

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

**REVIEW APPLICATION [STAMP] NO.22202 OF 2016
IN
WRIT PETITION NO.4103 OF 2016**

Taterao s/o. Mahadu Bagul,
Age-54 years, Occ. Service,
[as Addl. Collector, Nandurbar]
r/o. Tokar Talav Road,
Nandurbar, Dist. Nandurbar ..Applicant

Vs.

1. The State of Maharashtra
Through its Addl. Chief
Secretary (Revenue),
Revenue and Forest Department,
M.S., Mantralaya, Mumbai-32
2. The Divisional Commissioner,
Nashik Division, Nashik .. Respondent

Mr.R.B.Raghuwanshi, Advocate i/b. Mr.D.S.Bagul,
Advocate for applicant

Mr.V.M.Kagne, AGP for respondent nos.1 and 2

**CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : DECEMBER 04, 2017
PRONOUNCED ON : DECEMBER 18, 2017**

JUDGMENT (PER SANGITRAO S. PATIL, J.) :

The applicant has sought review of the
judgment and order dated 13.04.2016 passed by this

Court in Writ Petition No.4103 of 2016 whereby it came to be dismissed.

2. The applicant had filed Original Application No.2 of 2015 before the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, seeking directions against respondent no.1 to consider and decide on merits his claim for correction in his date of birth recorded in his service record in the light of Instruction (1) under Rule 38(2) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 ("Rules of 1981", for short), as they stood prior to amendment of 2008, by quashing and setting aside the communication dated 26.02.2015 issued by respondent no.1, whereby the applicant was informed that since he had not applied for correction of his date of birth within a period of five years of entering into service, his request for effecting change in his date of birth was refused.

3. The learned Member of the Tribunal, after hearing the parties, dismissed the said Original Application on the basis of various judgments of the Hon'ble the Supreme Court. The applicant filed Writ Petition No.4103 of 2016 against the judgment and order passed by the Tribunal. After hearing the learned Counsel for the applicant and the learned A.G.P. for the respondents, this Court did not find any reason to interfere with the judgment and order passed by the Tribunal and accordingly, rejected the Writ Petition on 13.04.2016.

4. The learned Counsel for the applicant submits that the applicant entered into the Government Service on 15.06.1988 initially as a Police Sub-Inspector. He was then appointed as Deputy Registrar of Co-operative Societies in the Department of Co-operation, Government of Maharashtra, which was a Class-I post, with effect from 19.07.1993. He then applied for the post of Deputy Collector through the Maharashtra Public Service Commission and got

selected and appointed as Deputy Collector in Revenue and Forest Department with effect from 19.07.1995. He was promoted as an Additional Collector on 13.07.2011. His date of birth was wrongly recorded as 07.01.1960 in the service record. Since his date of birth was approximate and not the actual one, the applicant started searching and collecting the necessary information about his correct date of birth. After collecting the necessary documents and information, he applied on 18.07.2005 for correction of his date of birth to make it 07.01.1962 in the place of 07.01.1960. The learned Counsel submits that since the applicant had applied for correction of his date of birth prior to amendment of 2008, that was effected in the Rules of 1981, his application was not liable to be rejected on the basis of the limitation provided in the amended Rule 38 since it was having prospective effect only. He submits that the said vital question has not been considered by this Court while dismissing Writ Petition No.4103 of

2016, which has caused substantial injustice to the applicant. He submits that the claim of the applicant for correction in his date of birth should have been considered on merits and should not have been rejected on the technical ground of delay in applying for correction thereof and more particularly, when the amended provisions of Rule 38 were not having retrospective effect. In support of his contentions, he relied on the following judgments :-

- (i) National Airport Authority Vs. M.A. Wahab, (1994)4 SCC 439;
- (ii) Union of India and anr. Vs. Hemraj Singh Chauhan and ors., Civil Appeal No.2651-52 of 2010 (arising out of SLP(C) No.6758-6759/2009) delivered by the Apex Court on 23.03.2010;
- (iii) Unreported judgment in the case of Ashok s/o. Pralhad Meshram Vs. The Head Master, Zilla Parishad High School, Palandur (Chauras), Tahsil Lakhni, Dist. Buldhana, and anr. delivered by the single Bench of this Court at Nagpur Bench on 09.07.2014.

