

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

WRIT PETITION NO. 12525 OF 2015

Vice Chancellor,
Mahatma Phule Krishi Vidyapeeth,
Rahuri, Post Vidyapeeth,
Tal.Rahuri, District Ahmednagar.

...PETITIONER

-VERSUS-

Govind Sundar Kharat,
Age : 65 years, Occupation : Retired,
R/o At Dnyaneshwar Colony, G-57,
Mahatma Phule Krishi Vidyapeeth,
Tal.Rahuri, District Ahmednagar.

...RESPONDENT

...

Advocate for Petitioner : Shri Navandar Manish N.
Advocate for Respondent : Shri Barde Parag Vijay.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st September, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ University is aggrieved by the award dated 11.05.2015 by which Reference (IDA) No.24/2012 has been allowed by

the Labour Court and the Petitioner is directed to pay a lump-sum compensation amount of Rs.63,600/- to the Respondent/ Employee.

3 I have heard the strenuous submissions of Shri Navandar and Shri Barde, learned Advocates on behalf of the Petitioner/ University and the Respondent/ Employee, respectively.

4 The issue is as regards the correction in the date of birth and as to whether, such correction could be permitted at the fag end of the career of an employee or after his retirement.

5 The Respondent joined services with the Petitioner as a daily wager in 1968. On 20.06.1980, he was granted regularization in service and the date of his birth was recorded in his service book as 02.03.1950. The Respondent had signed below the said entry in the service book indicating that the details entered in the service book are correct.

6 Grievance of the Petitioner is that Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 would be applicable to this case. For the sake of clarity, Rule 38(2)(f) is reproduced as under:-

“38. Procedure for writing the events and recording the

date of birth in the service book.

- (1)*
- (2) While recording the date of birth, the following procedure should be followed:-*
- (a) to (e)*
- (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.

Instruction (2) : Subject to (1) above, the correct date of birth of a Government servant may be determined, if he furnishes a proof of age in any of the following forms:-

- (a) His own statement or that of a parent, guardian, friend or relative;*
- (b) School Leaving Certificate, Secondary School Certificate Examination/ Matriculation Certificate or University Certificate;*
- (c) Extract from a birth or baptismal register;*
- (d) Horoscope;*
- (e) Entry in family records or accounts books.*

The proof at (a) above should not be accepted as sole proof of Government servant's age; also (b), (d) and (e) separately cannot always be depended on as reliable proof of age, while (c) cannot also furnish absolute proof unless the name of the child is registered."

7 Instruction (1) under the above rule indicates that normally no application for alteration of the entry regarding the 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 service. There is no dispute that in 2008, the said Instruction (1) has undergone an amendment and Instructions (1) and (2) have been introduced by the Notification dated 24.12.2008. The relevant portion of Instructions (1) and (2) read thus:-

“Instruction (1) : No application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant, who has entered into the Government service on or after the 16th August, 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.”

“Instruction (2) : Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested xerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.”

8 By the judgment of this Court in the matter of *Ashok Pralhad Meshram vs. The Head Master, Zilla Parishad High School, Bhandara*, **2015(2) ALL M.R. 622**, this Court has come to a conclusion in paragraph 7 that the amended Rule would be made applicable prospectively and it cannot be given a retrospective effect.

9 In this backdrop, Rule 38 prior to its amendment would be applicable to the case of the Respondent. The said Rule, prior to amendment, did not liberally permit filing of an application for alteration of an entry regarding the date of birth after five years from the date of his entry in service. The word “normally” indicates that unless exceptional circumstances were made out, no such application would be entertained after five years. This has been interpreted by this Court to mean that if such an application is made after five years, such application could be entertained provided exceptional circumstances were pointed out.

10 I have perused the service book of the Respondent placed on record. The entry as per the Christian calendar indicates the date of birth in English as 02.03.1950 and the same date of birth is written correctly in Marathi. The remark in front of the said entry indicates that the said entry has been made on the basis of the scrutiny carried out with the aid of the Headmaster of the school at village Kendal Khurd, Taluka Rahuri, District Ahmednagar where the Respondent had acquired primary education. The said entry is based on the school record dated 26.05.1968. As such, there is no dispute that the entry of the date of birth is made on the basis of the school record as was available on 26.05.1968. The said school record of 1968 has not been brought on record before the Labour Court by either of the parties.

11 Shri Barde has tendered across the Bar a copy of the school leaving certificate from the same school at Kendal Khurd where the Respondent had acquired education. He had left the school on 26.05.1968 and the date of birth recorded as per the Christian calender is 02.03.1951. One more school leaving certificate obtained by the Respondent on 11.10.2007 indicates the same date of birth i.e. 02.03.1951 as well as the date of leaving the school 26.05.1968.

12 The Petitioner/ University concedes on the basis of the record that no such certificate was supplied by the Respondent to the Petitioner while making an entry of the date of birth in the service book, which would indicate his date of birth as being 02.03.1950. As such, it is apparent that there was no record before the Petitioner/ University on the basis of which the date of birth of the Respondent could reflect 02.03.1950 and on the basis of which the entry was made.

