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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4188 OF 2017

Chandrakant Punju Wagh

Aged 56 years, R/o Kavyadhara, Malhar

B-3/203, Dhokali-Kolshet Road,

Thane (W) 400 607.

working as Chief Engineer (C) with

Maharashtra State Electricity Distribution Co. Ltd.

having registered address at

Prakashgad, Bandra, Mumbai 400 051.

.. Petitioner

Versus

1. Chairman & Managing Director
Maharashtra State Electricity Distribution
Co. Ltd., 6th Floor, Prakashgad, Prof. Anant
Ghanekar Road, Bandra (E), Mumbai 400 051.

2. Chief General Manager (T/E)
Maharashtra State Electricity Distribution
Co. Ltd. , 4th Floor, Prakashgad, Prof. Anant
Ghanekar Road, Bandra (E), Mumbai 400 051. .. Respondents

Mr. Nilkanth D. Batule for petitioner.

Ms. A. R. S. Baxi for respondent nos.1 and 2.

CORAM: NARESH H. PATIL &
Z. A. HAQ, JJ.

SEPTEMBER 13, 2017.

ORAL JUDGMENT [Per Naresh H. Patil, J.] :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner joined service of respondents in the year 1997 based on school leaving certificate, wherein the date of birth was mentioned as 19/02/1960.

3. Under the service Rules, the petitioner could have applied for change of date of birth within one year from joining service. In January 1998, petitioner secured a Birth Certificate issued by the Chopda Municipal Council, wherein birth date was mentioned as 01/03/1961. It is submitted that the petitioner applied to the respondents on 02/03/1998 for making necessary change in the petitioner's service record in respect of the date of birth. To an application filed by the petitioner to change date of birth in service record, it was informed by the respondents to the petitioner that the date of birth certificate issued by Chopda Municipal Council does not mention name of the petitioner. It was also mentioned that the petitioner had submitted an application for the post of Deputy Executive Engineer

(Civil), in which the date of birth was recorded in his handwriting as 19/02/1960. The school leaving certificate and other documents produced by the petitioner at the relevant time showed date of birth as 19/02/1960. In spite of the said communication, the petitioner did not take any steps for getting the record corrected which include school leaving certificate, municipal record etc.

4. The petitioner has approached this Court with a plea that the certificate issued by the Chopda Municipal Council on 5/3/2016, mentioning the date of birth of the petitioner as 01/03/1961, be taken into consideration. Reply has been filed by the respondents. Rejoinder is submitted by the petitioner today, which is taken on record.

5. The learned counsel appearing for the petitioner submits that there is no time limit prescribed for the respondents to correct the service record by entering the change in date of birth. It is further submitted that in view of the birth certificate issued by the Health Department of Chopda Municipal Council on 5/3/2016, mentioning date of birth of the petitioner as 1/3/1961, the same be held to be correct and genuine and based on the same, the service record be corrected. The petitioner is also placing

reliance on the circular dated 27/7/2015 issued by the State Government and the Rules of 2000 framed by the State Government in respect of birth and death registration.

6. The learned counsel appearing for the respondents submits that it would not be possible and appropriate to correct the date of birth of the petitioner based on the certificate issued by the Chopda Municipal Council. The other ground raised by the counsel is that at the fag end of service tenure, said request has been made. The petitioner is to retire in the month of February, 2018. The learned counsel further submitted that near-about 17 to 18 years, the petitioner kept mum, without taking necessary steps in respect of change of birth record. The counsel requests for dismissal of the petition.

7. The learned counsel for the petitioner submits that the petitioner's application for change of date of birth was rejected by the respondents in the year 2017. In case such a rejection was communicated to the petitioner, petitioner would have taken necessary steps. We do not find that such a submission advances any credibility to the petitioner's case as under the existing laws, the petitioner was not prevented from taking

necessary steps for getting the date of birth corrected, if such a correction was required in accordance with the Rules framed for the said purpose.

8. We have perused the record placed before us. As on today two contrary certificates showing date of birth are placed on record, one is school leaving certificate, which indicates birth date of the petitioner as 19/2/1960 and another is the birth certificate recently issued by the Chopda Municipal Council, which indicates birth date of the petitioner as 01/03/1961. On what information and material Chopda Municipal Council issued the birth certificate is a matter of inquiry and investigation.

9. In the case of Life Insurance Corporation of India and ors. vs. R. Basavraj alias Basappa [(2016) 15 SCC 781], the Supreme Court in paras 5 and 7 observed as under:

“5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement.

7. This Court in *State of T.N. v. T. V. Venugopalan*, elaborately dealt with such a demand made by the employee with regard to alteration in the date of birth. This Court observed : (SCC p. 307, para 7)

“7. As held by this Court in *Harnam* case, Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force i.e. 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31-8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted the matter for reconsideration. The Government considered various facts and circumstances in GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of

evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejected the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance of technicalities, question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed

by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs.3000.”

In the case of State of Madhya Pradesh and ors. vs. Premlal Shrivastava [(2011) 9 SCC 664], the Supreme Court in para 9 observed as under:-

“9. In Home Deptt. v. R. Kirubakaran indicating the factors relevant in disposal of an application for correction of date of birth just before the superannuation and highlighting the scope of interference by the courts or the tribunals in such matters, this Court has observed thus: (SCC pp.158-59, para 7)

“7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their

promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by the rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy

on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior.”

10. In the instant case, in view of the contrary documents indicating different date of birth of the petitioner, we find that it will not be appropriate to issue a writ to the respondents to carry out necessary change in the service record as desired by the petitioner. The petitioner's request is affected by abnormal delay in approaching the court for seeking necessary directions as prayed for in this petition. At the fag end of the service tenure, the petitioner seeks such direction.

11. In view of the facts and record placed before us, we are not inclined to go into questions of facts as to why the petitioner's name was not included in the certificate issued by the Chopda Municipal Council in the year 1993 and as to on what basis the petitioner's date of birth was mentioned in the certificate issued in the year 2016. All these issues may be gone into by a fact finding forum or by an appropriate authority entrusted with such powers.

12. In the fact, we are not inclined to issue directions as prayed for by the petitioner.

13. The learned counsel submits that petitioner would approach appropriate forum on the issue of correction of date of birth. The petitioner may resort to appropriate alternate proceedings as permissible in law.

14. The petition is dismissed. Rule stands discharged. No costs.

(Z. A. HAQ,J.)

(NARESH H. PATIL,J.)