

3. The respondent approached the Tribunal for the reliefs restraining the petitioners from recovering the amount of salary paid towards the actual service rendered by him for the period from 01/07/2013 to 30/06/2014 and for further directions to sanction the extension of service during this period. The controversy is as regards the date of retirement of the respondent. The respondent claims to have been born on 28/06/1956. The respondent joined the Government service on 02/06/1977 as a Police Constable. At the time of joining the service, his date of birth came to be recorded as 28/06/1955 in the service-book. The respondent claims that in the attestation form, he has mentioned his date of birth as 28/06/1956. Thereafter, on 13/10/1977 a report was made by the Superintendent of Police, Solapur to the Commandant, SRPF, Group-VIII Bombay, stating that the school leaving certificate of the respondent shows his date of birth as 28/06/1955, while the Municipal record of Mangalwedha shows his date of birth as 28/06/1956. The respondent's father had informed the school authorities that his date of birth is 28/06/1955.

4. The Tribunal has recorded that the first page of service-book initially showed the date of birth of petitioner as 28/06/1955 as per the school leaving certificate, thereafter it was corrected as 28/06/1956.

5. The respondent was promoted as Police Sub-Inspector (PSI) in due course. There is no dispute that the records indicate that for the better part of his career, the respondent's date of birth is shown as 28/06/1956.

6. It appears that, on a communication of the petitioner No.4 to the petitioner No.3 dated 11/09/2014 an objection was raised by the petitioner No.4 regarding the conflict in the date of birth of the respondent. The respondent retired on 30/06/2014.

7. The learned AAGP on behalf of the petitioners contended that the respondent's date of birth was wrongly corrected by the Department as 28/06/1956 instead of 28/06/1955. In his submission, initially the date of birth in the service-book was recorded as 28/06/1955. Relying on Rule 38(1) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, he contends that the respondent should have requested for

change of his date of birth within a period of five years of his entry in the Government service. The Tribunal was of the opinion that Rule 38(1) will have no application in the facts of the present case as the petitioners themselves have effected the change in the date of birth. Almost one year after the respondent retired, the petitioners by an adverse note dated 09/10/2015 mentioned that the respondent colluded with some other officers and belatedly altered his date of birth illegally.

8. We do not find any reason to interfere with the order passed by the Tribunal. The respondent continued to work till 30/06/2014, which is on the basis of the date of birth being 28/06/1956 as per the service record. The respondent having worked on the said post till 30/06/2014 the question of effecting any recovery for the period from 01/07/2013 to 30/06/2014 cannot arise. Moreover, it is the petitioner authorities themselves who had effected the necessary change in the service record, on which basis the respondent continued to work till 30/06/2014. The respondent having retired from service, the action on the part of the petitioners holding that the respondent's date of retirement could have been 30/06/2013 is not only belated, but also unjust.

In this light of the matter, we are not inclined to interfere with the order passed by the Tribunal in the exercise of writ jurisdiction under Article 226 of the Constitution of India.

9. The petition being devoid of any merits, is dismissed with no order as to costs. Rule is discharged.

(M. S. KARNIK, J.)

(ACTING CHIEF JUSTICE)