

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6229 OF 2017

The State of Maharashtra and ors.	...Petitioners
Versus	
Bhagavan M. Patil	...Respondent

Ms Shruti D. Vyas, B-Panel Counsel for the State/ Petitioners.
Ms Vaishali Jagdale for the Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 10.07.2018.

ORAL JUDGEMENT:

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 19..9.2016 made by the Maharashtra Administrative Tribunal (MAT), Mumbai allowing O.A. No.676 of 2015 instituted by the respondent for record of change of date of birth from 2.6.1957 to 17.10.1959 and consequential reliefs on the basis of such change.

4] Ms Shruti Vyas, learned B-Panel Counsel for the State – petitioners, submits that the school register records the respondent's date of birth as to 2.6.1957. The same date is reflected in the SSC Certificate as well. The respondent himself accepted this is correct date of date of birth at the time of his entry into service on 20.9.1984. In such circumstances, Ms Vyas submits that the MAT was not at all justified in ignoring all such materials and directing the petitioners- State to change the respondent's date of birth in the records to 17.10.1959.

5] Ms Vyas submits that a detailed order has been made by the competent authority of the State based upon assessment of the material produced by the respondent as well as the material collected by the department. In the absence of any perversity, the MAT, was unjustified in interfering with such findings of fact recorded by the competent authority. For this reason as well as Ms Vyas submits that the impugned judgment and order is liable to be set aside.

6] Ms Vaishali Jagdale, learned counsel for the respondent, submits that in the present case, the respondent made application for correction of date of birth in the records within three years from the date of joining service, i.e., well within five years entry in government service prescribed in Rule 38 of the Maharashtra Civil Services (Condition of Service) Rules 1981. She submits that the respondent explained the error which had crept into the school register and also placed on record. The birth certificate, which is again, a public document emanating from the records of the Government itself. She submits that in terms of the rules, executive instructions issued by the State itself and the ruling of this court in case of **Vasudha G. Mandvilkar vs. City and Industrial Development Corporation of Maharashtra Ltd. - 2008 Mh. L.J. 147**, the competent authority was required to give weightage of entry made in the birth register. For all these reasons, Ms Jagdale submits that there is no ground to interfere with the impugned judgment and order made by the MAT and therefore, this petition may be dismissed.

7] The rival contentions now fall for our determination.

8] In this case, there is no dispute that the respondent applied for change of date of birth in the service records about 3 years from the date of his entry in Government service. This is well within the period of five years stipulated in Rule 38 of the MCS Rules. In fact, the record indicates that there was delay on the part of the petitioners – State in dealing with such application. Therefore, this is not a case where the application of change of date of birth in the records has been made beyond statutorily prescribed period or on the verge of the respondent's retirement.

9] The respondent's application for change of date of birth in the service records was backed by an official document, i.e., birth certificate as well as the entries in the registers of birth and death maintained by the petitioners-State itself. Even the competent authority, has not disbelieved either the birth certificate or the entries in the registers of birth and death.

10] The only reason why the competent authority declined to accept the petitioners' request is that if the date of birth as indicated in the birth certificate is accepted as correct,

then, the age of the respondent at the time of his entry in Standard -I (primary school) would be 4 years 11 months and 26 days. The competent authority has reasoned that normally, the age of a child at the time of his entry in Standard - I is '6' years. The competent authority also make some vague reference to Rules which prohibit admission to 1st standard prior to a child attaining the age of '6' years.

11] The MAT, has quite correctly assessed such defence and thereafter rejected it. In the first place, nothing was produced on record by the petitioners- State to suggest that in the year 1964, when the respondent secured admission in Standard - I (primary school), there was some bar for admission to Standard - I before attaining the age of '6' years. Secondly, it is too much to suggest that the respondent in the year 1964, planned and took some undue advantage for securing admission to Standard-I at the primary school and thereafter, to secure some position in Government service 25 years later.

12] This Court in *Vasudha Mandvilkar (supra)* has held that in case of variance in the record of the date of birth in SSC

Certificate/Leaving Certificate on one hand and in the registers of births and deaths on the other, the entry made in the register of births and deaths must be preferred or granted an additional weightage. There are executive instructions issued by the petitioners - State itself, which also seems to accept this position. Thus construed, there is really no ground to interfere with the impugned judgment and order made by the MAT.

13] As regards the entries in the school register, we deem it appropriate to extract what is set out in paragraphs 26 and 27 of the impugned judgment and order, which read thus:

*“26. Considering that the State has placed reliance on the register of the school showing admission of various students, this Tribunal has minutely examined various entries made in the said register which is titled as (Pravesh - Nirgam Register), photocopies of which 4 pages are kept on record by the Government at pages 105 to 108. The register contains entries from Sr. No.203 to 246. **It reveals that barring few entries, by and large the date of birth of the candidates admitted in the school in year 1964 is either “1st or 2nd June” either of 1956-57.***

27. The very fact of monotonous date of birth and year of birth of majority of students, tends to prove that the date of birth mentioned in the school register is not based on truth and fact, rather those are

recorded in most random and rather on wholly tentative basis This must have occurred because villages were generally not keen in recording the birth. Therefore, it is evident that the entry taken in the school register is totally of a superfluous nature and does not carry any worth of evidence whatsoever."

(emphasis supplied)

14] From the aforesaid, it is reasonable to proceed on the basis that the entries in the school records appear to have been made quite casually. As noted by the MAT, the entire from 203 to 246, i.e., almost 43 entries, which were produced by way of illustration before the MAT indicated that by and large the date of birth of the students recorded in the school register for the year 1964 was either "1st or 2nd June" of the year 1956-57. This certainly reflects upon the evidentiary value to be attached to such entries. In contrast, the entry in the register of births and deaths, very clearly indicates that the respondent's date of birth as 17.10.1959.

15] In such circumstances, we cannot say that the finding recorded by the competent authority was, without very good reason, upset by the MAT. The finding recorded by the competent authority had ignored the relevant material in

the form of entries in register of birth and death, State's own executive instructions as well as the law laid down by this court in case of *Vasudha Mandvilkar (supra)*. These were good reasons for which, the MAT was quite fortified in interfering with the findings of the competent authority.

16] Accordingly, we see neither any jurisdictional error nor any illegality in the impugned judgment and order. This petition is therefore, dismissed. Rule is discharged. There shall, however, be no order as to costs.

17] Now that the respondent has already retired, we direct the petitioners - State to comply with the directions in the impugned judgment and order within a period of 8 weeks from today.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Dinesh
Sadanand
Sherla

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