

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8283 OF 2006

Shri Parshuram Kondiba Shinde

..Petitioner

Vs.

The Director General and Inspector
General of Police & others

..Respondents

.....

Mr. Balwant Salunke i/by Mr. H.E. Palwe, Advocate for the
petitioner.

Mr. O.M. Kulkarni, AAGP for respondent Nos. 1 to 3.

.....

**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 13th DECEMBER, 2017

ORDER (PER : M.S. KARNIK, J.) :-

By this petition under Article 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 29/9/2006 passed by the Maharashtra Administrative Tribunal (hereinafter referred to as "the Tribunal" for short) dismissing O.A. filed by him.

2. The petitioner joined the police service of the respondents as a Police Constable on 6/12/1971. Thereafter, he was appointed as Police Sub-Inspector and eventually promoted as Assistant Police Inspector and Police Inspector. On 24/11/2004, the petitioner was designated as Senior Police Inspector. In the service book of the petitioner, his date of birth was recorded as 16/9/1948 on the basis of the date of birth of the petitioner as mentioned in the school leaving certificate. This entry was made consequent to his appointment as a Police Constable on 6.12.1971.

3. Learned Counsel for the petitioner submits that when the petitioner came to be selected for the post of Police Sub-Inspector and was sent for training on 1/6/1981 or thereabout, the petitioner made an application supported by his caste certificate and birth extract to be forwarded to the respondent No.1 for effecting appropriate change in the date of birth in the service record of the petitioner as being 14/9/1949 as against 16/9/1948. The petitioner along with the application

submitted birth extract issued by the competent authority viz. Tahsildar, Khandala, District Satara in Village Form No.14. Along with the said application he annexed the certificate of age dated 21/9/1978 issued by the Executive Magistrate, Khandala, in which the date of birth of the petitioner is mentioned as 14/9/1949. The petitioner also relied upon the Maharashtra Government Gazette extract of October, 1978 to the effect that the name of the petitioner was changed from Parshuram Kondiram Vachkar to Parshuram Kondiram Shinde.

4. In the submission of the learned Counsel for the petitioner a decision for change of his date of birth was taken by the respondents on the basis of the application so made in 1981. He however submits that no formal order was issued in this regard. In his submission, the gradation list of the police officers from 1984 till 2005 showing his date of retirement as 30/9/2007 is sufficient to believe that the application made by him in the year 1981 was accepted. Learned Counsel submits that though necessary change was not carried out in the service

book, nonetheless, the date of retirement viz. 30/9/2006 as reflected in the gradation list is sufficient proof of acceptance of his application of 1981 for change in date of birth. Learned Counsel submits that as the petitioner's date of retirement was consistently shown as 30/9/2007 in the gradation list of the police officers right from 1984 till 2005, he bonafide believed that necessary change as regards his date of birth is effected in the service records. In his submission, there is no communication on record which would indicate that his request as regards the change of date of birth has been rejected.

5. Learned Counsel for the petitioner further submits that by an order dated 3rd March, 2006, the petitioner came to know from the police Gazette of the year 2006 that his date of retirement is shown as 30/9/2006. The petitioner sent his representation dated 4th January, 2006 to the respondent No.1 and also a detailed representation by his letter dated 19/1/2006 protesting the incorrect date of retirement. Learned Counsel submits that though the petitioner had submitted the application

in 1981 but did not retain a copy of the same. He tried to obtain the copy from the respondents/department but he was unsuccessful. Learned Counsel also contended that though he came in possession of the birth extract showing his correct date of birth as 1978, however, as the petitioner was busy in preparing for exams for the post of Police Sub-Inspector, he could not make an application within time and ultimately he applied in 1981 for change of his date of birth. In the submission of the learned Counsel for the petitioner, this is not a case where request for change in date of birth is made at the fag end of his service. In fact, it is the respondents who have at fag end changed his date of retirement though the seniority list from 1984 till 2005 indicated his correct date of birth.

6. In the submission of the learned Counsel for the petitioner, the Tribunal ought to have allowed the application on the basis of the overwhelming documentary evidence which was in possession of the petitioner showing his correct date of birth.

7. Learned AGP on behalf of the respondents invited our attention to the reasons recorded by the Tribunal while dismissing O.A. In his submission, the order passed by the Tribunal is well reasoned order upon considering all the material aspects. Learned AGP submits that the petitioner was aware of the entry in the service book, which entry came to be made on the basis of the school leaving certificate supplied by the petitioner at the time of joining the service in 1971. Learned AGP submits that as per the Rules, the petitioner should have applied within the period of five years or in any case within a reasonable period from the date when he entered the service for making any changes in the date of birth. In the submission of the learned AGP, there is nothing on record to indicate that even in 1981 an application was made by the petitioner for the change of his date of birth on the basis of the documents obtained by him in the year 1978. Learned AGP relying upon Rule 7 of the Maharashtra Civil Services (Regulation of Seniority) Rule, 1982, contends that the gradation list is for indicating the seniority of the concerned Government servant

and nothing beyond that. In the submission of the learned AGP the service book reflected the correct date of birth. The date of retirement mentioned in the gradation list was a result of some typographical and bonafide error. The petitioner is trying to take undue advantage of this error.

8. We have considered the submissions advanced by the learned Counsel and have gone through the relevant documents and the order impugned with the assistance of the learned Counsel. In our opinion, the order passed by the Tribunal is a well reasoned order upon considering all the materials on record. We find that the applicant entered the service in 1971 and the entry as regards his date of birth was made in the service book on the basis of the school leaving certificate produced by the petitioner himself. Any change in the date of birth has to be made by making an application within a reasonable time from the date of entry in service. The Apex Court in the case of **State of Punjab & others Vs. S.C. Chadha, (2004) 3 SCC 394**, has stated the importance of the entry of the

date of birth in the relevant register or service book. The Apex Court has categorically held that the rules which prescribe a procedure to be followed for changing the date of birth are with the sole object that request for change in date of birth should be made within a reasonable time and not on the eve of the superannuation of such public servant.

9. Learned Counsel for the petitioner vehemently contended that he came across the relevant birth extract only in the year 1978 where after he made the application in 1981. It is not in dispute that the application as contended to be made by the petitioner in the year 1981 is not on record. In our opinion, it was incumbent on the part of the petitioner to have made an appropriate application for the change of date of birth in the service book within a period of five years from the date of entry into the service or atleast within reasonable time as at relevant point of time the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 were not in force. The Tribunal was justified in holding that the petitioner cannot take undue

advantage of wrong entry of the date of retirement in the gradation list. It is only when the petitioner's date of retirement was notified in the Gazette on the basis of the entry made in the service book that the petitioner approached the respondents for getting his date of birth corrected. We, therefore, do not find any merit in this petition.

10. We may usefully refer to the decision of the Apex Court in the case of **State of Madhya Pradesh & Others Vs. Premlal Shrivastava, (2011) 9 SCC 664**, wherein the Apex Court has held that “if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his/her induction into the service, particularly beyond the time fixed by his/her employer, he/she cannot claim, as a matter of right, the correction of his/her date of birth, even if he/she has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights.”

11. In this view of the matter, the order passed by the Tribunal is a well reasoned order and therefore, warrants no interference. The Writ Petition is dismissed.

12. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)