

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

**WRIT PETITION NO.340 OF 2017**

Shakuntala w/o. Zumbar Kale,  
Age : 47 years, Occ. Service,  
r/o. Papnas Nagar,  
Osmanabad ..Petitioner

Vs.

The Chief Officer,  
Municipal Council,  
Osmanabad ..Respondent

--  
Mr.S.B.Choudhari, Advocate for petitioner  
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**CORAM : V.M. KANADE AND  
SANGITRAO S. PATIL, JJ.  
DATE : JANUARY 18, 2017**

**PER COURT :**

Heard the learned Counsel for the  
petitioner.

2. The petitioner has filed this petition seeking writ of mandamus or appropriate direction for quashing the order passed by the respondent on 19.12.2016 rejecting the petitioner's application for correction in her date of birth.

3. Brief facts, which are necessary for deciding this petition, are that the petitioner was appointed as a Sweeper with Municipal Council, Osmanabad on 31.10.2001. At the time her appointment, her date of birth was shown as 13.02.1957. According to the petitioner, though she had given correct date of birth as 25.01.1969, her date of birth was wrongly recorded as 13.02.1957 in her service record. When she came to know about this fact, she made an application for change in her date of birth from 13.02.1957 to 25.01.1969. Her application was dismissed on the grounds that the application was not filed within five years from the date of appointment and the procedure prescribed under Rule 38 of the Maharashtra Civil Services Rule ("M.C.S.R.", for short) was not followed.

4. The learned Counsel for the petitioner submits that the application filed by the petitioner reveals that along with the said

application, original certificate about death of birth was annexed and that the said certificate was issued by the Sarpanch on 04.01.1996. He further submits that there was a clerical mistake on the part of the person who recorded the date of birth of the petitioner in the service record and therefore, the date of birth is liable to be corrected.

5. We have perused the petition and the annexures thereto. In our view, it is not possible to accept the submissions of the petitioner. Rule 38 of the M.C.S.R. reads as under :-

**38. Procedure for writing the events and recording the date of birth in the service book.**

....

....

(f) When once an entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error:

**Instruction.-**

(1) No application for alteration of the entry regarding date of birth as recorded in the service book or service roll of Government Servant, who has entered into the Government service on or after 16<sup>th</sup> August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.

6. It is mentioned in the said Rule that an application for correction in date of birth has to be filed within five years from the date of appointment.

7. In the present case, admittedly, the petitioner filed the application for correction in her date of birth after five years from the date of her appointment and in our view, the respondent has rightly rejected the application of the petitioner on that ground.

8. Apart from that, the contention of the petitioner is that there is a clerical mistake in

recording the date of birth of the petitioner in the service record. Though the petitioner produced the original hand written application dated 18.12.2001 addressed to the respondent, which mentions that the petitioner had produced the birth certificate, neither there was reference to the birth certificate nor it was mentioned as to who had issued the birth certificate. Therefore, it cannot be said that the birth certificate issued by the Sarpanch on 04.01.1996 was the same certificate which was annexed to the application.

9. Another thing which can be noted is that the petitioner's father had filed an application before the Magistrate stating therein that the petitioner's date of birth was 25.01.1969 and accordingly, the Magistrate has given direction on 07.11.2016 that the date of birth of the petitioner may be recorded as 25.01.1969. In our view, on the basis of the said order, the date of birth of the petitioner cannot be changed since

father of the petitioner made the said application without there being any supporting evidence.

10. In view of above discussion, we are not inclined to interfere with the order passed by the respondent.

11. The Writ Petition stands dismissed.

[SANGITRAO S. PATIL, J.]

[V.M. KANADE, J.]

kbp