

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

WRIT PETITION NO.10935 OF 2015

Shivaji S/o Baburao Zanzan,
Age 52 years, Occ.Service,
R/o Parijat Nagar, N-4,
CIDCO, Aurangabad, Tq.
and Dist.Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra
through the Secretary,
Urban Development Ministry,
Mantralaya, Mumbai-32.

2. The Commissioner,
Municipal Corporation,
Aurangabad. ... Respondents.

...

Mr.V.M.Thorat, advocate holding for
Mr.S.J.Salunke, advocate for the petitioner.
Mr.P.S.Patil, Additional Government Pleader for
the State.
Mr.Deelip Patil Bankar, advocate for Respondent
No.2.

...

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

**Reserved on : 01.03.2017.
Pronounced on : 31.03.2017.**

JUDGMENT (Per S.V.Gangapurwala, J.)

1. The petitioner seeks correction of date of birth in his service book and consequently assails the order of the Commissioner, Municipal Corporation, Aurangabad, dated 20.10.2015, thereby rejecting the application of the petitioner for correction of date of birth in his service book as 22.6.1963 instead of 3.6.1959.

2. The facts necessary to decide the petition are hereby culled out :

3. The petitioner was appointed as a Station Officer in Municipal Corporation, Aurangabad, on 1.9.1987. His date of birth in the service book is recorded as 3.6.1959. The petitioner on or about 24.9.1987 gave an application for correction of date of birth in his service book. It is the contention of the petitioner that from 24.9.1987 to 19.4.2014 he applied on 19 occasions, however, no cognizance is taken of his applications for correction of date of birth in his service book. The Commissioner on or about 28.7.2014 sought

guidance from Respondent No.1 with regard to correction of the date of birth of the petitioner in the service book. The Respondent No.1 on or about 30.8.2014 communicated to the Commissioner that he is competent to take decision on his own. Under order dated 20.10.2015, the Commissioner rejected the request of the petitioner.

4. Mr.Thorat, learned counsel for the petitioner strenuously contends that within 25 days of joining the service, the petitioner had applied for correction of date of birth in his service book. The Respondent No.2 did not take immediate decision upon the same and kept the matter pending. Time and again the petitioner applied for correction of date of birth but to no avail. On 28.7.2014, the Commissioner came to the conclusion that the date of birth of the petitioner is required to be changed in the service book and that the correct date of birth of the petitioner is 20.6.1963. The Commissioner upon consideration of the documents submitted before him was convinced that the date of birth of the petitioner recorded in the service book as

3.6.1959 is erroneous and the correct date of birth is 22.6.1963. Once the Commissioner was convinced about the correct date of birth of the petitioner, it was for the Commissioner to direct correction of the date of birth in the service book of the petitioner and was not required to seek guidance from the Respondent No.1 as was sought to be done by the Commissioner pursuant to his letter dated 28.7.2014 addressed to Respondent No.1. The Respondent No.1 on 30.8.2014, communicated the Commissioner to take decision on his own as he is the appointing authority.

5. The Commissioner had already concluded about the fact that the correct date of birth of the petitioner is 22.6.1963, as such he was only required to carry out the correction in the service book. He had no authority to review the earlier decision wherein he had concluded the correct date of birth of petitioner to be 22.6.1963 and the entry in the service book as 3.6.1959 is erroneous. The statute does not permit the Commissioner to review his earlier

order.

6. The learned counsel further submits that the petitioner had relied on the documents dated 3.1.1970 issued by the Grampanchayat Sakhri Borgaon, Tq. and Dist.Beed, through its Sarpanch, so also the Gramsevak of Sakhri Borgaon Grampanchayat on 1.4.2013 had given the birth certificate stating the date of birth of the petitioner as 22.6.1963. The said certificate has a presumptive value under the provisions of the Registration of Births and Deaths Act. The said certificate is a conclusive evidence of the date of the birth of the petitioner as 22.6.1963. Even the uncle of the petitioner, the father of the petitioner and the Sarpanch of the Grampanchayat had given affidavits before the Tahsildar and Executive Magistrate, Beed that the real date of birth of petitioner is 22.6.1963. The horoscope of the petitioner was also submitted showing that the date of birth of the petitioner is 22.6.1963. Upon perusal of all these documents, the Commissioner had concluded about the real date of birth of the petitioner to

be 22.6.1963 and that entry of date of birth in the service book as 3.6.1959 is wrongly recorded. The Commissioner could not have reviewed the said decision taken on 28.7.2014 by separate order dated 20.10.2015.

