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

WRIT PETITION NO.1284 OF 2010

Municipal Council Osmanabad
Through its Chief Officer,
Yashwant s/o Bhimrao Dange,
Age: 32 years, Occ: Service,
R/o. Quarter of Municipal Council,
Osmanabad,
Tq. & Dist. Osmanabad. ..PETITIONER

VERSUS

Triveni w/o Madan Maske,
Age: 65 years, Occ: Retire,
R/o. Ambedkar Nagar,
Osmanabad, Tq. & Dist.Osmanabad. ..RESPONDENT

Mr R.V. Naiknavare, Advocate for petitioner;
Mr K.A. Kadam, Advocate for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd NOVEMBER, 2017

ORAL JUDGMENT :

The petitioner, a Municipal Council, a statutory authority constituted under the provisions of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (hereinafter shall be referred to 'Act' for sake of

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brevity), preferred this petition questioning the judgment delivered by the Member, Industrial Court, Latur on 3rd November, 2009 in favour of respondent – employee, whereby it was declared that the date of birth of present respondent-employee be considered as 25th August, 1954 and the petitioner should desist from indulging into unfair labour practice in view of Schedule IV, Item-9 of the M.R.T.U. & P.U.L.P. Act, 1971. It is further directed by the tribunal that the respondent-employee be reinstated w.e.f. 28th February, 2007 alongwith backwages of 25%.

2. The facts as are necessary for deciding the present petition are as under :

It is the case of petitioner that from 1978, she was working with the respondent on daily wages as 'Safai Kamgar'. The petitioner herein confirmed her services pursuant to the order of Divisional Commissioner/Regional Director of Municipal Administration vide order dated 19th

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April, 2002 on the said post with retrospective effect i.e. 31st October, 2001. The respondent-employee was thereafter directed to produce relevant certificates and on the date of joining, upon her medical examination, she has disclosed to the Civil Surgeon her age 55 years as on 13th February, 2002 as is reflected in the certificate issued by Civil Surgeon. The petitioner, as such, stood retired from service after attaining age of superannuation on 28th February, 2007.

3. The petitioner claimed that on the date of superannuation, she has completed age of 55 years and not age of superannuation, as her date of birth was wrongly recorded. According to the petitioner, her date of birth should have been recorded as 16th May, 1966 and not 13th April, 1947. So as to substantiate the said claim, she has produced certificate issued by concerned Grampanchayat.

4. Being aggrieved by the aforesaid act of

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her superannuation, respondent-employee preferred complaint in question.

5. Learned tribunal, after considering the complaint and reply tendered by the present petitioner-Council, noticed that upon medical assessment of the health of the respondent-employee, it could be disclosed that on 25th August, 2009, the age of respondent-employee was between 55 to 60 years. The tribunal then proceeded to give declaration that the date of birth of respondent-employee be considered as 25th August, 1954 and allowed the petition.

6. Learned Counsel for the petitioner submits that the order passed by the tribunal is without jurisdiction, particularly when it is not open for the tribunal to decide the date of birth of an individual by substituting its decision to that of one reflected in documentary record. He would then urge that even if medical report qua assessment of age of respondent is accepted as it

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is, the fact remains that her average age was certified by the concerned medical authority between 55 to 60 years, which act was carried out pursuant to the order of the Court passed on 29th July, 2009 and as such, according to him, it has to be considered that the respondent stood retired on attaining age of superannuation. He would then urge that at the time of entering into service in the year 2002, the respondent-employee voluntarily disclosed her age as 55 years. He would then urge that upon retirement, that too, based on her service record, she having attained age of superannuation, has come out with plea that wrong calculation of her age at superannuation and further made prayer for grant of relief of compassionate appointment to her son. He submits that proceedings are initiated purely with intention to twist the arms of the petitioner so as to pressurize the petitioner for grant of employment to the son of respondent on compassionate ground.

