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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2085/2015

- 1] The State of Maharashtra,
through Government Pleader,
High Court, Bench at Aurangabad.
- 2] The Collector, Osmanabad.
- 3] The Tahsildar, Tuljapur.
Tq.Tuljapur Dist.Osmanabad.
...Petitioners..

Versus

Shivaji Ambadasrao Ahkude,
age 55 yrs., occu.service as
Sr.Clerk, Tahsil Tuljapur,
r/o Kasar Galli, Opp.Vidya Mandir,
Tuljapur Dist.Osmanabad.
...Respondents...

.....
Smt.M.A. Deshpande, AGP for petitioners.
Smt.A.N. Ansari, Advocate for respondent.
.....

**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 28.09.2016

ORAL JUDGMENT (Per K.L.Wadane, J.) :

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1] Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final disposal.

2] Present petition is filed by the petitioners challenging the judgment and order passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No.189/2011 dated 29.2.2012. The learned Tribunal set aside the impugned order and held that the birth date of respondent to be 15.2.1956. Prior to the above order, the Maharashtra Administrative Tribunal by order dated 18.2.2010 in Original Application No.979/2009 with M.A.No.362/2009 directed the petitioners to make an enquiry in the matter of correct date of birth of the respondent.

3] The petitioners, in compliance with the order dated 18.2.2010 passed by the Maharashtra Administrative Tribunal, appointed the Deputy Collector, Osmanabad, as an Enquiry Officer and the respondent herein submitted the documents before the Enquiry Committee. The Enquiry Committee rejected the request of the respondent for correction of his birth date by its order dated 16.11.2010. Being aggrieved by the order passed by the

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Enquiry Committee, the respondent herein filed Original Application No.189/2011 before the Maharashtra Administrative Tribunal and thereby it is contended that the Enquiry Committee has not taken into consideration the office record wherein the date of birth of the respondent is mentioned as 15.2.1956. According to the respondent, this is a very peculiar case of correction of birth date and not for the alteration or change in the birth date. The prayer of the respondent is rejected mostly on the ground that the respondent has filed an application before the Tribunal after about 27 years of his joining of service and, therefore, such a petition cannot be entertained on the ground mentioned in Rule 32(2)(f) of the Maharashtra Civil Services (Conditions of Service) Rules, 1981, read with Government resolution dated 3.3.1998.

4] It is further contended that taking into consideration the date of birth of the respondent as 15.2.1952, the respondent retired on 28.2.2010. The learned Tribunal by its judgment and order dated 29.2.2012 allowed the original application and quashed and set aside the order dated 16.11.2010 and it is held

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that the birth date of the respondent is 15.2.1956.

5] Being aggrieved by the same, the present writ petition.

6] We have heard the arguments of learned counsel for the parties.

7] We have perused the record and proceedings of the case. On perusal of the contentions raised by the respondent in the Original Application and other record, it appears that the dispute is with regard to real birth date of the respondent.

8] Present respondent had earlier filed Original Application No.979/2009 seeking correction of his date of birth as 15.2.1956 instead of 15.2.1952. The Tribunal under its order dated 18.2.2008 gave directions to the present petitioners to make an enquiry with regard to the correct date of birth of the present respondent. In compliance of the order of the Tribunal, the enquiry was conducted. The Sub Divisional Officer, Osmanabad, was directed to conduct the enquiry. Upon enquiry, the Sub Divisional Officer submitted his report on 8.7.2010 holding that the correct date of birth of the present respondent is 15.2.1956, however, by order dated

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16.11.2010, negatived the request of the present respondent to correct the date of birth in the service record. Aggrieved thereby, the present respondent filed Original Application No.189/2011. The Tribunal upheld the contention of the present respondent and allowed the Original Application under order dated 29.2.2012.

9] Present petitioners, pursuant to the order of the Tribunal in Original Application No.979/2009, had appointed Sub Divisional Officer as Enquiry Officer for conducting the enquiry. Upon enquiry, it was held by the Sub Divisional Officer that the genuine date of birth of the present respondent is 15.2.1956. The present petitioners did not assail the judgment of the Tribunal delivered in Original Application No.979/2009. Upon enquiry, it is found that the real date of birth of the respondent is 15.2.1956. Not only that, even the seniority list published in the year 1996 maintained by the present petitioners shows the date of birth of the present respondent as 15.2.1956. As such, the Tribunal did not commit an error in coming to the conclusion that the date of birth of the respondent is 15.2.1956 and necessary correction ought to be made in that regard.

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However, the Tribunal did not pass further orders with regard to the monetary benefits that the present respondent has claimed pursuant to his own representations made on 2.5.1997 and 5.1.2000. Pursuant to the said applications, the respondent represented his date of birth as 15.2.1952 and availed the benefit of exemption of passing the departmental examination. The respondent would not be entitled for the benefits which he has availed of higher pay-scale on account of such representations. We may not disturb the order of the Tribunal of considering the date of birth of the respondent as 15.2.1956, however, we cannot be oblivious of the applications of the respondent and relying on the said applications, the benefit being accorded to the respondent. In view of that, we pass the following order.

O R D E R

a] The petitioners shall consider the date of birth of the respondent as 15.2.1956 and shall consider the said date of birth while considering the length of service of the respondent for pensionary benefits. However, the respondent

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shall not be entitled for the actual salary for the period the respondent may have put in service considering his date of birth as 15.2.1956 instead of 15.2.1952, so also the petitioners are entitled to revise the pay-scale of the respondent, which he would have been entitled to if he would not have been given exemption from passing the departmental examination in the years 1997 and 2001.

b] The writ petition is partly allowed accordingly in terms of aforesaid observations and directions. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)