13 The whole issue, therefore, turns upon the remark in the service book where the date of birth is entered. As noted above, it clearly indicates that on the basis of the school leaving certificate dated 26.05.1968, the entry of the Respondent's date of birth has been made. This record of 26.05.1968 indicates the date of birth as 02.03.1951. It,

therefore, appears that the Clerk of the Petitioner/ University, who entered the date of birth in the record, has erroneously recorded it as 02.03.1950 despite the fact that the school leaving certificate placed before him for reference indicates the date of birth as being 02.03.1951. This, therefore, puts the dispute as regards the actual date of birth of the Respondent to rest and establishes the same as being 02.03.1951.

14 It is also not in dispute that the Deputy Registrar (Administration) of the Petitioner/ University Shri M.H.Kshirsagar had issued the office order dated 13.12.1979 by which the employees like the Respondent herein were called upon to seek correction of the dates of birth or dates of entry in service or their castes, etc. in between 12.12.1979 to 30.12.1979.

15 It is indicated from the seniority list prepared pursuant to the office order dated 13.12.1979 that the Respondent got his date of birth corrected in the seniority list as being 02.03.1951. Earlier it was written as 09.10.1951 and he pointed out that he was seven months older than the date of birth shown and thereby, got his correct date of birth 02.03.1951 entered in the seniority list. This would also indicate the bonafides of the Respondent since that seniority list showed his date of birth as 09.10.1951 and he pointed out that it was 02.03.1951 and thus, he was seven months

older than the date of birth shown in the seniority list.

16 However, it cannot be ignored that when the entry of his date of birth 02.03.1950 was made in the service book, the Respondent has signed on the said page just three rows below in token of those entries having been correctly made. Had he pointed out the mistake at the same time, his date of birth could have been correctly written way back in 1980.

17 From the above, it is apparent that the date of birth of the Respondent in the seniority lists published at different times indicates 02.03.1951. The entire school record indicates the same date of birth. There is not a single document available with the Petitioner which would indicate the date of birth as 02.03.1950.

18 In the above backdrop, the issue that needs to be considered is as to whether, the correction in the date of birth, as a matter of rule, could be permitted at the fag end of the career. The Respondent superannuated on 01.03.2008 going by the entry in the service book. He filed an application on 15.10.2007 which is just five months prior to his superannuation claiming that his date of birth is 02.03.1951. The reason cited by the Respondent is that after he received the intimation of retirement, he realized that the Petitioner is considering 02.03.1950 as his

date of birth. Hence, he made the said application. No other reason is cited.

19 Pitting this reason as against his signature in the service book way back in 1980, which is suggestive of having read and admitted the contents of the service book, in my view, do not amount to setting forth exceptional circumstances for entertaining the application for correction of the date of birth, after 27 years of the entry made in the service book. Such request for correction could have been made on or before December, 1985. His signature appearing in the service book indicates that he accepted his date of birth 02.03.1950 though it apparently appears that he lost sight of the year of birth mentioned in the service book as such a slip is likely to occur and such a mistake could be committed by any human being.

20 From the facts as recorded above, it is apparent that the Clerk of the Petitioner / University, who carried out the entry of the Respondent's date of birth, has committed the mistake. Insofar as the role of the Respondent is concerned, he got the same corrected pursuant to the office order dated 13.12.1979 and as such, he got his correct date of birth 02.03.1951 entered in the seniority list which has been carried forward in the seniority lists published by the Petitioner from time to time. Despite

the same, I am not inclined to accept the contentions of Shri Barde that the date of birth could have been corrected five months prior to the date of retirement of the Respondent by giving a liberal meaning to the word “normally” appearing in the Instruction (1) reproduced above, prior to its amendment. At the same time, it cannot be ignored that it was purely on account of an error committed by the Clerk of the Petitioner while making the entry in the service book and the slip/ oversight of the Respondent in signing on the service book without properly checking the date of birth.

21 In the above backdrop, the Labour Court, after considering that the last drawn gross wages of the Respondent were Rs.11,000/- per month and he would have earned such wages for 12 months which would make his earning Rs.1,32,000/-, has granted him a lump sum compensation of Rs.63,600/- on the basis of his basic pay which was Rs.5300/- per month.

22 Considering this fact situation and upon concluding that it was on account of the error committed by the office of the Petitioner, that though all records indicate the Respondent's date of birth 02.03.1951 and the service book indicates it as 02.03.1950, I do not find that the Labour Court has committed any error in not giving all benefits to the Respondent by permitting the correction in the date of birth, which was five months

prior to his superannuation. Equities appear to have been balanced by the Labour Court by penalizing the Petitioner/ University for the mistake committed by it and at the same time, depriving the Respondent/ Employee of the entire benefits for 12 months on account of his error of signing the service book without noticing the incorrect date of birth. In my view, ends of justice have been met and equities have been balanced by the award of the Labour Court.

23 In the light of the above, I do not find any merit in this petition. The same is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)