

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 272 PF 2004

J.M. Gamare
Adult, Indian Inhabitant,
Residing at C-2/4/1:4, Sector 16, Vashi
New Mumbai.

...Petitioner

Vs.

1. The City and Industrial Development
Corporation of Maharashtra Limited
A Government of Maharashtra undertaking,
having its registered office at Nariman Point,
Mumbai-400 021 and having its office at
C.B.D. Navi Mumbai.

2. Mr. B.S. Waghmare
Adult, Indian Inhabitant presently
employed with CIDCO as Manager (Personnel)
at its office at CBD, Navi Mumbai.

...Respondents

Ms. Manjiri Parasnis i/b. Ketan A. Chothani,
Advocate for the Petitioner
Mr. G.S. Hegde, Advocate for the Respondent

**CORAM : A.A. SAYED &
M.S. KARNIK, JJ.**

**RESERVED ON: 6TH JUNE, 2017
PRONOUNCED ON : 9TH JUNE, 2017**

ORDER (PER M.S. KARNIK, J.):

1. The Petitioner challenges an order dated 31st December,
2003 informing the Petitioner that his date of birth as per

school leaving certificate is 1st January, 1946 which is the official birth date and his representation in this connection has already been turned down on 27th August, 1998. It is thus informed by the impugned communication that the Petitioner stands relieved due to superannuation on completion of 58 years of age as on 31st December, 2008.

2. The brief facts on which the Petitioner based his claim are as under:

1. The Petitioner was appointed as a Peon on 5th August, 1970. On 30th September, 1971 the Petitioner was promoted as Daftary. The Petitioner was working as Assistant Marketing Officer at the time of passing of the impugned order.

2. It is the Petitioner's case that when he joined service in 1970, on the basis of the documents then available with the Petitioner, his date of birth was recorded as 1st January, 1946. Some time in the year

1990 the Petitioner realized that his correct date of birth is 17th June, 1948 as reflected in the records of the Gram Panchayat of Mashala District: Raigad and on the basis of the records obtained from the Tahasildar.

3. The Petitioner, therefore, made a representation to the then Manager (Personnel) on 23rd July, 1990 along with a copy of affidavit indicating that Santaram was his cradle name, but otherwise he is known as Jayant. The Petitioner further stated that he would want to be known by his name shown in the school register as Jayant Mahadev Gamare and not by the name Santaram Mahadu Gamare as reflected in the records of the Birth Register maintained by the Tahasildar.

4. According to the Petitioner necessary changes were made in the service records and the seniority list published on 25th May, 1992 indicating his correct date of birth as 17th June, 1948. This, however, is disputed

by the Respondents.

3. Learned Counsel for the Petitioner submitted that in the seniority list of 1st April, 1998 the date of birth of the Petitioner was once again shown as 1st January, 1946. The Petitioner, therefore, by a representation dated 20th May, 1998 requested for correction of the date of birth. By a communication dated 27th August, 1998 the Petitioner's request for change of date of birth was rejected on the ground that the documents i.e. school leaving certificate and S.S.C. Certificate submitted by the Petitioner at the time of joining the Corporation confirms that his date of birth is 1st January, 1946. The Petitioner, therefore, made a detailed representation on 3rd March, 1999 for correcting the Petitioner's date of birth with a request to record the same as 17th June, 1948 in his service record. The Petitioner pointed out that as his parents were illiterate and from a poor Scheduled Caste family the date of birth was wrongly recorded in the school records. It is however, after the records from the Tahasildar were obtained that the Petitioner

realized that his correct date of birth is 17th June, 1948.

4. By communication dated 16th June, 1999 the Petitioner's request for correcting the date of birth was accepted and after verification and examination of birth records the necessary changes were made in the service records. The Petitioner's date of birth was recorded as 17th June, 1948 by the Respondents.
5. The learned Counsel for the Petitioner pointed out that even in the seniority list dated 1st April, 2002 the Petitioner's date of birth was correctly reflected as 17th June, 1948.
6. According to the learned Counsel for the Petitioner on 11th December, 2003 the Petitioner was called upon to submit his say along with the documentary evidence in support of the Petitioner's correct birth date on or before 18th December, 2003. The Petitioner was also called upon to bring the application dated 3rd March, 1999 which was not available in the Corporation record. It was further indicated that failure

to produce sufficient evidence thereto, his birth date i.e. 1st January, 1946 as originally recorded will be confirmed. A reference is also made to the communication dated 3rd March, 1999 of the then Manager (Personnel) who had accepted the date of birth as 17th June, 1948, which is against the provisions of law and without following the due procedure.