7. The learned counsel further submits that subsequent order dated 20.10.2015 was without jurisdiction as the Commissioner has no powers of review. The said order is also bad in law as it is an unreasoned order. According to learned counsel, even principles of natural justice are not followed while passing the impugned order by the Commissioner. The learned counsel submits that even the petitioner was referred to the Medical Board. On 21.10.2014, Medical Board opined the age of petitioner to be between 45 to 50 years. All these facts would go to show the real date of birth of the petitioner to be 22.6.1963. Due to the illiteracy of the parents of the petitioner, the date of birth was wrongly recorded in the School record of the petitioner as 3.6.1959 and the same is continued. According to the learned counsel, the impugned

order passed by the Commissioner deserves to be set aside and the Respondent No.2 be directed to correct the date of birth in the service book of the petitioner as 22.6.1963 instead of 3.6.1959.

8. Mr.Deelip Patil Bankar, learned counsel for the Respondent No.2 submits that on 28.7.2014, the Commissioner had sought guidance from the Respondent No.1 about correction in date of birth of the petitioner and had only expressed its opinion. There would be distinction between opinion and the decision. On 28.7.2014, the Respondent No.2 had not given any decision about changing the date of birth of the petitioner in the service book. As such it can not be said that any order was passed by the Commissioner on 28.7.2014. After the Respondent No.1 communicated to the Respondent No.2 that Respondent No.2 is competent to take decision on his own regarding change of date of birth of the petitioner in the service book. The Respondent No.2 after considering all the documents on record negatived the claim of the petitioner. There is no question of review of any order, as

no order was passed prior to the impugned order by Respondent No.2.

9. The learned counsel submits that the entry in the service book showing the date of birth of the petitioner as 3.6.1959 was on the basis of representation of the petitioner and also the documents submitted by the petitioner at the time of his appointment. The documents submitted by the petitioner showed his date of birth as 3.6.1959. At the time of entry of the petitioner in the service, the petitioner had submitted the documents i.e. the School Leaving Certificate of Bhagwan Vidhyalaya, Beed dated 20.7.1977, showing the date of birth of the petitioner as 3.6.1959, the S.S.C. Certificate issued by the Maharashtra Secondary and Higher Secondary Education, Divisional Board, Aurangabad dated 20.6.1977, showing the date of birth of petitioner as 3.6.1959, the certificate issued by the Executive Magistrate, Beed dated 15.6.1982, showing the date of birth of the petitioner as 3.6.1959. The certificate issued by Civil Surgeon, Aurangabad in respect of Medical fitness

of petitioner dated 20.10.1987 which clearly states that as per the statement of the petitioner, his age is 28 years, so also by appearance, the age appears to be 28 years. On the basis of all these documents the entry in the service book is taken of the date of birth of the petitioner as 3.6.1959. The petitioner is well qualified. The learned counsel submits that even after petitioner was employed with Respondent the subsequent documents also show the date of birth of the petitioner as 3.6.1959. The passport dated 7.7.2005 issued in favour of the petitioner by the Passport authority of India shows the date of birth of the petitioner as 3.6.1959. Adhar card dated 27.8.2011, driving license, PAN card issued by the Income Tax Department show the date of birth of the petitioner as 3.6.1959. Earlier applications relied by the petitioner to state that since 1987, he is applying for the change of date of birth in his service record were not addressed to the Commissioner of Municipal Corporation, who is the appointing authority but to the Estate Officer or to the Deputy Commissioner. The applications annexed by the

petitioner at pages 24-A to 24-E show that he has given these applications to the Fire Department as acknowledgments are obtained from Fire Department. It is only after the period of five years some communications were addressed by the petitioner to the Commissioner of the Municipal Corporation.

