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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6067 OF 2013

Smt. Smita Madhav Patki

.. Petitioner

Versus

The State of Maharashtra and ors.

.. Respondents

Mr. V. S. Talkute for petitioner.

Mr. S. S. Aradhye for respondent no.1.

Ms. A. R. S. Baxi for respondent nos.2 to 5.

CORAM: NARESH H. PATIL &
SMT. BHARATI H. DANGRE, JJ.

JUNE 13, 2017.

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

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

2. The petitioner's husband was serving with Maharashtra State Electricity Distributor Company Ltd. He died while in service on 9/11/1999. The petitioner applied for service on compassionate ground. Initially, petitioner was allowed to join work on a consolidated pay of

Rs.2000/- per month. Petitioner represented to the Department to appoint her on compassionate ground on regular basis. Finally by appointed order dated 27/1/2009, the petitioner was appointed as a Lower Divisional Clerk / Office Assistance in a prescribed pay-scale on compassionate ground subject to her selection by the Designated Selection Committee. The petitioner claims that she worked in that capacity till the date of her superannuation. She retired on 31/7/2013. During this period, on 14/8/2009, petitioner contends that she filed an application addressed to the Executive Engineer of respondent no.5 for getting her date of birth corrected in the service book.

3. It is the contention of the petitioner that she even addressed a communication dated 16/1/2013 to the Education Officer, Higher Secondary, Solapur for correction of date of birth. According to the petitioner in service record and the school record, the date of birth was mentioned as 7/7/1955, but the correct date, according to the petitioner, ought to be 20/8/1957. In reply to the application filed by the petitioner, the Education Officer by communication dated 12/7/2013 rejected the application of the petitioner on the ground that in accordance with the provisions of Rule 26.4 of the Secondary School Code, correction of date

of birth could be carried out in case the student is taking education in the school and as petitioner had left the school, the issue regarding the correction of the birth date entry cannot be looked into.

4. Learned counsel for the petitioner places reliance on the following judgments in support of the contention that Rule 26.4 of the Secondary School Code has been considered to be directory and not mandatory. In that case, the petitioner's application ought to have been considered on merits.

(a) Vilas s/o Dattatraya Ransubhe vs. The State of Maharashtra [2013(1) Bom CR 666].

(b) Shaikh Shafi Ahmed Khadarsab vs. State of Maharashtra and ors. [2013(1) Bom.CR 660].

Learned counsel places reliance on an entry appearing in the Birth Register maintained by the Pandharpur Municipal Council.

5. Learned counsel appearing for the Pandharpur Municipal Council, produced the original register and photostat attested copy of the

entry-sheet wherein the petitioner's name is mentioned along with her date of birth to be 20/8/1957, which is taken on record and marked "X" for identification.

6. The learned AGP submits that in view of the settled position as regards the interpretation of the provisions of Rule 26.4, appropriate orders may be passed.

7. We have perused the record placed before us and the judgments cited (Supra). This court has taken a view that Rule 26.4 of the Secondary School Code is directory in nature and even if a person had left the school, still his/her application for correction of date of birth is required to be considered on its own merits. The Education Officer committed an error in rejecting the application of the petitioner on the ground stated therein. We are, therefore, inclined to set aside the impugned order and remand the matter back to the Education Officer for considering afresh.

8. Impugned order dated 12/7/2013 passed by the respondent no.2A - Education Officer (Secondary), Zilla Parishad, Solapur, is hereby

quashed and set aside and matter is remanded back to Education Officer (Secondary), Zilla Parishad, Solapur. Respondent No.2A is directed to take into consideration the relevant record produced by the petitioner and shall thereafter take appropriate decision at the earliest by passing a brief reasoned order. This exercise shall be completed by respondent no.2A within three months from the date of receipt of this order.

9. Rule made absolute in the above terms. No costs.

(SMT. BHARATI H. DANGRE,J.)

(NARESH H. PATIL,J.)