

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8253 OF 2017

01 Gangamai Education Trust's
Nagaon, Tq. And District Dhule,
through its Chairman
Shri Manohar Dattatraya Patil
(Bhadane)

02 Dr. Prakash Nana Patil,
age: 62 years, Occ: Service,
R/o Nagaon, Tq. and District
Dhule.

Petitioners

Versus

01 The State of Maharashtra,
through the Secretary for
Higher and Technical Education
Department, Mantralaya,
Mumbai.

02 The Joint Director,
Higher Education,
Jalgaon Region, Jalgaon,
District Jalgaon.

Respondents

Mr.V.D. Hon, Senior Counsel i/by Mr.A.V. Hon, Advocate for the
petitioners.

Mr. S.P. Sonpawale, AGP for Respondents.

**CORAM : PRASANNA B. VARALE &
AVINASH G. GHAROTE, JJ.**

DATE : 3rd October, 2019

JUDGMENT : (Per : PRASANNA B. VARALE, J.)

1 The petitioner no.1 is a Trust running educational institutions and the petitioner no.2 is/was a principal in one of the institutions being run by the petitioner no.1, whose date of birth was claimed to be 07.04.1955, according to which, the petitioner no.1 is claimed to be completing the age of superannuation on 30.04.2017. The petitioners have filed present petition for issue of writ of certiorari to quash and set aside the communication dated 20.06.2017 (Exhibit "G"), issued by the Joint Director, Higher Education, Jalgaon Region, Jalgaon/ Respondent No.2 addressed to the petitioner no.1 whereby the proposal of the petitioner no.1-Trust, for extension of the retirement age of the respondent no.2, from 60 years to 65 years for the school situated in rural/hilly/tribal areas, in the light of the Government Resolution dated 12.07.2016, has been turned down for reasons as recorded therein. If the G.R. dated 12.07.2016 was held to be applicable to the petitioner no.2, his age of superannuation would have increased to 65 years as per the said G.R..

2 Shri V.D.Hon, learned Senior Counsel, assisted by Shri A.V.Hon, appearing for the petitioners, contend that the impugned order is bad in law for the reasons that the date of birth of the petitioner no.1, as recorded in his service book as well as the documents issued by the University and the College was 07.04.1955, as a result of which, he was entitled for the benefit of G.R. dated 12.07.2016. It is further contended that the entire exercise done by

the Respondent No.2, was contrary to the provisions of Rule 38 of the M.C. S. (General Conditions of Service) Rules, 1981 and thus stands vitiated. It is further contended that the Respondent No.2 ought to have placed reliance upon the documents submitted by the petitioner no.2 and specifically the service book, entries in which have a presumptive value. It was, therefore, submitted that the order dated 20.06.2017 be quashed and set aside and the Respondents be directed to approve the proposal dated 03.04.2017, as sent by the petitioner no.1, which was in tune with the G.R. dated 12.07.2017 and thereby grant extension to the services of petitioner no.2 up to the age of 65 years and he be permitted to serve on the post of Principal of Arts, Commerce and Science College at Nagaon. The further reliefs as claimed in the petition, would depend upon the communication dated 20.06.2017 being quashed and set aside.

3 Learned AGP Shri S.P.Sonpawale for the Respondents, opposes the submission of learned Senior Counsel Shri V.D.Hon, and contends that the impugned order is correct and is based upon the information collected and received by the Respondent No.2 during the course of inquiry in considering the proposal of petitioner no.1 dated 03.04.2017, which information, discloses a wilful suppression on the part of petitioner no.2, vis-a-vis his date of birth, and the proposal has accordingly been considered in the light of the material/information received and has been rightly rejected by the Respondent No.2.

