

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4103 OF 2016

Taterao s/o. Mahadu Bagul,
Age : 54 Yrs., Occu : Service
[as Addl. Collector, Nandurbar],
R/o : Tokar Talav Road,
Nandurbar, Dist. Nandurbar

PETITIONER
[Orig.Applicant]

VERSUS

- 1] The State of Maharashtra,
Through its Addl. Chief
Secretary [Revenue],
Revenue & Forest Department,
M.S., Mantralaya, Mumbai – 32.
- 2] The Divisional Commissioner,
Nashik Division, Nashik

[Notices of Resps.No.1 & 2 to be
served on the Ld. Government
Pleader, High Court Bench at
Aurangabad]

RESPONDENTS
[Orig.Resps.No.1 & 2]

...
Mr. Avinash Deshmukh, Advocate for the
petitioner.

Mr. S.B.Yawalkar, AGP for Respondent - State

...

**CORAM: S.S.SHINDE &
SANGITRAO S.PATIL,JJ.**

Date: 13.04.2016.

ORDER: [Per S.S.Shinde, J.]:

This Petition takes exception to the impugned order dated 5th February, 2016, passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No.02/2015 and the impugned communication dated 26th February, 2015 issued by respondent no. 1.

2] The learned counsel appearing for the petitioner submits that respondent no.1 rejected petitioner's request for change in the date of birth in his service record on the basis of amendment to the Maharashtra Civil Services [General Conditions of Services] Amendment Rules, 2008 [hereinafter referred to as 'the Rules']. It is submitted that in the light of Instruction No.1 under Rule 38 (2) as existing prior to the Amendment in the Rules, the petitioner's request should necessarily have been

considered on its own merits by respondent no.1 and then only the decision should have been taken by respondent no.1.

3] It is submitted that the Maharashtra Administrative Tribunal has rejected Original Application on altogether different reasons, than those were assigned by respondent no.1 while rejecting the claim of the petitioner. The learned counsel appearing for the petitioner further submits that respondent no.1 as also the Maharashtra Administrative Tribunal ought to have taken into consideration the family background of the petitioner that at the time of petitioner's entry in the School in the year 1968, his date of birth was wrongly recorded as 07.01.1960 by the School Authorities, merely on the basis of his physical appearance inasmuch as neither his parents were in a position to give his exact date of birth, nor was there any system of recording of dates of

births and deaths at that time in the village. As such, the petitioner's date of birth at the time of his entry in the school in 1968 was recorded simply on the basis of guess work and there was absolutely no basis for it. It is submitted that however, when the said date of birth, i.e. 07.01.1960 of the petitioner is considered vis-a-vis the dates of births of his real brothers and sisters, then it becomes explicit that it was out and out a wrong recording of the date of birth of the petitioner. The learned counsel appearing for the petitioner invited our attention to Annexure-A chart giving details about the dates of births of the petitioner's brothers and sisters as available in the said chart.

4] The learned counsel appearing for the petitioner submits that the petitioner could not file application within 5 years for correction in the date of birth in his

service record, since considerable time was consumed to collect the necessary information and possible documents, and thereafter, on 18th July, 2015, the petitioner had filed application with respondent no.1 for correction in the date of birth in his service record. Therefore, the learned counsel appearing for the petitioner relying upon the grounds taken in the Petition, annexures thereto, submits that, the Petition deserves to be allowed.

5] On the other hand, the learned AGP appearing for the respondent – State relying upon the reasons recorded by the MAT, submits that, the Petition may be rejected.

6] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned AGP appearing for the respondent – State. With their able assistance, we have perused

the grounds taken in the Petition, annexures thereto and the reasons recorded by the MAT. It is not in dispute that the petitioner made entry in the Government employment by his appointment on the post of Police Sub Inspector on 15th June, 1988. After rendering services for 5 years on the said post, the petitioner was appointed in Class-I service of the State Government in its Co-operative Department as directly recruited Deputy Registrar of Co-operative Societies on and with effect from 19th July, 1995. Consequent upon his due selection and recommendations by the MPSC. Thereafter, on 13th July, 2011, he was promoted as Additional Collector and since then he is working on the said post. Therefore, keeping in view the posts on which the petitioner has rendered services, it is not possible to accept the contention of the petitioner that it took more than 17 years for him to collect the information and the

documents so as to apply for correction in the date of birth. The petitioner's entry in the service was on 15th June, 1988. The MAT has elaborately discussed about the service record of the petitioner and has recorded sufficient reasons from para 13 to 19 of the impugned Judgment. Admittedly, the petitioner did not file application for correction in date of birth within 5 years from the date of joining of Government service. It is not in dispute that the provisions of Rule 38 of the MCS [General Conditions of Services] Rules, 1981, are applicable to the petitioner, and therefore, he should have requested to correct the date of birth within 5 years from the date of joining of Government Service.

7] Therefore, in our considered view, the reasons assigned by the MAT and the view taken is in consonance with the material placed on record. There is no perversity in the findings recorded by the MAT. There is

no reason for this Court to interfere in the well reasoned impugned judgment and order of the MAT. In the result, the Writ Petition stands rejected.

Sd/-
[SANGITRAO S.PATIL]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE