

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 10044 OF 2014**

Miss Tara M. Kandekar ...Petitioner  
Versus  
The Dean/Administrative Officer  
Grant Government Medical College  
& Sir J.J. Group of Hospitals ...Respondent

Mr. Vinayak Kumbhar i/b. Mr. S.A. Mane for the Petitioner.  
Mr.N.C. Walimbe, AGP for the Respondent – State.

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

**DATE : 12<sup>th</sup> MARCH 2018**

**ORAL JUDGMENT:**

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 16<sup>th</sup> September 2014 made by the Maharashtra Administrative Tribunal (MAT) dismissing the petitioner's O.A. No. 1004 of 2013 seeking for change of her date of birth from 27<sup>th</sup> July 1957 to 29<sup>th</sup> March 1959.

The petitioner, had in fact, challenged the rejection of her application dated 4<sup>th</sup> May 2012 made after almost 28 years of service seeking for correction of date of birth.

4] Mr. Vinayak Kumbhar, learned counsel for the petitioner, submits that in the service book the petitioner's correct date of birth as 29<sup>th</sup> March 1959 had been initially recorded. Thereafter, without any notice to the petitioner and quite unilaterally this entry was scored off and in its place, the incorrect date of birth, i.e., 27<sup>th</sup> July 1957 came to be entered. Mr. Kumbhar submits that since such change was unilateral and without afford of reasonable opportunity to the petitioner, such change was illegal, null and void. Mr.Kumbhar submits that such change was noticed by the petitioner only in the year 2012 and therefore, the petitioner, made application for restoration of the correct date of birth on 4<sup>th</sup> May 2012. Mr. Kumbhar submits that there is un-impeachable material in the form of birth certificate as well as extract from the register of births and deaths forwarded by the Tehsildar, from which, it is quite clear that the petitioner's correct date of birth is 29<sup>th</sup> March 1959. Taking into consideration of these aspects, the

respondent was duty bound to restore in the service records the petitioner's correct date of birth, i.e., 29<sup>th</sup> March 1959. The rejection is illegal, arbitrary and unconstitutional. The impugned judgment and order, insofar as which upholds the rejection is also equally arbitrary, illegal and unconstitutional.

5] Mr. Walimbe, learned AGP for the respondent, submits that the change in the service book was on the basis of the school leaving certificate/SSC certificate submitted by the petitioner herself at the time of her appointment way back in the year 1983. Mr. Walimbe submits that it is inconceivable that the petitioner was not aware of this entry in the service book made in the year 1983 until the year 2012. Mr. Walimbe submits that there is inconsistency in the case pleaded by the petitioner, because, in one place, she states that she had in fact filed an affidavit along with copy of the birth certificate before the respondent in order to explain the discrepancy in the school leaving certificate and it is on this basis that the date of birth of 29<sup>th</sup> March 1959 came to be entered. He points out that there is no endorsement receipt of either

the affidavit or the copy of the birth certificate. He points out that the service record indicates that only school leaving certificate was furnished by the petitioner and it is the original of this certificate, which was taken back by the petitioner as per the endorsement made by the petitioner herself in the service book. Mr. Kumbhar submits that belated application for change of date of birth made at the conclusion of service tenure cannot be entertained in terms of the service rules applicable to the petitioner. He submits that there was no legal infirmity in the rejection of the petitioner's belated application for change in the date of birth. He submits that there is no legal infirmity whatsoever in the view taken by the MAT. For all these reasons, Mr. Walimbe submits that this petition is liable to be dismissed.

6] In this case, there is no dispute that the petitioner came to be appointed as a Staff Nurse on or about 26<sup>th</sup> October 1983. The application for correction of date of birth in the service records was made on 4<sup>th</sup> May 2012, i.e., after almost 28 years from the date of the petitioner's appointment as Staff Nurse. The case of the petitioner is

that she was not aware of the entry in her service book indicating her date of birth as 27<sup>th</sup> July 1957.

