

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

WRIT PETITION NO.1385 OF 2012

Pratima Pramod Gunjal,
Age 31 years, Occ. Nil,
R/o. Dwarka Nagar, Amalner,
Tq. Amalner, Dist.Jalgaon.

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Municipal Council Education Board,
Amalner Municipal Council,
Amalner, Dist. Jalgaon,
Through its Administration Officer
3. The Headmistress,
Navin Marathi Shala,
Amalner, Dist. Jalgaon.
4. The Maharashtra Public Service
Commission,
Through its Secretary
Bank of India building 3rd Floor,
M.G.Marg., Hutatma Chowk,
Mumbai-1.

RESPONDENTS

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Mr.B.R.Warma, Advocate for the petitioner
Mr.S.J.Salgare, AGP for the Respondent
No.1/State
Mr.S.S.Shete, Advocate for respondent no.2
[absent].
Mrs.M.N.Deshpande, Advocate for respondent
no.3 [absent].
Respondent no.4 served.

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 27.02.2018
Pronounced on : 05.03.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition is filed with the following prayers:

A) *By issuing writ of Certiorari or appropriate writ or order or direction in the like nature impugned communication dt. 1/2/2012 issued by respondent no.2 being out ward No.56/549/2011-12 (EXH-J) may please be quashed and set aside and respondent no.2 be directed to issue necessary orders for correction of birth date entry of petitioner recorded in education record of respondent no.3 school as per extract of birth register (EXH-E)*

issued by Municipal Corporation, Jalgaon.

B) By issuing writ of Mandamus or appropriate writ or directions in the like nature the respondent no.4 be directed to accept and consider the birth date of petitioner shown on birth certificate issued by the Registrar Birth and Death Registration Act i.e. Municipal Corporation Jalgaon at the time of interview for post of Police Sub Inspector examination 2011.

3] Learned counsel appearing for the petitioner submits that when the petitioner was admitted in the primary school at Amalner, her date of birth has been shown as 04.05.1981 by her parents. Accordingly, initial record of school was prepared and maintained by respondent no.3. The petitioner completed her education up to graduation and thereafter appeared for competitive examinations. It is the case of the

petitioner that date of birth appearing in S.S.C. certificate is on the basis of the school leaving certificate issued by respondent no.3, on completion of education of 4th standard by the petitioner. Respondent no.3 has committed mistake in mentioning the date of birth at the time of issuance of the school leaving certificate. The petitioner thought it fit to correct the date of birth in the school record, and therefore, filed an application in the office of respondent no.3 and requested to correct the date of birth on the basis of birth certificate issued by the Jalgaon City Municipal Corporation, Jalgaon. Respondent no.3 informed the petitioner that since the petitioner has left the school, no changes can be made in the school leaving certificate in respect of the date of birth of the petitioner. Thereafter, the petitioner filed an application on 17.01.2012 before respondent no.2 under Section 48 [e] of the

Bombay Primary Education Rules and requested respondent no.2 to issue necessary orders for correction of birth date in basic education record i.e. record of primary school. On receipt of the said application, respondent no.2 also informed the petitioner that the Board has no power to issue orders for correction of birth date in the primary education record.

4] Learned counsel appearing for the petitioner submits that as per the Birth and Death Registration Act, the maternity Hospital is under obligation to inform the birth date and gender along with name of mother / father to the Registrar i.e. Chief Officer / Commissioner of the Municipal Council or Corporation. Therefore, entry in the birth register would prevail for consideration of age. Learned counsel further submits that similar issue like raised in the present petition has already been considered

by the Division Bench [Coram: S.S.Shinde & P.R.Bora, JJ.] of the Bombay High Court Bench at Aurangabad in the case of *Bhagwan Gulabsing Rajput Vs. State of Maharashtra & others* in Writ Petition No.3639 of 2015, decided on 7th May, 2015, by another Division Bench in the case of *Vinod s/o Bapurao Singewar Vs.The State of Maharashtra and others* in Writ Petition No.4264 of 2009, decided on 15.01.2010 and in the case of *Popat Trimbak Palve Vs.The State of Maharashtra & others* in Writ Petition No.5976/2010 decided on 24.09.2010.

5] On the other hand, learned AGP appearing for the respondent-State fairly submits that the issue raised in this Petition is answered by the Division Bench in the case of *Bhagwan Gulabsing Rajput [cited supra]*.

6] We have heard the learned counsel

appearing for the parties, perused the grounds taken in the petition, annexures thereto including the impugned order passed by the authority and the judgment of this Court in the case of *Shaikh Shafi Ahmed Khadarsab Vs. State of Maharashtra and others*¹. This Court while considering the similar fact situation, referring the provisions of para 26.4 of the Secondary Schools Code in para 12 of the judgment, held thus:

12. In the present case, the application has been rejected not on merits but only on the technical ground that it had been made after the petitioner had left the school and joined the junior college. In our view, the respondent No.3 Education Officer ought to have considered the application on its own merits and ought not to have rejected it only on the technical ground that the

¹ 2012 [5] Mh.L.J. 36

application had been made after the petitioner had left the school. Of course, for ordering any change the respondent No.2 would have to be satisfied about the merits of the case and the bona fides of the petitioner."

7] In the light of the discussion herein above and in particular, the observations of this Court in para 12 of the judgment in the case of *Shaikh Shafi Ahmed Khadarsba [supra]*, we are of the opinion that the application of the petitioner should not have been rejected only on the ground that the petitioner has left the school. It is open for the authority concerned to consider the application in the light of the provision of Para 26.4 of the S.S. Code and give reasons while accepting or rejecting the prayer of the petitioner.

8] In that view of the matter, the impugned order / communication dated

01.02.2012 passed / issued by respondent No.2 is set aside. The application of the petitioner is restored to its original file. Respondent no.2 is directed to decide the application of the petitioner afresh in the light of above mentioned provisions of the S.S. Code, as expeditiously as possible, however, on or before 30.04.2018, on its own merits. The Petition is allowed to above extent and stands disposed of accordingly. Rule is made absolute on above terms.

9] The parties to act upon authenticated copy of this order.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE