

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

WRIT PETITION NO. 11472 OF 2015

SHALINI JIVAPPA BAHIRWADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Choudhari Yuvraj S.
AGP for Respondent/State: Mr. S.K.Tambe

...

CORAM : S.S. SHINDE & P.R. BORA, JJ.
Dated: January 07, 2016

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PER COURT :-

1] This Petition takes exception to the order passed by the respondent No.3, dated 17th October, 2015, thereby rejecting the request of the petitioner for change in the date of birth.

2] The learned counsel appearing for the petitioner, invited our attention to the pleadings in the Petition, annexure thereto, and submits that, the reasons assigned in the impugned communication that, the date of birth can be corrected only within 5 years from entering into the service, is not sustainable. He invited our attention to the provisions of Rule 38, *Instruction* [1] of the Maharashtra Civil Services [General Conditions of Services] Rules, 1981, and submits that, it is only in case of employees, who have entered into the Government service on or after 16th August, 1981, their prayer shall be entertained within 5 years commencing from the date of his

entry in the service for correction in the date of birth. However, employees, who have entered into the Government service prior to 16th August, 1981, like petitioner, in absence of limitation for filing the application for correction in the date of birth, the respondent No.3 was not justified in assigning the reason that, the request for correction in the date of birth can only be considered within 5 years from the date of entry in the service.

3] The learned AGP appearing for the respondent - State submits that, *instructions* [1] below Rule 38 of the afore-mentioned Rules is enabling provision to the employees, who have entered into the Government service on or after 16th August, 1981, to file application for change in the date of birth, and such application can be entertained within 5 years and not thereafter. The sum and substance of the argument of the learned AGP appearing for the respondent - State is that, the said provision cannot be read, interpreting that no limitation is prescribed to the employees, who have entered into the services prior to 16th August, 1981, for correction of their date of birth in the service record. Therefore, he submits that, the Petition may be rejected.

4] We have heard the learned counsel appearing for the petitioner, and the learned AGP appearing for the respondent - State. With their able assistance, we have perused the pleadings in the Petition, annexure thereto, the reasons assigned by the respondent No.3, and the provisions of Rule 38 of the said Rules, and we are of the

opinion that, the *instruction* [1] below Rule 38 of the said Rules is enabling provision for the employees, who entered into the service on or after 16th August, 1981, to apply for correction in the date of birth within 5 years, and the authority to consider the same and if necessary to carry out the correction within 5 years from such entry in the service. The said provision cannot be read to mean that, those who are entered into the services prior to 16th August, 1981, and desirous for correction in the date of birth, there is no limitation provided. The petitioner, who entered into the service in the Year 1980, approached the respondent No.3 in the Year 2015, belatedly after 35 years from the entry in the service.

5] In that view of the matter, in our opinion, apart from the merit, even the petitioner's request for correction in the date of birth, belatedly after 35 years after the entry in the service, deserves to be rejected, on the ground of delay and laches.

6] For the reasons aforesaid, the Petition *sans* merit, and hence rejected.

[P.R.BORA, J.]

[S.S. SHINDE, J.]