

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5518 OF 2016

1. The State of Maharashtra,
Through Deputy Commissioner
of Police, Motor Transport
Department (Under the Admin.
Control of the Commissioner of
Police, Mumbai) having office at
Nagpada, Mumbai.

2. The State of Maharashtra,
through Additional Chief Secretary,
Home Department, having office at
Mantralaya, Mumbai-32.

.....Petitioners
(Orig. Respondents)

V/s.

Mr. Ganpat D. Salunkhe
Om Sagar Park, Amrut Nagar
Ghatkopar, Mumbai-86

.....Respondent
(Orig. Applicant)

Mr. Nitin P. Deshpande, AGP for the State, petitioners.

Mr. Bhushan A. Bandiwadekar, Advocate for the
respondent.

CORAM :-

SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATE :- 21ST JULY, 2017.

ORAL JUDGMENT (PER :- SMT. V.K. TAHILRAMANI, J) :

1. Heard Learned AGP for the petitioners and Learned Counsel for the respondent.

2. Rule. By consent, Rule is made returnable forthwith and the matter is heard finally. This petition has been preferred by the petitioners i.e. Deputy Commissioner of Police, Motor Transport Department and the State of Maharashtra against the order of the Maharashtra Administrative Tribunal dated 6th August, 2015 passed in O.A. No. 892 of 2014 preferred by the respondent.

3. The issue in this petition is in relation to the date of birth of the respondent. The respondent had reported for duty as Police Constable for the first time on 26th September, 1981. Initially, the date of birth was

wrongly recorded in the service book as 26th September, 1976. That would mean that, in 1981 when he joined service, he was five years of age. Obviously, at the age of five, he could not have been appointed. This mistake in filling in the date of birth in the service record was of the office of the Commissioner of Police or Deputy Commissioner of Police. Thereafter, the date of birth was changed to 26th September, 1956. The respondent started his career as a Police Constable in 1981 and in the year 2014, he became Assistant Sub-Inspector. Going by the date of birth of 26th September, 1956, the respondent was proposed to be superannuated on 30th September, 2014. When it came to his notice, the respondent preferred O.A. before the Maharashtra Administrative Tribunal praying therein that, the clerical mistake committed by the Commissioner Office be corrected and his date of birth be corrected in the service book from 26th September, 1956 to 26th September, 1960. As no interim relief was given to him, he superannuated on 30th September, 2014.

4. The records show that, the Assistant Commissioner of Police addressed a communication dated 12th June, 2014 to the General Administration Department (GAD), which was at Exhibit-A to the O.A. It was clearly mentioned in the said communication, that the respondent had requested for a change of date of birth. The lapses on the part of the office was set out in the communication. It was then stated that the date of birth of the respondent should be changed to 26th September, 1960. It was clearly stated in the communication that this mistake in the date of birth occurred due to mistake of the office. It was specifically stated in the communication that, on account of mistake by the office, a wrong date of birth was noted in the service record and hence orders be given to change the date of birth to 26th September, 1960. The same authority again wrote to the Government on 12th September, 2014 with the same request.

5. On 4th February, 2013 the respondent wrote to

the Deputy Commissioner of Police, Motor Transport Department that he had already submitted the documents in respect of the date of birth being 26th September, 1960. Similarly, on 26th September, 2014 the respondent annexed copies of documents to support his stand i.e. his date of birth is 26th September, 1960. There was a School Leaving Certificate showing the date of birth of the respondent as 26th January, 1960. There was also a Certificate from the Assistant Commissioner (Motor Vehicles) dated 6th January, 1993 which showed that the date of birth of the respondent was 26th September, 1960. There was also an Identity Card issued by the Bombay Police on 17th July, 1995 wherein the date of birth is mentioned as 26th September, 1960. There were some other office documents also showing that the date of birth of the respondent was 26th September, 1960.

6. Thus, it is clear that, there was a record in the Bombay Police Department from the year 1993 to show that the date of birth of the respondent was 26th

September, 1960. The respondent had informed repeatedly that his date of birth was 26th September, 1976. The authorities due to mistake on their part had initially also entered the wrong date of 26th September, 1976 in the service record of the respondent. This date of 26th September, 1976 was corrected. However, thereafter it was substituted with the date “26th September, 1956” without any document to support the same.

7. This is not a case where the respondent wanted a change in the date of birth. This is not a case where the respondent had given a particular date at the time of initial entry which was later on sought to be changed by him. Infact, the office of the petitioner itself had convincing material before them to show that the date of birth of the respondent was 26th September, 1960 yet wrong date was noted in the service book. The Learned Counsel for the petitioners, submitted that, after a period of 5 years from entry in Government Service, no change can be carried out in date of birth. To support this

submission, reliance is placed on Instruction (1) to Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 which states as under :-

“(1) No application for alteration of the entry regarding date of birth as recorded in the Service Book or Service Roll of a Government servant should be entertained after a period of five years commencing from his entry in Government service.”

8. In the first place, the respondent had not given his date of birth as 26th September, 1956, nor had he preferred an application for alteration of the entry. There was no tangible material before the petitioners to record the date of birth as 26th September, 1956. On the other hand, as far as, the date 26th September, 1960 is concerned, there was ample convincing documentary material before the petitioners who were the custodians of his service book to show that the date of birth of the respondent is 26th September, 1960. Infact, Rule 38(3) of the above Rules, read as under :-

“All cases relating to alteration of dates of birth of Gazetted Government Servants and

such of the requests of the Non-Gazetted Servants as are proposed to be entertained on merits in relation of instruction no.(1) above should invariably be referred to the General Administration Department and the Finance Department through the Administrative department concerned.”

Accordingly, the Assistant Commissioner of Police had addressed a communication to the GAD and sought orders to change the date of birth of the respondent from 26th September, 1956 to 26th September, 1960. The petitioners themselves have written an erroneous date of birth in the service book of the respondent without any material to support the same. On the other hand, there was ample material to show that the date of birth of the respondent was 26th September, 1960. In such case, the petitioners cannot be allowed to take advantage of their own wrong and the respondent cannot be made to suffer for some thing for which he was not responsible or accountable. The Tribunal took into consideration all the above facts and thereafter directed to enter in the

relevant record, the respondent's date of birth as 26th September, 1960 instead of 26th September, 1956 and allowed the respondent to rejoin the duties with continuity of service and all service benefits including backwages from 1st October, 2014 till resumption of duties. Looking to the above facts, as discussed by us in detail, no error can be found in the order of the Tribunal. Hence, Rule is discharged.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)