birth as 3/6/1947. Rule accordingly made absolute with no costs.

9] Needless to state that if any amount is withheld by the respondents on mere ground that the date of birth is 12/3/1945, then same shall be released to the petitioner considering date of birth of petitioner as 3/6/1947, expeditiously preferably within three months.

V.L.ACHLIYA,J.

S.V.GANGAPURWALA,J.

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