5. On the other hand, the learned AGP submits that the amended provisions of Rule 38 would be very much applicable to the case of the applicant. Even prior to that, there was a provision prescribing time limit of five years from the date of entry in the service for filing application for correction of date of birth in the service record. According to him, there has been delay of 17 years on the part of the applicant in filing the application for correction of his date of birth, which is not at all satisfactorily explained. Relying on the judgment in the case of **State of U.P. and anr. Vs. Shiv Narain Upadhyaya, (2005)6 SCC 49**, the learned AGP submits that such a belated claim of the applicant, that too at the fag end of his service career, cannot be considered and rightly has not been considered by the Tribunal. He submits that this Court has rightly dismissed the Writ Petition.

6. Admittedly, the applicant joined the service with respondent no.1 on 15.06.1988. He recorded his date of birth as 07.01.1960 in his service record. It seems to have been verified from time to time. The applicant acquired higher position as Deputy Registrar of Co-operative Societies on 19.07.1993, Deputy Collector in Revenue and Forest Department on 19.07.1995 and then got promoted to the post of Additional Collector on 13.07.2011. He is due for retirement on attaining the age of superannuation in the month of January, 2018. It is only on 18.07.2005 (i.e. after about 17 years) that the applicant thought of applying for correction of his date of birth. The reason for the delay given by the applicant is that his native place is a remote village in Aurangabad District and it was difficult for him to collect the necessary information and documents showing his correct date of birth. Considering the vertical progress made by the applicant in his service career, the reason shown by

him for delay in filing the application *ex-facie* does not appear to be natural, probable and acceptable.

7. The further contention of the applicant that his application for recording his date of birth filed after 17 years of his entering into the service was maintainable, also is not at all acceptable. As per Instruction (1) given under sub-rule (2) of Rule 38, as it stood prior to amendment of 2008, normally, no application for alteration of the entry regarding the date of birth as recorded in service book or service record of Government servant should be entertained after five years commencing from the date of his entry in Government service. The applicant has produced the Circular dated 03.03.1998 (page 163) issued by the General Administration Department, Government of Maharashtra. In the said Circular, in view of the judgment of the Hon'ble Apex Court in the case of **Union of India Vs. Harnam Singh, (1993) 2 SCC 162**, it is made clear that the application for correction of date of birth of in-service Government

Officers/servants, who have entered into the Government service prior to or after 15.08.1981, should be considered only if they are made within five years of their entering into the service. This Circular was binding on the applicant. It has not been ever challenged by him. Thus, even prior to filing of the application for correction of his date of birth, the applicant was aware that his application would be considered only if it was filed within five years of his entering into the service. He entered into the service on 15.06.1988. Consequently, the application for correction of date of birth filed for the first time on 18.07.2005, was not at all tenable.

8. The learned Member of the Tribunal has referred to the judgment in the case of **State of Maharashtra and anr. Vs. Gorakhnath Sitaram Kamble and ors., (2010)14 SCC 423** and reproduced paragraphs 9 and 11 to 20 in the judgment, while rejecting the claim of the applicant for entertaining his

application. In that case, respondent no.1, who was appointed as an Assistant Teacher on 13.02.1978, had applied for correction of date of birth on 23.05.2004. The Hon'ble the Supreme Court, referring to a number of judgments, held that the application of respondent no.1 for alteration of date of birth after five years could not have been entertained. Though respondent no.1 therein had filed application for correction of his date of birth prior to amendment of 2008 effected in the Rules of 1981, the Hon'ble the Supreme Court held that according to the notification dated 24.12.2008 amending the Rules of 1981 from 16.08.1981, the date of birth of Government servant cannot be changed after five years from 16.08.1981. As such, the Hon'ble the Apex Court treated the said notification amending Rules of 1981 in the year 2008 as retrospective. In our opinion, if the amendment of 2008 in the Rules of 1981 is treated as prospective, the Government servants, who joined service on 16.08.1981, would be entitled to

file application for correction of date of birth even after the said amendment of 2008. In that event, the amended provisions of Rule 38 prescribing time limit of five years for filing application for correction in date of birth from the date of entry in the Government service would become nugatory. Though the judgment in the case of **State of Maharashtra Vs. Gorakhnath Kamble (supra)** was cited before the learned single Judge of this Court while deciding the case of **Ashok Meshram (supra)**, the learned Judge did not at all consider the effect of that judgment and held amendment of 2008 as prospective with the following observations :-

"07. Comparison of the old rule and amended rule clearly shows that the rule making authority has after amendment in 2008 prohibited the employees from making any application for correction in the date of birth after the period of five years from the date of entry in service but since the

amendment is not retrospective, it must be read as prospective."

