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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6301 OF 2014**

Smt. Shalan Shivaji Chavan

... Petitioner

Versus

The State of Maharashtra and Ors

... Respondents

Mr. Narendra Bandiwadekar a/w Mr. S.A. Mane for the petitioner,

Mr. V.N. Sagare, AGP for R. Nos. 1 to 3.

**CORAM : SHANTANU KEMKAR &  
PRAKASH D. NAIK, JJ.  
DATED : MARCH 23, 2017.**

**P.C.**

Parties through their counsel.

2. Feeling aggrieved by the communication dated 15.5.2014 (Exh. "N") received from the office of the first respondent rejecting the petitioner's prayer for change of date of birth on the ground that the petitioner's case is not falling under Rule 38(2)(F) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (For short "Rules of 1981"), the petitioner has filed this petition.

3. According to the petitioner, she had joined the services on 1.10.1981 and on 21.2.1983 (Exh. "B") she had applied for change of her date of birth which according to her is 15.10.1960 and not 15.10.1956 as recorded in her service record.

4. Learned counsel for the petitioner submits that thereafter she got the relevant document in support of her claim that her date of birth was 15.10.1960 and submitted the same along with application dated 21.2.2007 Exh. "G". The petitioner's matter was processed and an order was passed by the concerned Minister of Civil Justice and Special Assistance Department as per Exh. "M". But thereafter as per the said order Exh. "M", no further steps were taken by the General Administration Department and the impugned order dated 15.5.2014 (Exh. "N") has been passed by the first respondent without taking into consideration the relevant documents as also Instruction no. 2 of Rule 38 of the Rules of 1981. Thus according to learned counsel for the petitioner, the impugned order has been passed without taking into consideration the note of the Minister Exh. "M" as also Instruction No. 2 of Rule 38. According to the petitioner, she had submitted the birth certificate after getting it under the Registration of Births and Deaths Act, 1969 and that document has been totally ignored while considering the petitioner's claim as also her horoscope.

5. On the other hand, learned AGP has supported the impugned order and submits that the petitioner having applied belatedly after the prescribed period of five years from the entry in the service, her claim has rightly been rejected.

6. Having considered the submissions made by the learned counsel for the parties and having gone through the relevant documents, we find that the petitioner initially had submitted an application for change of date of birth in the service record on 21.2.1983 Exh. "B". The same also find reference in the order Exh. "M" passed by the Minister. In the circumstances, the contention of the learned AGP that the application was filed beyond the prescribed period of five years, cannot be accepted. However, we also find that the respondent no.1 while rejecting the petitioner's claim has not taken into consideration Instruction 2 of Rule 38 of the Rules, 1981 and rejected the petitioner's claim merely placing reliance on Clause (F) of Sub Rule (2) of Rule 38. However, petitioner had never sought change of date of birth on the basis of the said clause (F).

7. Keeping in view the aforesaid, we are of the view that the impugned order deserves to be set aside. We accordingly set aside the same and remand the matter back to Secretary, Social Justice and Special Assistance Department (respondent no.1) who shall decide the petitioner's claim afresh after giving opportunity of hearing to the petitioner. Petitioner to appear before respondent no.1 on 10.04.2017 at 3.00 p.m. The first respondent on that date or within two weeks from that date, hear the petitioner and the

concerned officer of the department and pass appropriate orders in regard to the petitioner's claim as expeditiously as possible but not latter than two months from the date of conclusion of the hearing.

8. With the aforesaid directions, petition is disposed of.

9. Parties to act on authenticated copy of this order.

**(PRAKASH D. NAIK, J.)**

**(SHANTANU KEMKAR, J.)**