10. The learned counsel further submits that reliance placed by the petitioner on the certificate issued by the Sarpanch dated 3.1.1970 is misplaced. It nowhere states as to on what basis the said certificate is issued by the Sarpanch and what is source of knowledge, whereas subsequent certificates of the School records - Secondary School Certificate and the certificate issued by the Executive Magistrate show the date of birth as 3.6.1959. The certificate issued by the Gramsevak, Sakhri Borgaon on 4.1.2013 is based on the affidavits of his father and uncle. The same is at the fag end of the service career of the petitioner. The said certificate can not have any presumptive value. According to the learned counsel, the subsequent documents such as

Passport, Adhar Card, Pan Card are submitted by the petitioner to the Respondent No.2 Corporation for getting certain certificates. On one hand, petitioner relies upon the said documents for getting certificates wherein the date of birth is recorded as 3.6.1959 and now claims his date of birth as 22.6.1963. Within a period of five years, no application for correction of date of birth was ever addressed to the Commissioner but were to the other authorities.

11. Learned counsel for Respondent No.2 further submits that correction of date of birth in the service book can not be allowed unless it is shown that the recorded date was due to negligence of some other person or that it was a case of clerical error. Learned counsel relies on the judgment of the Apex Court in the case of **"State of M.P.and others" Vs. Premlal Shrivastava** reported in **2011 (3) G.L.H. 656**. The learned counsel also relies on the judgment of the Apex Court in the case of **"Commissioner of Police, Bombay Vs.Bhagwan V.Lahane"** dated November 26, 1996. The learned counsel submits that unless a

clear case on the basis of material which can be held to be conclusive in nature is made out by the petitioner, the Court may not issue direction for correction of date of birth made in accordance with the procedure. The learned counsel relies on the judgment of the Apex Court in the case of **"State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others"** reported in **2011 AIR SCW 206**.

12. We have considered the submissions canvassed by the learned counsel for respective parties and the documents sought to be relied by them.

13. The onus is on the petitioner to prove about the wrong recording of his date of birth in his service book.

14. The contention of the petitioner that earlier the Commissioner of the Municipal Corporation had taken the decision to effect the change of date of birth of the petitioner in the service record does not appear to be in tune with

the factual matrix. The petitioner is placing his reliance on the letter dated 28.7.2014 written by the Commissioner, Municipal Corporation to the Principal Secretary, Urban Development Department. In the said letter, the Commissioner, Municipal Corporation had jotted down various documents presented by the petitioner and had referred the same to the Principal Secretary, stating that it is the opinion of the administration that there may not be any objection to effect the change of date of birth of the petitioner in the service record and sought confirmation of the opinion from the Principal Secretary. It would be seen that no actual decision was taken and the Commissioner was of the opinion that the said decision would be taken by the Urban Development Department. The Commissioner had not taken any conscious decision with regard to effecting the change in the date of birth of the petitioner in the service book of the petitioner. After the Commissioner received communication from the Urban Development Department dated 30.8.2014 and asking the Commissioner to take the decision at

his end thereafter, the Commissioner by applying his mind and upon considering various documents on record did not find sufficient evidence to effect the change in date of birth of the petitioner in the service record.

15. The order is not a detail or a reasoned order by referring all the documents, however, various documents on record would imply that the correct date of birth of the petitioner is recorded in the service book at the time of his entry in service. It is for the first time on 20.10.2015, decision has been taken by the Commissioner, thereby rejecting the application of the petitioner to effect the change of date of birth of the petitioner in the service book. By no stretch, it can be said that the Commissioner has reviewed any earlier order as no order was passed before the impugned order passed by the Commissioner.

16. It is undisputed that the School record of the petitioner records the date of birth of the petitioner as 3.6.1959. The said record

includes the School Leaving Certificate of the petitioner, the certificate issued by the Secondary School Board, so also the certificate of the Executive Magistrate dated 15.6.1982, showing the date of birth of the petitioner as 3.6.1959.