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7. Per contra, learned Counsel for the respondent-employee would urge that this Court must consider the very scope of Article 227 of the Constitution of India under which interference can be caused in the findings which are already recorded by the tribunal based on the cogent evidence. According to him, once the tribunal has observed that the petitioner has indulged into unfair labour practice, the tribunal has every right to determine right age based on the documentary evidence about date of birth and it cannot be termed that the tribunal has exceeded its jurisdiction in recording findings. Learned Counsel then would urge that pursuant to the order of tribunal, age of the respondent was certified to be between 55 to 60 years and based thereon, having regard to the status of respondent as uneducated lady, the tribunal rightly granted reinstatement alongwith 25% backwages, which is based on the evidence brought before it. He submits that the petition is liable to be dismissed.

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8. Having considered rival submissions, the issue cropped up in S.L.P. before the Apex Court in the matter of ***State of Gujrat & ors vs Vali Mohmed Dosabhai Sindhi***, reported in ***A.I.R. 2006 (SC) 2735***. The Apex Court in Paragraph-12 of the said judgment has observed thus :

"12. An application for correction of the date of birth should not be dealt with by the courts, 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 the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of

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retirement of his immediate senior. This is certainly an important and relevant 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 and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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 within at least a reasonable time. The applicant has to produce the evidence in

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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 about the wrong recording of his date of birth in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior."

9. One more aspect of which this Court must take note of is while dealing similar issue, the Apex Court has noticed that interference if any caused by the tribunal in the matter of correction of date of birth of employee and granting appropriate relief based on such correction disturbed the entire chain that is already in existence qua working of the employee who succeeded the person who has retired. The Apex Court observed that the Court should be slow in such eventuality to cause interference.

10. In the aforesaid backdrop of piece of law laid down by the Apex Court, it is required to be noted that the respondent-employee claimed to be in the service of the petitioner for more than 25 years as a temporary employee and her services were confirmed in 2002. In 2002 the respondent has not taken any steps for correctly mentioning her date of birth so as to substantiate her claim that she was entitled to be retired on the date of superannuation after having regard to the date of birth mentioned in the birth certificate issued by

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Grampanchayat. The birth certificate issued by Grampanchayat in favour of respondent for the first time is produced by the respondent-employee after her superannuation and thereafter before learned Industrial Court. Just because the respondent-employee is considered to be an uneducated lady, that does not give any legal right or premium to move proceedings for continuation in employment, for carrying/ordering correction in the date of birth after she was already superannuated from the service of the petitioner-Council.

11. The Apex Court has already cautioned the Courts and Tribunals to be more diligent while ordering correction in the date birth, which is not required to be dealt with casually. It could be inferred that the petitioner accepted permanency in the employment in 2002 based on the date of birth, which was formed to be a basis for her superannuation, of which, this Court cannot lose sight of. The tribunal has failed to consider the same.

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The respondent, in my opinion, has not fairly established by cogent evidence that her date of birth recorded in the service record is incorrect and it is out of Grampanchayat record, her correct date of birth is to be recorded. There is no sufficient material to fully satisfy that there has been really injustice to the respondent-employee qua her date of birth. The respondent has failed to produce on record irrefutable proof relating to her date of birth.

12. As a consequence of the order passed by the tribunal, what could be noticed is, defaults on the part of respondent, particularly delayed request for carrying out correction in her date of birth was permitted after substantial delay, for which, there is no convincing explanation. The only ground which is considered for conferring benefit for correction of her date of birth and consequential relief is, respondent is uneducated lady and Doctors have certified about the date of birth of her on medical examination i.e. in the

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year 2009 as between 55 to 60 years, as per opinion of the Radiologist based on the radiographs. Even if presuming that on the date of her examination on 28th February, 2007 she was between 55 to 60 years, the fact remains that the petitioner was superannuated at the right age she was rightly superannuated on 28th February, 2007.

13. In my opinion, the tribunal has exceeded jurisdiction in exercising power in favour of the respondent.

14. For the aforesaid reasons, the judgment impugned passed by the tribunal on 3rd November, 2009 in Complaint (ULP) No.16 of 2007 cannot be sustained in law and is accordingly quashed and set aside. It is ordered that the complaint preferred by the respondent referred supra is dismissed.

15. The petition stands allowed in above terms. Rule made absolute accordingly.

(NITIN W. SAMBRE, J.)