

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 840 OF 2016**

Shri. Devendra Purushottam Shinde .. Petitioner

Vs.

State of Maharashtra and Others .. Respondents

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Mr. A.V. Anturkar Senior Advocate i/b Mr. Prathamesh B.
Bhargude Advocate for the Petitioner

Mr. C.P. Yadav AGP for the State

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**CORAM : D.H.WAGHELA CHIEF JUSTICE &
SMT.V.K.TAHILRAMANI, J.
DATE : FEBRUARY 17, 2016**

ORDER [SMT. V.K.TAHILRAMANI, J.] :

1 Heard learned counsel for both sides. Rule. By consent, Rule is made returnable forthwith and petition is taken up for final hearing.

2 This petition is directed against the order dated 8.1.2016 passed by the Maharashtra Administrative Tribunal Mumbai Bench in O.A. No. 835 of 2015 thereby rejecting the claim of the petitioner to correct his date of birth in his service record. In the said Original Application, the petitioner has

challenged the letter dated 11.3.2014 by which, the petitioner was communicated that the request of the petitioner for change of his Date of Birth in his service record from 1.1.1958 to 1.10.1958, is rejected.

3 Brief facts of this case, are as under :

The petitioner joined service on 1.3.1983 as Police Sub-Inspector. In his service record, his date of birth is recorded as 1.1.1958 on the basis of S.S.C. Certificate. The contention of the petitioner is that his correct date of birth as per S.S.C. certificate, is 1.10.1958 and an incorrect entry was made in his service book, hence, he prayed that his date of birth be corrected from 1.1.1958 to 1.10.1958 in his service record.

4 The learned AGP for the State has submitted that the date of birth of the petitioner is 1.1.1958 which is the date given by the petitioner himself and the same is recorded in the Service Book of the petitioner. He has further submitted that even on the first page of the Service Book of the petitioner, the petitioner himself has signed the entries in token of the

acknowledgement thereof. Thus, the claim of the petitioner that his date of birth was wrongly recorded, lacks credibility when the petitioner himself acknowledged the same to be correct.

5 Though the petitioner has relied on various documents including S.S.C. certificate seeking to claim that his date of birth is 1.10.1958, he has failed to produce the original copy of the said Certificate. He has produced the Duplicate Copy of the S.S.C. Certificate issued in the year 2014. Similarly, the Birth Certificate on which reliance has been placed was issued on 1.10.2015.

6 The petitioner is not an illiterate person and he is a Graduate and occupying an important post in the Government. Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 ("MCSR" for short) does not permit for any change in the Date of Birth of the Government servant after five years of joining service. The petitioner had not made request for correcting the entry relating to his date of birth as recorded in his Service Book within five years of his

entering into Government service. It is seen that for the first time the petitioner has made request for correction in his date of birth on 28.5.2012. According to the petitioner, he made this request after coming to know that as per the seniority list, his date of retirement was 1.1.2016. It is known fact that the seniority list is published from time to time and it contains the date of retirement. The petitioner must have received copies of seniority list from time to time. The petitioner has not only signed the first page of his service book but thereby he has accepted that all the entries therein including his date of birth which is shown as 1.1.1958 is correct. Thus, it is not possible to believe that the petitioner came to know about the wrong entry relating to his date of birth only in the year 2012.

7 The Supreme Court in the case of **State of Maharashtra and Another Vs. Gorakhnath Sitaram Kamble and others in Civil Appeal No. 9704 of 2010**, has held that no correction in the date of birth can be allowed at the fag end of the career of a Government servant. In the above decision, the Supreme Court in paragraph 16 has observed as under:

"16. Learned counsel for the respondent has placed reliance on the judgment of this Court in U.P.

Madhyamik Shiksha Parishad and others Vs. Raj Kumar Agnihotri (2005) 11 SCC p. 465. In this case, this Court has considered number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career."

8 In paragraph 18, the Hon'ble Supreme Court in the aforesaid decision, has observed that any claim for alteration even on the basis of extracts of births and death register was not open after five years of joining service. In the present case, such reliance on births and deaths register could have been permissible in first five years of entry into service and after five years even that option is not available.

9 In paragraph 19, the Hon'ble Supreme Court in the aforesaid decision has observed as under:

"19. These decisions lead to a different dimensions of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in Secretary and Commissioner, Home Department and others Vs. R. Kirubabakaran reads as

under:

`An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the court or the Tribunal while examining the grievance of a public servant in respect of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the Tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the

applicant to prove about the wrong recording of his date of birth in his service book'."

10 The judgment of the Hon'ble Supreme Court has been quoted extensively to emphasize the fact that the facts in the present case are strikingly similar and the petitioner cannot be allowed to change his date of birth at the fag end of his career. The petitioner had failed to move the authorities within five years of his entry into service to correct his date of birth. Now that option is not available to him. Even otherwise, his claim that he came to know that his date of birth is incorrectly entered into his service book only in 2012, lacks credibility.

11 For the aforesaid reasons, the petition is dismissed. Rule is discharged.

[SMT. V.K.TAHILRAMANI,J.]

[CHIEF JUSTICE]