9. The above observations do not find any support of any provision or precedent. As a matter of fact, the bare wording of amended Rule 32(2) would make it clear that it has retrospective effect. In the circumstances, the findings of the learned single Judge that the amended provisions of Rule 38(2) have prospective effect, cannot be accepted, being not the correct exposition of law.

10. The learned Counsel for the applicant further cited the judgment in the case of **National Airport Authority** (supra), which prohibits the provision of Note 5 of Fundamental Rule 56(m) as substituted in 1979, governing correction of date of birth in service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No.19017/79 dated 30.11.1979. The said provisions are

not *pari-materia* to the amended provisions of Instruction (1) under sub-rule (2) of Rule 38 of Rules 1981 inasmuch as there is no mention in Note no.5 of any specific date of entry in service of the Government servant, as has been mentioned in Instruction (1). Therefore, it has been interpreted that the employees, who completed five years of service prior to substitution of Note 5 prescribing time limit of five years of entry into the Government service for alteration of date of Birth, would be entitled to apply for correction of date of birth within a period of five years from the date of such notification.

11. As stated above, the case of **State of Maharashtra Vs. Gorakhnath** (supra), takes into consideration the amended provisions of Rule 38 of Rules of 1981, while rejecting the application dated 23.05.2004 filed by respondent no.1 therein for correction of his date of birth, the judgment in the case of **National Airport Authority** (supra) relating

to some other provision, which is not *pari-materia* with Rule 38(2) would be of no help to the applicant to claim that the amended provisions of Rule 38 would not be applicable to his case.

12. The judgment in the case of **Union of India and anr. Vs. Hemraj Singh** (supra) relates to Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954, which is not at all in consonance with Rule 38 of Rules of 1981. Consequently, the said judgment would not be helpful to the applicant.

13. In the case of **State of U.P. and anr. Vs. Shiv Narain Upadhyaya** (supra) cited by the learned AGP, it has been observed that most of the states have framed statutory rules or in the absence thereof issued administrative instructions stating as to how a claim made by a public servant in respect of correction of his date of birth in the service record is to be dealt with and what procedure is to be followed. It is further observed that in many such

Rules a period has been prescribed within which if any public servant makes any grievance in respect of error in the recording of his date of birth, the application for that purpose can be entertained. It is then observed that the sole object of such rules being that any such claim regarding correction of the date of birth should not be made or entertained after decades, especially on the eve of superannuation of such public servant. If no rule or order is made or framed prescribing the period within which such application must be filed, then such application must be filed at least within reasonable time.

14. In the present case, as stated above, even prior to the amendment effected in the year 2008 in the Rules of 1981, period of five years was prescribed within which normally the Government servant was expected to make an application of correction of his date of birth after entering into the service. The Circular dated 03.03.1998 mandates that no such application shall be entertained in case

it was not made within five years from the date of entry in the Government service. The amended Rule 38 mandates that such application shall be made within five years from the date of entry in the service. Even if the period five years, as mentioned in the Rules of 1981, as they stood prior to amendment of 2008 and even thereafter, is ignored for a while, it was expected of the applicant to make an application within a reasonable period. The application made by the applicant after 17 years of his entry in the Government service, by no stretch of imagination can be said to have been made within reasonable time. In the above circumstances, the claim of the applicant seeking correction in the date of birth cannot be entertained and rightly has not been entertained by respondent no.1. The Tribunal also has rightly dismissed the Original Application filed by the applicant giving sound reasons based on the law laid by the Apex Court. In the circumstances, the Writ Petition filed by the applicant was liable to be

dismissed and accordingly, has been dismissed by this Court.

15. We do not find any error apparent on the face of record to review the said judgment. The Review Application is sans substance. It is liable to be dismissed and accordingly, dismissed.

[SANGITRAO S. PATIL, J.]

[S.S. SHINDE, J.]

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