7. Learned Counsel for the Petitioner pointed out that in reply to the notice dated 11th December, 2003 a detailed response was submitted by him on 16th December, 2003. The Petitioner relied upon various documents to show that his date of birth is 17th June, 1948. The Petitioner also submitted an explanation as to why in the school records the date of birth wrongly came to be recorded as 1st January, 1946. It is further pointed out in the reply that pursuant to his representation submitted in 1990 necessary changes were made in the service records and the seniority list from 1992 indicating the Petitioner's date of birth as 17th June, 1948. According to the Petitioner in 1999 the then Manager (Personnel) corrected the mistake and restored his correct

date of birth. Reference is also made to the circular dated 4th November, 1997.

8. The Respondent, however, by impugned order dated 31st December, 2003 came to the conclusion that there is no need to change the date of birth as at the time of joining the Corporation, the date of birth as per school leaving certificate is recorded as 1st January, 1946 and his representation was already turned down on 27th September, 1998. The Petitioner thus stood relieved due to superannuation on completion of 58 years of age as on 31st December, 2003.

9. Learned Counsel for the Petitioner while assailing the impugned order submitted that the order is a non-speaking order. She further submits that reply to the show cause notice has not been considered at all. According to her the Respondents have also not adverted to the subsequent order dated 3rd March, 1999 by which the Respondents themselves had corrected the date of birth and made necessary changes in the service records. The learned Counsel for the Petitioner

further contended that the documents produced by her in support of her claim obtained from the Tahasildar's office were not considered by the Respondents.

10. Learned Counsel for the Respondents on the other hand supported the impugned order. According to him the Petitioner's claim for change in the date of birth was already rejected on 27th August, 1998. The Manager (Personnel) was in error in correcting the date of birth by his order dated 3rd March, 1999 as the same was against the provisions of law and without following due procedure. Learned Counsel further submitted that the Petitioner has approached the Respondents for correcting his date of birth almost after 20 years and therefore, the impugned order does not call for interference.

11. The learned Counsel for the Respondents further invited our attention to the birth extract to contend that the Petitioner is trying to take advantage of the similar surname mentioned in the said document. He further contended that

though the extract of birth and death register was available with the Petitioner right from 1971 the same was produced for the first time only in 1999. The learned Counsel for the Respondents submitted that the impugned order therefore, does not warrant any interference as according to him the Petitioner has not come to the Court with clean hands.

12. Having considered the rival submissions advanced on behalf of the respective parties we are of the opinion that the matter requires a fresh hearing by the Respondent No.1. It is not in dispute that pursuant to the rejection of the Petitioner's request on 27th August, 1998 the Petitioner had made an application on 3rd March, 1999 for change in date of birth. The same was accepted by the Respondents on 16th June, 1999 and the Petitioner's date of birth was corrected to 17th June, 1948. Moreover the show-cause notice dated 11th December, 2003 clearly called upon the Petitioner to submit the Petitioner's say along with the documentary evidence in support of the Petitioner's claim for correct date of birth. The Petitioner was also called upon to bring his subsequent

application dated 3rd March, 1999 which was not available with the Corporation.

13. The Petitioner by his reply dated 16th December, 2003 submitted various documents in support of his claim for change in date of birth. The Petitioner also submitted an explanation as to how the date 1st January, 1946 appeared in the school leaving certificate. In our opinion when the Respondent had issued a notice calling upon the Petitioner to submit his say along with documentary evidence in support of the Petitioner's claim for correct date of birth, the Respondents ought to have considered the explanation tendered by the Petitioner and passed a reasoned order. The explanation of the Petitioner is not at all adverted too in the impugned order.

14. The only reason given by the Respondent No.2 in the impugned office order dated 31st December, 2003 is that the Petitioner's claim for correcting the date of birth was already turned down on 27th September, 1998. The Respondent No.2

however, has not given any reason as to why the subsequent communication dated 3rd March, 1999 accepting the Petitioner's claim for change in date of birth was completely over looked.

15. We thus find that the impugned order is a non-speaking order. In this light of the matter we are inclined to set aside the order dated 31st December, 2003 and direct the Respondents to pass fresh order on merits after hearing the Petitioner. We further feel it appropriate that the matter be heard by the Joint Managing Director of Respondent No.1 Corporation having regard to the facts of this case. The learned Counsel for the Respondent fairly accepted this course. Hence, following order:

ORDER

1. The impugned order dated 31st December, 2003 passed by the Manager (Personnel) is quashed and set aside.
2. The Joint Managing Director of the Respondent No.1 Corporation to hear the show-cause notice dated

11th December, 2003 afresh after considering the reply dated 16th December, 2003 and the documents tendered by the Petitioner on its own merits and pass a brief reasoned order within a period of ten weeks from today, without being influenced by the impugned order.

3. The Petitioner to appear before the Joint Managing Director of Respondent No.1 Corporation on 19th June, 2017 at 11.00 a.m. when the further schedule of hearing may be fixed.

4. We may not be understood to have expressed any opinion on the merits of the matter and the Joint Managing Director of the Respondent No.1 may take a decision on its own merits and in accordance with law.

5. The Petition is disposed of.

6. Rule is partly made absolute with no order as to costs.

(M.S. KARNIK, J.)

(A.A. SAYED, J.)