4 Having heard the respective learned Counsel and having perused the record, we find that the claim of petitioner no.2 that his date of birth was 07.04.1955, cannot be sustained. This is so for the reason, that from the material collected by the Respondent No.2, it is evident that the date of birth of the petitioner no.2 was 07.04.1954. This is reflected from the school leaving certificate, received by Shri Govindram Seksaria High School, Pachora (Jalgaon), as called for and received by the Respondent No.2 from the school, which mentions the date of birth of the petitioner no.1 as 07.04.1954, in which school the petitioner took education from 12.06.1961 to 31.05.1971. The certified copy of the school register of Shri Govindram Seksaria High School, Pachora, District Jalgaon as called for and received by the Respondent No.2, also records the date of birth of petitioner no.2 as 07.04.1954. Similar date of birth of 07.04.1954 is reflected from the school leaving certificate issued by the Vidya Mandir, Wadi Shewale, where the petitioner no.2 took education from 17.06.1964 to 01.06.1967. Similar is the position, in respect of the General Register entry maintained by the Zilla Parishad Primary School, Antoorli Khurd, Tahsil Pachora, District Jalgaon, which also records the date of the petitioner no.2 as 07.04.1954.

5 The petitioner no.2, as against the above documents reflecting his date of birth as 07.04.1954, has placed reliance upon a

copy of the birth certificate issued by SSBP College, copy of the service book of the petitioner, which records his date of birth as 07.05.1955. A perusal of the impugned order, reflects that the entries in the service book, were recorded on the basis of an entry certified by the Tahsildar, Dhule, on 24.09.1993, whereas, the petitioner no.2, was appointed on 11.07.1977, which makes the use of the certificate dated 24.09.1993 for the purpose of entry of date of birth in his service book an impossibility. This being the position, no reliance can be placed upon the entries in the service book of the petitioner no.2.

6 It would not be out of place to point out here that the impugned order dated 20.06.2017, has not been passed in any proceedings initiated for change of the date of birth under Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. This position is reflected upon an inquiry being conducted by Respondent No.2 upon receipt of the proposal dated 03.04.2017 by the petitioner no.1 for availing the benefit of the G.R. dated 12.07.2016 to the petitioner no.2, as such, there being no proceedings under the provisions of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, the plea of violation of Rule 38 thereof, is clearly untenable.

7 The date of birth of the petitioner no.2 as reflected from the documents collected by the Respondent No.2 being prior in point

of time, have a presumptive value as against the entry of date of birth as recorded in the service book, which in the present case was recorded on the basis of the certificate as issued by the Tahsildar, Dhule. In fact, the impugned order records that the two school leaving certificates produced by the petitioner no.2 before the Respondent No.2, recording his date of birth as 07.04.1955, were both duplicate certificates and not the originals, which again raise a question mark as to their credibility, and specifically so in the light of the date of birth certificate as called for and received by the Respondent No.2, from the Govindram Seksaria High School, Pachora, District Jalgaon and the Vidya Mandir, Wadi Shewale, and the Zilla Parishad Primary School Antoorli Khurd, Pachora, District Jalgaon.

8 Thus, the impugned order dated 20.06.2017, cannot be faulted with in finding that the actual date of birth of the petitioner no.2, was 07.04.1954, instead of 07.04.1955 and thereby for this reason of tampering with the school leaving certificates, denying the benefit of the G.R. dated 12.07.2016 to the petitioners.

9 Shri Hon, learned Senior Counsel for the petitioners, invited our attention to the operative part of the order dated 20.06.2017, which directed the recovery of the salary paid for the period 01.05.2016 to 30.04.2017, to petitioner no.2 and contended that considering the date of birth of the petitioner no.2 as 07.04.1954, the

petitioner no.2 already stood retired as on 30.04.2016, he however, had actually worked till 30/04/2017 and, therefore, insofar as the issue of recovery was concerned, the matter would be covered by para 44 of the judgment in the case of **State of U.P. Vs. Shiv Narain Upadhyaya**, reported in 2005 (6) SCC 49 and, therefore, the direction for recovery of the amount, as contained in the impugned order, be quashed. We are of the opinion that considering the fact that the petitioner no.2 stood retired as on 30.04.2016, but has in fact, worked till 30/04/2017, the position would be covered under para 44 in **Shiv Narain Upadhyaya** (supra), in view of which the direction in the impugned order dated 20.06.2017, insofar as it relates to the recovery of salary paid for the period 01.05.2016 to 30.04.2017, is accordingly set aside.

10 In the result, the petition partly succeeds. The impugned order dated 20.06.2017, is maintained except for the portion directing the recovery for the period 01.05.2016 to 30.04.2017 from the petitioner no.2.

11 Rule is made absolute in above terms.

AVINASH G. GHAROTE
JUDGE

PRASANNA B. VARALE
JUDGE

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