

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.378 OF 2018***

Inacio Colaco

... Petitioner

Versus

State of Goa,

Through its Chief Secretary & Ors.

.... Respondents

Ms. Neha Shiroadkar, Advocate for the Petitioner.

Mr. Sagar G. Dhargalkar, Additional Government Advocate for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.******Date : 30 July 2018.******P.C. :***

By this petition, the Petitioner has challenged the order passed by the Respondent-Authority relieving the Petitioner from the services. The Petitioner was relieved from the services as having been superannuated as per the entry in the service book. The Petitioner contends that the birth date entry made in the service book of the Petitioner is shown as 13 August 1957 is incorrect and it should have been 30 July 1960.

2. The Petitioner joined the services of the Respondents on 27 August 1997 as a Line Helper. When he was due to retire on superannuation, he made a representation on 5 April 2017, for correction of his birth date. The same was not accepted. Hence, the Petitioner has approached this Court.

3. The learned counsel for the Petitioner submitted that the Petitioner is not educated and he had no reason to check his service book to find out whether the entry has been correctly made or otherwise and the Form 3 under Rule 54 (12) which is given by the Petitioner mentions the date of birth as 30 July 1960. The learned counsel relying upon the decision of the Division Bench in the case of the *State of Maharashtra Vs Ganpat D. Salunkhe*¹ submitted that since there was no mistake of the Petitioner and since it was only an error on the part of the Authority, the Petitioner cannot be made to suffer.

4. The learned Additional Government Advocate relied upon the Service Rules more particularly, regarding the alteration of the date of birth. The learned Additional Government Advocate submitted that the request for change or alteration of the date of birth will have to be made within five years and the Petitioner had failed to

1 2017 SCC OnLine Bom 8703

do so.

5. As regards the contention of the Petitioner that the Petitioner had no reason to check the service book is difficult to accept. The service book is accessible to the Government servant and it is not possible that the Petitioner could not have even looked at the service book when he was in service for a period of 20 years or so. As regards the information under Form 3 is concerned, the service book also contains a bio-data of the Petitioner which is signed by the Petitioner wherein the date of birth is stated as 13 August 1957. If there was an apparent disparity the Petitioner should have immediately drawn the attention of the Authority to the same. The learned Additional Government Advocate has pointed out that the birth certificate shows the date of birth as 13 August 1957, which the Authority followed.

6. As regards the decision of the Division Bench of this Court, the facts before the Division Bench were that the change in birth date in the service record was granted by the Administrative Tribunal against which the State has filed a writ petition. The Division Bench found that if the entry in the record as original was relied upon, the Petitioner would be at the age of 5 years and it was an obviously absurd, which the Tribunal has corrected and, therefore, the

Division Bench did not entertain the writ petition. The present is not such a case. The Petitioner had all opportunities to get the records corrected if the Petitioner thought that it was incorrect. The Apex Court in the case of *State of Maharashtra and another Vs Gorakhnath Sitaram Kamble and others*², after adverting to various earlier decisions, has reiterated that the employee should not be permitted to change the date of birth at the fag end of the service career. This is precisely the Petitioner is attempting to do. In these circumstances, the writ petition cannot be entertained and is accordingly rejected.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.

² (2010) 14 SCC 423