

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10661 OF 2017

Mukund Atmaram Ingle,]
Aged about 56 years,]
Occupation : Service,]
R/of Ujjani Officers' Colony,]
Gurunanak Chowk, Solapur.] Petitioner

Versus

1. The State of Maharashtra,]
Through the Secretary,]
Water Resources Department,]
Mantralaya, Mumbai – 32.]
]]
2. Superintending Engineer,]
Small Scale Irrigation (W.C.) Circle,]
Yerawada, Pune.]
]]
3. Superintending Engineer,]
Bhima Canal Circle,]
Gurunanak Chowk, Solapur.] Respondents

Mr. Nitin P. Dalvi for the Petitioner.
Mr. N.C. Walimbe, A.G.P., for the Respondents.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 26TH SEPTEMBER, 2017.

ORAL JUDGMENT : [Per Smt. V.K. Tahilramani, J.]

1. Heard learned counsel for the Petitioner and learned A.G.P. for all the Respondents. Rule. By consent, Rule is made returnable forthwith and the matter is heard finally.

2. The Petitioner joined Government service on 26th December 1983 as 'Junior Engineer'. As per the details given by the Petitioner, at that time, his 'Date of Birth' was recorded as "10th October 1959". For the first time, on 20th November 1998, the Petitioner made an application to the concerned authorities for change of his date of birth from 10th October 1959 to 10th October 1960. That request was based on a certificate issued by the Tahasildar, Mehkar in Buldhana District. As there was no response from the Respondents, on 4th May 2007, the Petitioner made another representation to the Secretary, Irrigation Department, in relation to the change of his date of birth. Again, as there was no response, on 26th June 2015, he made a representation to the Chief Secretary and by communication dated 20th July 2016, he was informed that his request was rejected. Being aggrieved thereby, the Petitioner preferred Original Application before the Maharashtra Administrative Tribunal, Mumbai. The said Original Application was presented on 6th January 2017. The said Original Application came to be dismissed by order dated 11th September 2017; hence this Petition.

3. The case of the Petitioner is that, he approached the

Tahasildar, Mehkar, Dist. Buldhana, searching for his date of birth in the year 1987. Thus, it is seen that the Petitioner joined Government service on 26th December 1983; however, for four years after joining service, he did not take any steps in the matter. From the contents of the Original Application, it appears that the Petitioner was born at the place of his maternal father. It is his case that in the year 1987, Tahasildar, Mehkar did not give him the 'Extract' of the relevant record on the ground that, as a result of flood, most of the record got damaged; therefore, he could not get the 'Extract' immediately.

4. As stated earlier, for the first time, the Petitioner made an application on 20th November 1998 to the concerned authorities for change of his date of birth. He did not receive any response to the same. Thus, it is seen that, in the year 1998, the Petitioner realized that his move has not succeeded, or, at-least, it can be said that he came to know that his application was not being accepted. However, the Petitioner did not do anything, except making representations on 4th May 2007 and 26th June 2015. Thus, it is seen that these representations too were made after a gap of about seven to eight years of each representation.

5. As stated earlier, the Original Application was presented on 6th January 2017 and as the Petitioner is due to retire on 30th October 2017, it can be said that the Original Application was preferred almost on the eve of retirement of the Petitioner. Thus, there is no escape from the conclusion that, as the Original Application was presented almost on the eve of retirement, it would be hit by the Judgment of the Supreme Court in the case of *State of Maharashtra and Anr. Vs. Gorakhnath S. Kamble & Ors.*, (2010) 14 SCC 423, which was referred to in *Bharat Coking Coal Ltd. & Ors. Vs. Chhota Birsa Uranw*, AIR 2014 SC 1975.

6. In the discussion, from paragraph No.12 onwards, in the case of *Gorakhnath S. Kamble (Supra)*, the Supreme Court was pleased to refer to a number of earlier Judgments of the Supreme Court, which held that, “*change of date of birth should not be allowed to be made when it was applied for by the employee on the eve of his retirement*”. It was also observed that, “*such a move on the eve of the retirement of an employee also adversely affects the chances of others, who are patiently waiting in the queue for being promoted*”.

7. Thereafter, the learned counsel for the Petitioner placed

reliance on the two decisions of this Court in the cases of *Shriniwas Prabhakar Karve Vs. The State of Maharashtra & Ors.*, 2017 (2) ALL MR 328, and *Ashok P. Meshram Vs. Head Master, Zilla Parishad High School, Palandur (Chauras) and Anr.*, 2014 (6) MLJ 590. In both these cases, the mistake occurred from the side of the Office to record the correct date of birth of the said Applicants. In both of them, in the ultimate analysis, the move for change of date of birth was not suffering from laches. Though a period of more than five years had elapsed in *Shriniwas Karve's* case, but that was because the record of the said Applicant, as per the then prevalent procedure, was maintained elsewhere and, therefore, the application could not be assailed on the ground of delay. The facts in the present case being entirely different, the decision in the case of *Shriniwas Karve* and *Ashok Meshram (Supra)* cannot be made applicable to the present case.

8. Both in *Shriniwas Karve* as well as in *Ashok Meshram (Supra)*, the mistake was on the part of the Office, rather than on the part of the employee. However, in the present case, it is a clear case of indolence on the part of the employee for almost 18 years, which is

inexcusable as far as the Petitioner is concerned. The date of birth of “10th October 1959” was recorded at the time of entry of the Petitioner in Government service, as per the documents submitted by the Petitioner, and no blame of any nature whatsoever can be laid at the door-step of the Respondents or any of their employees. Once it is found that the concerned employee, like the present Petitioner, allowed the things to dither till the last moment and then moved for a change of date of birth just before his retirement, then, in such case, such move should not be allowed to succeed, unless the blame can be put at the door-step of the employer, which is not so in the present case.

9. The Tribunal has considered all these facts and, thereafter, dismissed the Original Application preferred by the Petitioner. Looking to the facts and circumstances of this case and the decisions of the Supreme Court and this Court, as discussed above, we are of the opinion that no case is made out for interference. Hence, the Writ Petition is rejected.

10. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[SMT. V.K. TAHILRAMANI, J.]