

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11364 OF 2015

Sopan Rajaram Rankhambe .. **Petitioner**

Versus

The State of Maharashtra and others .. **Respondents**

Shri Milind Patil, Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl. G. P. for Respondent Nos. 1 to 4.

Shri M. P. Kale, Advocate for Respondent Nos. 5 and 6.

WITH

CIVIL APPLICATION NO. 3758 OF 2016

CORAM: **S. V. GANGAPURWALA &**
 SUNIL K. KOTWAL, JJ.

DATE: **30th July, 2018**

PER COURT:

1. Mr. Patil, learned counsel for the petitioner submits that the Education Officer under order dated 11.12.2015 directed that the petitioner shall stand retired at the age of 58 years, considering the date of birth as 15.05.1951. Mr. Patil, learned counsel submits that the real date of birth of the petitioner is 15.05.1959. Much prior to the entry in the service, the petitioner has corrected his date of birth in the year – 1982, by publishing in the Government

Gazette. The date of birth is also corrected in the SSC certificate. The petitioner had joined the services with respondent - institution on 12.06.1989 as an Assistant Teacher. The date of birth recorded in his service book at the time of joining service is 15.05.1959. According to the learned counsel, there was no reason for the Education Officer to observe that the date of birth of the petitioner ought to be 15.05.1951, after almost 15 years of putting in service. According to the learned counsel, the date of birth in the service book cannot be changed after five years of entering the service. The learned counsel submits that all the documents on record except the school admission extract shows the date of birth as 15.05.1959.

2. Mr. Yawalkar, learned Additional Government Pleader submits that the date of birth has been got changed in the Gazette simply by filing the affidavit. The same does not have any probative value. Even though in the service book of the

petitioner the date of birth is recorded as 15.05.1959, the Education Officer after having found the date of birth being recorded as 15.05.1951 in the school record which is authentic has rightly passed the order. It is highly improbable that at the age of five years the petitioner would be admitted in 4th standard. The school record suggests in that fashion.

3. We have considered the submissions canvassed by the learned counsel for respective parties.

4. It is not disputed that at the time of entry in service, the date of birth of the petitioner in the service book is recorded as 15.05.1959 and the said date of birth continued for all the purposes till the impugned order is passed. We would not give much credence to the change of date of birth by publishing it in the Government Gazette as the same is simply on the basis of affidavit. The school record no doubt records the date of birth of the petitioner as 15.05.1951. We have considered the probability of the case also. It

appears that the petitioner has passed SSC in the year – 1974 in first attempt. If the date of birth of the petitioner is considered as 15.05.1951, then he would be 23 years of age as on the date of passing SSC and if it is considered as 1959, he would be 15 years of age at the time of passing SSC examination. All the other attending documents produced on record records the date of birth of the petitioner as 15.05.1959.

5. It is further submitted that by following due procedure the date of birth of the petitioner is also recorded under the provisions of the Births and Deaths Registration Act, 1969 and the same is 15.05.1959. If the date of birth of the petitioner would have been considered as 15.05.1951, then on the date the petitioner was appointed he had crossed 38 years of age and was not qualified even for appointment.

6. In normal course, the date of birth in the service book is not changed after five years, subject to certain exceptions. In the present

case, for 15 years the same date of birth is recorded in the service book continuously and in view of that and in view of the attending documents the date of birth of the petitioner as 15.05.1959 appears to be more probable.

7. In the light of above, the impugned order is quashed and set aside. The petitioner shall be continued in service considering his date of birth as 15.05.1959. It is made clear that, petitioner would not be entitled for salary / back wages from 01.01.2016 till the date his superannuation considering his date of birth as 15.05.1959. However, for pensionary purpose the service of the petitioner shall be counted till May – 2016.

8. Writ Petition accordingly allowed in above terms. No costs.

9. In view of disposal of the writ petition, the civil application is also disposed of.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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