17. To buttress his case, the petitioner relies on the documents such as :

(i) *Horoscope;*

(ii) *The certificate of Sarpanch of Grampanchayat Sakhri Borgaon dt.3.1.1970;*

(iii) *The birth certificate dated 4.1.2013 issued by Gramsevak and the affidavits of his father and uncle.*

(iv) *The letter of the Medical Board dated 23.8.2013, stating that the age of the petitioner may be between 45 to 50 years.*

18. The birth certificate dated 4.1.2013 is said to have been issued under the provisions of Registration of Births and Deaths Act, 1969.

19. The certificate under the Registration of Births and Deaths Act, would have a presumptive value only if the same is issued in consonance with the procedure as established under the said Act. In the present case, the petitioner contends of having been born on 22.6.1963 and the entry of the said birth as per the Registration of Births and Deaths Act, is taken on 4.1.2013, that too on the basis of affidavits. For the said certificate to have the benefit of presumption, the entry ought to be made adhering to the condition stipulated under sub-section (1) of Section 22 of the said Act. Reliance can be had to the Division Bench judgment of this Court in the case of **"Gangadhar S/o Gonduram Tadme Vs. Trimbak S/o Govindrao Akingire and others"** reported in **2005 (1) Mh.L.J.94.**

20. As against the aforesaid documents

relies by the petitioner, the following documents depict the date of birth of the petitioner as 3.6.1959.

(i) School Leaving Certificate issued by Bhagwan Vidhyalaya, Beed, dated 20.7.1977;

(ii) Secondary School Certificate issued by the Maharashtra Secondary and Higher Secondary, Divisional Board, Aurangabad dated 20.6.1977;

(iii) The certificate issued by the office of Executive Magistrate, Beed dated 15.6.1982;

(iv) The certificate issued by Civil Surgeon, Aurangabad dated 20.10.1987;

(v) The Passport dated 7.7.2005 issued in favour of the petitioner by the Passport Authority of India;

(vi) *The Adhar Card dt.27.8.2011 issued in favour of the petitioner by the competent authority;*

(vii) *The Driving licence issued by the concerned Regional Transport Office, Aurangabad to the petitioner shows date of birth as 3.6.1959;*

(viii) *The PAN Card issued to the petitioner by the Income Tax Department shows date of birth as 3.6.1959;*

21. Even at the time of entry in the service, the petitioner had submitted the documents from serial Nos.1 to 3 above showing the date of birth of the petitioner as 3.6.1959. The date of birth recorded in the service book was based on the documents submitted by the petitioner himself at the time of his appointment. There is nothing on record to show that the recorded date was due to negligence of some other person or that due to want of proper care of other person, date of birth of petitioner at the

time of entry in service was recorded incorrectly in the service book or it is a case of clerical error. The date of birth in the service book of the petitioner was correctly recorded as per the documents submitted by the petitioner and as represented by the petitioner. It is thereafter, the petitioner had sought to produce the documents such as horoscope and the certificate of the Sarpanch. Even the birth certificate issued by Gramsevak of the Grampanchayat was submitted in the year 2013 i.e. almost after 25 years of the petitioner entering in service. Even subsequent documents of the year 2005 and 2011, such as Passport, Adhar Card, Driving license, PAN card issued to the petitioner by various authorities shows the date of birth recorded as 3.6.1959.

22. The onus is on the petitioner to prove wrong recording of his date of birth in service book. The petitioner has to produce the evidence of the nature of irrefutable proof relating to his date of birth. The petitioner has to produce clinching evidence to show that his date of birth

is wrongly recorded. The petitioner has failed to produce evidence of unimpeachable nature to substantiate that his date of birth is incorrectly recorded in the service book. On the contrary, the over-whelming record as discussed supra consistently shows the date of birth of the petitioner as 3.6.1959.

23. In light of the above conspectus, the petitioner does not have any case on merits. The Writ Petition is dismissed. However, with no order as to costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