7] The respondent as well as the MAT upon consideration of the material on record have returned a finding that the petitioner was aware of the entry in the service book and her case that she was not aware of such entry until 2012, is quite unbelievable. In this regard, the MAT, has relied upon the endorsement on the service book as regards the return of SSC certificate/school leaving certificate, implying thereby that it was this document which was produced by the petitioner as proof of age/date of birth. Admittedly, this document indicates the petitioner's date of birth is 27<sup>th</sup> July 1957. Secondly, the MAT has made reference to some affidavit on stamp paper dated 28<sup>th</sup> October 1982 and copy of birth certificate, which is alleged to have been produced by the petitioner at the time of her appointment. The MAT has correctly noted that there is no endorsement of receipt on these documents. Further, the fact that the petitioner claims to have produced such documents suggest that the petitioner was quite aware of the entry in her service book and it is only in

order to correct such entry that such documents were claimed as produced. Thirdly, the entry in the service book itself indicates that upon verification of the documents submitted by the petitioner herself, i.e., SSC certificate/school leaving certificate, it was noticed that her date of birth was 27<sup>th</sup> July 1957 and it is for this reason that earlier entry in the service book was scored off. This means that the correction was not done in some clandestine manner.

8] In any case, the moot question is that even this correction was done way back in the year 1983 or 1984 and the petitioner, has reacted against the same only in the year 2012 when in fact, the material on record suggests that the petitioner was very much aware of the entry in her service book. The finding of fact recorded by the MAT cannot be said to be based on no evidence or suffers from perversity. In such circumstances, there is no case made out to review such finding of fact recorded by the MAT taking into consideration the restrictive parameters of judicial review in a petition of this nature.

9] The petitioner seeks to explain that since her parents were illiterate, an incorrect date of birth came to be recorded in her school records. If this is the position and if the petitioner indeed had her birth certificate indicating different date of birth at the time she was appointed as Staff Nurse, it is only reasonable to proceed on the basis that such birth certificate would have been produced by the petitioner. Further, there is material on record which indicates that copies of service book are issued to the employees. The petitioner, in such a situation, should have been diligent enough to obtain a copy of the service book or otherwise, ensure that her date of birth is recorded as per her say and as per the documents produced by her. The application made almost after 28 years was rightly not entertained by the respondent in the light of not only service rules applicable in such matters, but also in the light of several decisions of the Hon'ble Supreme Court in the matter of entertainment of application on the eve of retirement seeking for change in the date of birth.

10] The document, in form of letter from Tehsildhar purportedly enclosing the extract from the birth register

also cannot, in the facts and circumstances of the present case, be regarded as some strong or unimpeachable document. Admittedly, on the basis of this document, the petitioner, took no steps to make corrections in the school leaving certificate or SSC certificate for all these years. Even the affidavit on which the petitioner seeks to place reliance was purportedly sworn in the year 1982 on a non-judicial stamp-paper. There is no evidence that such affidavit or even for that matter the birth certificate was really produced before the respondent. Taking into consideration of these circumstances, it cannot be said that there is any jurisdictional error or perversity in the view taken by the MAT.

11] In ***Bharat Coking Coal Limited and ors vs. Chhota Birsa Uranw - (2014) 12 SCC 570***, the Hon'ble Supreme Court has held that unless a clear case on basis of material, which can be held to be conclusive in nature is made out by an employee, court/tribunal should not issue direction on the basis of materials which make such claims only plausible.

12] In ***Home Department vs. R. Kirubakaran - 1994 Supp (1) SCC 155***, the Hon'ble Supreme Court has held that an application for correction of date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the

court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books.

13] For all the aforesaid reasons, we detect neither any jurisdictional error nor any perversity of approach so as to warrant interference with the impugned judgment and order under Articles 226 and 227 of the Constitution of India.

14] Rule is therefore, discharged. There shall, however, be no order as to costs.

**(M.S. SONAK, J.)**

**(ACTING CHIEF JUSTICE)**