

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
22 WRIT PETITION NO. 7338 OF 2016**

ASHOK BAJIRAO AHER

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Sanjay R. Choukidar, Advocate for the
Petitioner.

Mrs. M. A. Deshpande, AGP for Respondent-State.

Mr. Vishal A. Bagdiya and Mr. Sudhir K. Chavan,
Advocates for the Respondent No.4.

Mr. Mr. J. M. Murkute, Advocate for Respondent
No.5.

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**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 03rd DECEMBER, 2018.

PER COURT:-

1. The petitioner assailed the order dated 18.02.2011 passed by respondent no.2 and the order dated 05.03.2016 passed by respondent no.1. According to the said order, the authorities are directed that the date of birth of the petitioner shall be recorded as 21.07.1950 instead of 21.07.1952.

2. Mr. Choukidar, learned counsel for the petitioner submits that the entry in the school record and the S.S.C. Certificate was wrongly recorded. The father of the petitioner died when the petitioner was child. The petitioner was sent to his maternal place and the date of birth was

recorded on assumption. The petitioner initially joined the post of Lecturer in the employment of Arts and Commerce College, Ambad run by Matsyodari Shikshan Sanstha, Ambad on 01.08.1980 and the date of birth there also was wrongly recorded. The petitioner applied for recording his correct date of birth as 21.07.1952. The Principal of the College considered the same and after having satisfied recorded the date of birth as 21.07.1952 and also made endorsement to that effect in the service book of the petitioner. Since the said date, the petitioner's date of birth is treated as 21.07.1952. Subsequently, pursuant to the advertisement, the petitioner was selected and appointed as Principal of Sant Tukaram College at Parbhani in the year 2002 and continued on the said post. The respondent no.5 a dismissed employee filed a false complaint with regard to the date of birth of the petitioner. The respondent passed an order thereby concluding that the date of birth of the petitioner is recorded as 21.07.1950. In appeal the same has been confirmed. The initial order is passed on 18.02.2011 and the petitioner was directed to deposit the amount of salary that he has drawn after 21.07.2010. The petitioner had assailed the said order and also deposited the amount in compliance of the notice issued to him. The petitioner deposited an amount of Rs.4,63,740/-.

3. According to the learned counsel, after enquiry the Principal had corrected the date of birth of the petitioner as 21.07.1952. The same was again re-affirmed in the year 1995 by the Principal and endorsement to that effect was also made in the service book. According to the learned counsel even the date of birth cannot be changed after five years of joining the service. In the year 2010 the order is passed about changing date of birth of the petitioner, the same is illegal.

4. The learned counsel further submits that under the Government Resolution dated 23.11.2011, the date of retirement of the Principal has been increased from 62 to 64 years. The petitioner would have worked till the age of 64 years that is 21.07.2014. The petitioner be given the benefit of the same.

5. Mr. Murkute, learned counsel appears for respondent no.5 and submits that the petitioner had committed forgery and manipulated the service book. The service book records the date of birth of the petitioner as 21.07.1950 and the same was not corrected. The original service book depicts the same date of birth. The enquiry has been conducted and upon enquiry it has been found that there is a manipulation in the service book by the petitioner and the real date of birth of the petitioner recorded was 21.07.1950, the same is correct. The procedure is provided under Rule 38(3) of the

Maharashtra Civil Services (General Conditions of Services) Rules, 1981. If the petitioner says that the date of birth is corrected, then said procedure has not been adhered to. The order has been rightly passed by both the authorities.

6. The respondent no.4 is a institution where the petitioner was serving. It appears that there is dispute in the management and two rival persons claiming to be the office bearer are representing the respondent no.4. One group is represented by Mr.Bagdia and another group is represented by Mr. Chavan, learned counsel. We need not enter into the dispute between two parallel groups in the management of the institution, as we are only concerned with the correction of date of birth of the petitioner.

7. In the present matter we would also not be deciding the correct date of birth of the petitioner. We would only consider the date of birth recorded in the service book and the corrections whether made therein.

8. We had asked the learned A.G.P. as to whether the petitioner had given any application for correction of date of birth. The Administrative Officer of the Higher Education Department has forwarded the copy of the application submitted by the petitioner for correction of date of birth. It appears that the petitioner submitted the application on 16.12.1981

for recording his date of birth as 21.07.1952. Two service books are produced before us. The employee has produced the original service book. Whereas, respondent no.5 through Mr. Chavan, learned counsel has also produced before us the service book claiming to be the original service book. There cannot be two original service books. Either of them has to be incorrect.

9. In the service book produced by the employee, his initial date of birth is recorded as 21.07.1952 and the same is in the year 1980. If the entry is in the year 1980 the date of birth ought to have been recorded as 21.07.1950 and upon application being made, if correction is made the correct date of birth has to be recorded.

10. However, in the said service book produced by the petitioner a endorsement of the Principal appears. The said endorsement appears to be of 30.12.1981. The Principal appears to have examined the application, narration of the information given, the horoscope and has endorsed the date of birth to be recorded as 21.07.1952. In the service book produced by one group, the initial entry of the date of birth is recorded as 21.07.1950, however, there is an endorsement on 01.08.1995 that date of birth as 21.07.1952 is sanctioned and attested. The date of birth as produced by one group of respondent no.5 which is against the petitioner also shows that in the year 1995 the

Principal had attested the date of birth as 21.07.1952 and atleast since then for all purposes the date of birth of the petitioner was considered as 21.07.1952. The question would be at the fag end of his service whether change again could have been made. The petitioner had continued in service even after 21.07.2010 till the present order is passed on 18.02.2011, meaning thereby the management and petitioner were under bonafide belief that 21.07.1952 is considered as date of birth of the petitioner for service purposes.

11. Assuming for a moment that the date of birth has been wrongly recorded as 21.07.1952, it would not be permissible at the fag end of the service to allow the change therein. Considering the date of birth of the petitioner recorded as 21.07.1952 earlier, it would not be appropriate to direct the change of the said date of birth and to retire petitioner prior to 21.07.2012.

12. We are not inclined to accept the contentions of the petitioner that his services should be counted till 21.07.2014, as according to him the age of retirement has been extended to 64 years as per Government Resolution dated 23.11.2011. There are certain conditions to be complied before granting extension of age of retirement. The Performance Review Committee has to submit the report about the suitability of the candidate for continuation up to 65 years.

As the petitioner was made to retire in February 2011, there was no opportunity to undergo the said procedure. In view of that, it would not be permissible to accept the contentions of the petitioner that his services should be counted till he attained 65 years of age.

13. The petitioner certainly would be entitled for salary till the date he has worked. The amount of Rs.4,63,740/- deposited by him is required to be refunded to the petitioner. However, we are not inclined to grant any actual monetary benefit to the petitioner from the date the petitioner had not worked till the date he attained the age of superannuation that is from 18.02.2011 to 21.07.2012. However, for the pensionary benefits and notional increment his service shall be counted till 21.07.2012.

14. The amount of Rs.4,63,740/- be refunded to the petitioner within a period of three (03) months from today. The pensionary benefits shall be recalculated in view of the aforesaid order. The original service books are returned to the respective parties.

15. Writ Petition is disposed of. No costs.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE