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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1643 OF 2014

Virendrasingh Gyansingh Bisht

..Petitioner

Vs.

State of Maharashtra & Ors.

..Respondents.

Mr. Ajay Basutkar for Petitioner.

Mr. G.W. Mattos, AGP for Respondent Nos.1 to 3.

Ms. Rebecca Gonsalves for Respondent No.4.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 22nd April 2015.

P.C.:

Leave to correct.

2 Rule. Rule is made returnable forthwith by consent of the parties.

3 The Petitioner has approached this Court, praying for quashing and setting aside the letter dated 3rd March 2014 issued by the Respondent No.3.

4 The facts which are necessary for deciding the present petition are as under:

(i) The Petitioner was appointed as Judicial Magistrate First Class on 10th August 1990. At the time of entry into the service, the Petitioner's date of birth was recorded as 16th June 1959. The Petitioner having come to know that his date of birth was incorrectly recorded, made an application dated 24th April 1995 through the District And Sessions Judge, Jalna for correcting his date of birth as 19th July 1960 instead of 16th June 1959.

(ii) On 23rd January 1996, the representation of the Petitioner came to be rejected on the ground that the attested copies of the extract of the birth register were not furnished by the Petitioner. On 24th June 2010, the Petitioner made a fresh representation to the Respondent No.4 annexing along with the said application the attested copy of birth certificate showing his of birth as 19th July 1960.

(iii) On 19th March 2011, the Respondent No.4 forwarded the representation of the Petitioner to the State Government for taking necessary action. On representation made by the Petitioner, the Petitioner's matter was placed before the Hon'ble the Chief Justice and other Hon'ble Judges of this Court. On 5th November 2012, this Court accepted the representation of the Petitioner and had directed the Petitioner's date of

birth to be recorded as 19th July 1960. The said decision of the High Court on the Administrative Side was communicated to the State Government through the Law and Judiciary Department. On 11th July 2013, the Petitioner's representation came to be rejected by the General Administrative Department of the State Government on the ground that the Petitioner has not complied with the requisition of the Government Resolution dated 24th December 2008 issued by the Government of India Finance Department.

(iv) Again the proposal was moved by the Law and Judiciary Department of the State Government to the General Administrative Department on 22nd July 2013 for correcting the Petitioner's date of birth in the service book. On 26th August 2013, however, it was observed by the General Administrative Department that since the Law and Judiciary Department was the concerned Department who is empowered to take a decision with respect to the change in the date of birth in the service book in consultation with the General Administration Department. Again on 17th October 2013, the Law and Judiciary Department re-submitted the proposal to the State Government. However, again by the order dated 3rd March 2014, the representation of the Petitioner came to be rejected and as such the Petitioner has approached this Court.

5 Heard Mr. Basutkr, the learned Counsel appearing for the
Petitioner, Mr. Mattos, the learned AGP for the State and Ms. Gonsalves for
Respondent No.4.

6 We have perused the affidavit filed by the State Government. In
the affidavit it is categorically stated that the Law and Judiciary
Department has accepted the decision of the Hon'ble the Chief Justice and
other Hon'ble Judges of this Court. It is, however, submitted that as and by
way of abundant caution the matter was sent to the General Administrative
Department. It is submitted that the General Administrative Department
rather than accepting the recommendations of the Law and Judiciary
Department, has accepted the recommendations of the Finance
Department. When the Law and Judiciary Department of the State
Government has itself decided to accept the recommendations of the
Hon'ble the Chief Justice and other Hon'ble Judges of this Court, and when
as a matter of fact the request made by the Petitioner is within a period of
five-years as prescribed under the Rules of the State Government, we find
that there is no justification in passing the impugned order.

7 Perusal of the Government Resolution dated 24th December 2008 would reveal that that the powers to alter entry pertaining to the date of birth in case of Gazetted Officer are with the Head of the Department only in consultation with the General Administrative Department. In any case we find that when the application was made within the prescribed period and was very well supported by the documentary evidence on record, the application made by the Petitioner ought to have been allowed.

8 In that view of the matter, the following order:

- (i) The Writ Petition is allowed;
- (ii) The impugned order/letter dated 3rd March 2014 is quashed and set side;
- (iii) The Respondents are directed to correct the entry pertaining to date of birth in the service record of the Petitioner from 16th June 1959 to 19th July 1960. The same shall be done within four weeks from today.
- (iv) Rule made absolute in the aforesaid terms with no order as to costs.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)

