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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6790 OF 2015

Smt. Shanta Shatrughna Jagdale ... Petitioner
Vs.
The Commissioner,
Cooperation/Registrar and ors. ... Respondents

Mr. Kedar J. Patil for the Petitioner.
Mr. V.B. Thadani, AGP for Respondents.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JULY 26, 2016.

P. C.

1] The challenge in this petition is to the order dated 30 June 2014 made by the Maharashtra Administrative Tribunal (MAT), Mumbai declining to issue directions for change of date of birth of the petitioner in her service records, on basis of application submitted by the petitioner hardly ten months before she was to attain the age of superannuation.

2] Mr. Kedar Patil, learned counsel for the petitioner, has submitted that the application for seeking change in the service records was made within five years from the date of petitioner's appointment. Mr. Patil further submitted that there was an error in the

School Leaving Certificate, on basis of which, the incorrect date of birth came to be recorded in the service records. Thereafter, the petitioner, by applying to the Judicial Magistrate First Class, Bhore, under Rule 13 (2) of the Birth and Death Registration Act, 1960, as corrected her date of birth and relying upon such corrected date, the authorities were not at all justified in refusing to correct the service records.

3] We have considered the submissions made by Mr. Patil, learned counsel for the petitioner, perused the record as also the impugned judgment and order. We are satisfied that the impugned judgment and order neither suffers from any jurisdictional error nor any perversity in the matter of record of finding of fact. In fact, the MAT has applied the correct principles and there is no infirmity in the making of the impugned judgment and order.

4] The petitioner's contention that the application was made within five years from the date of appointment is not borne from the record. The record indicates that such application was made hardly ten months before the petitioner was to attain the age of superannuation as per date of birth record in the service records. This, by itself, was sufficient ground for rejecting the application for change of date of birth.

5] That apart, the MAT has recorded and even the record bears out that there was no compliance with Rule 38 of the Maharashtra Civil Service (General Conditions of Services) Rules, 1981. In these circumstances, there was no question of effecting any change in the date of birth in the service records.

6] In matters of this nature, the Hon'ble Apex Court in case of ***Secretary & Commissioner, Home Department and ors. Vs. R. Kirubakaran***¹, has observed thus:

“An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. 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 correction 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

1 AIR 1993 Supreme Court 2647

not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal 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 the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book”

(emphasis supplied)

7] Similarly, in case of ***Government of Andhra Pradesh and anr. Vs. M. Haygreev Sarma***², the Hon'ble Apex Court has held that the date of birth recorded in the service book on the basis of School Leaving Certificate at the time of entry into service, cannot be ordinarily changed even on the basis of extracts of entries contained in Birth and Death Register maintained under the Births, Deaths and Marriages Registration Act, 1886.

8] The material produced on record by the petitioner, in the present case, was neither conclusive in nature nor it can said to constitute irrefutable proof. The MAT, applying the principles set out

² (1990) 2 SCC 682

in the aforesaid cases, was therefore, justified in declining to direct change in the date of birth as recorded in the service records.

9] The material on record also indicates that the petitioner had claimed benefits on the basis of date of birth recorded in the service records. At this point of time, therefore, there was no question of the petitioner being permitted to resile from the position brought about by her, at the stage of securing appointment.

10] For all the aforesaid reasons, this petition is dismissed. There shall however, be no order as to costs.

[M. S. SONAK, J.]

[V. M. KANADE, J.]