

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10761 OF 2016**

Mrs. Shashikala D. Hatle

..Petitioner

Vs.

Thane Municipal Corporation & Ors

..Respondents

Mr. D. S. Hatle i/b Mr. D. P. Jamsandekar for the Petitioner

Mr. N. R. Bubna for the Respondents

**CORAM : R. M. SAVANT, J.
DATE : 24th OCTOBER, 2016**

P.C.

1 The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the judgment and order 23-7-2015 passed by the Learned Member of the Industrial Court, Thane, by which the Complaint ULP No.95 of 2010 came to be dismissed.

2 The Petitioner herein is employed with the Respondent No.1 Municipal Corporation and joined its services on 26-10-1987 as a clerk. The Petitioner at the time of joining the services had produced her school leaving certificate issued by one Chhatre New English School, Manmad which certificate was issued on 26-6-1980 and wherein her date of birth was recorded as 26-3-1963. The Petitioner had also produced her mark sheet

issued by the Pune University for the B.Com. examination. On the basis of the the passing certificate, the Petitioner had in the service record entered her date of birth as 26-3-1963 which date was also recorded in the pension form filled by the Petitioner under Maharashtra Civil Services (Pension) Rules 1982. The aforesaid position continued up to the year 2008. The Petitioner on 26-3-2008 for the first time filed an application with the Respondent No.1 for correcting her date of birth from 26-3-1963 to 26-3-1966. This was on the basis of the birth certificate she had obtained from the Manmad Municipal Council which was issued to her on 11-11-2005. Thereafter it seems that the Petitioner was issued a birth certificate by the Manmad Municipal Council on the basis of the correction which was carried out in the birth register which correction was carried out on the basis of the affidavit which was filed by the Petitioner which has been recorded in the birth certificate which was issued on 18-2-2012. On the Respondent No.1 Municipal Corporation not acceding to the request of the Petitioner to correct the date of birth, the Petitioner invoked the jurisdiction under the MRTU and PULP Act 1971 and filed a Complaint ULP under item Nos.5, 9 and 10 of Schedule IV of the said Act. The Respondent No.1 Municipal Corporation filed its Written Statement and contested the claim made by the Petitioner. It seems that the Petitioner led evidence of the clerk of the Manmad Municipal Council and also led the evidence of her elder brother in support of the claim for correcting her date of birth from 26-3-1963 to 26-3-1966. The Learned Member of the Industrial Court has by the impugned order

dismissed the Complaint.

3 The gist of the reasoning of the Learned Member of the Industrial Court as can be seen from the impugned order was that the Industrial Court did not have the jurisdiction to give directions to a public authority like the Thane Municipal Corporation i.e. the Respondent No.1 herein to add the correct date of birth to her service record. The second reason given was that the application was made by the Petitioner for correction after a period of 15 to 16 years of joining service. The Learned Member accordingly held that it cannot be said that the Respondent No.1 has engaged in unfair labour practice under Item Nos.5, 9 and 10 of the Schedule IV of the MRTU and PULP Act 1971.

4 The Learned Counsel appearing on behalf of the Petitioner Mr. Hatle would contend that it is not as if that the Respondent No.1 could not have corrected the date of birth. The Learned Counsel would contend that once the birth certificate was obtained from the Manmad Municipal Council the same would be conclusive in respect of the date of birth of the Petitioner. In support of the said contention the Learned Counsel sought to place reliance on the judgment of the Apex Court in the matter of **CIDCO Vs. Vasudha Gorakhnath Mandevlekar**.¹

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5 Per contra, the Learned Counsel Mr. Bubna appearing for the Respondent would support the impugned order. It was the submission of the Learned Counsel that in terms of the Maharashtra Civil Services (General Conditions) Rules 1981 no correction in the date of birth can be carried out after 5 years of service. It was the submission of the Learned Counsel that the correction was sought after about 21 years. The Learned Counsel also sought to make comments as regards the manner in which the birth certificate was obtained on 11-11-2005 and thereafter on 18-2-2012.

6 Having heard the Learned Counsel for the parties, in my view there is no merit in the above Petition. It is required to be noted that the Industrial Court has refused the reliefs to the Petitioner on two grounds which have been adverted to hereinabove. The second ground being that the correction was sought long after the Petitioner had entered into service, it is required to be noted that the Petitioner at the time of joining the services of the Respondent No.1 Municipal Corporation had submitted her school leaving certificate which was issued to her on 26-6-1980. Thereafter the entries were made in her service record on the basis of the said school leaving certificate and the entry as regards her date of birth was 26-3-1963. The said position continued up to the year 2008 when for the first time on 26-3-2008 the Petitioner applied for correction of her date of birth relying upon the birth certificate issued on 11-11-2005. It is significant to note that the Petitioner

thereafter obtained another birth certificate on 18-2-2012 which birth certificate discloses that the same has been issued after the Petitioner had filed an affidavit in respect of an entry which was made in the birth register which entry was in the name of one Atmaram and the Petitioner's name and surname thereafter incorporated by the side of the name of Atmaram in the said birth register. Prima facie the aforesaid documents do not inspire confidence. In terms of the Service Rules, the entries can be made on the basis of the school leaving certificate or the birth extract. At the relevant time the Petitioner chose to rely upon the school leaving certificate which was issued to her in the year 1980 i.e. probably on her passing the SCC examination. The entries in her service record were accordingly made on the said basis and the said entries continued till the year 2008 when for the first time the Petitioner made an application for correction. Hence assuming that a correction could be made notwithstanding the period of 5 years mentioned in the Maharashtra Civil Services (General Conditions) Rules 1981, having elapsed, on merits this Court does not find any case for the Petitioner, for correcting the said entry from 26-3-1963 to 26-3-1966. The judgment of the Apex Court in Mandevlekar's case (supra) would have to be read in the context of the fact that the Petitioner had in the instant case at the time of joining service relied upon the entry made in the school passing certificate which was not the case in the said Mandavlekar's case where the dispute was between the entries made made in the Grampanchayat record and the Municipal record. Hence the said judgment

would not further the case of the Petitioner. The impugned order passed by the Learned Member of the Industrial Court holding that no unfair labour practice has been committed by the Respondent Municipal Corporation on account of the non correction of the entry in respect of the date of birth sought by the Petitioner, does not merit any interference at the hands of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]