

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

WRIT PETITION NO.13535 OF 2018

Shri. Ashok Shankar Kale,	]
Aged 58 years, Occu: Nil,	]
Retired as Assistant Accountant Officer	]
from Office of below named Respondent	]
No.2, R/o: Jaldhara, C-5/22/1:4,	]
Sector No.1-A, C.B.D. Belapur,	]
Navi Mumbai – 614	]..Petitioner

Versus

1] The State of Maharashtra,	]
Through Principal Secretary,	]
Water Supply and Sewerage Department,	]
Having office at Mantralaya,	]
Mumbai-400 032.	]
2] The Chief Administrative	]
Officer, Maharashtra Jeevan	]
Pradhikaran, Having office at	]
CIDCO Bhavan, South Wing,	]
2 nd Floor, C.B.D. Belapur,	]
Navi Mumbai-614	]..Respondents

Mr. Gaurav A. Bandiwadekar, Advocate for the Petitioner.
Mr. P. G. Sawant, AGP for Respondent No.1.
Mr. A. R. Pitale, Advocate for Respondent No.2.

**CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ.
DATE : 18th FEBRUARY, 2019**

ORAL JUDGMENT (Per N. J. Jamadar, J)

1] Rule. Rule made returnable forthwith. With consent of the parties heard finally.

2] The Petitioner seeks a writ to quash and set aside the order dated 30th August 2018, passed by the Chief Administrative Officer, Maharashtra Jeevan Pradhikaran, thereby rejecting the claim of the Petitioner to record his correct date of birth i.e. 12th April 1962 instead of 10th August 1960, in the service book.

3] The substance of the Petition is that the Petitioner had joined the service of the Respondents on 16th April 1984. While joining the service, the date of birth was recorded as 10th August 1960, which, in fact, was not correct date of birth. The Petitioner was born on 12th April 1962. On 15th January 1986, the Petitioner made an application for correction in the date of birth. The Petitioner submitted a report of the Tahsildar to the effect that the correct date of birth of the Petitioner was 12th April 1962. Despite such communication, no action was taken by the Respondents. Hence, the Petitioner again made a representation on 16th April 2018. By the impugned order dated 30th August 2018, the prayer of

the Petitioner was rejected on the premise that the register of birth maintained at Ambegaon, District Pune, is in torn condition and the surname of the Petitioner is not legible. Since there is no clear proof of the Petitioner's date of birth being 12th April 1962, the request was not considered.

4] We have heard Mr. Gaurav A. Bandiwadekar, learned counsel for the Petitioner and Mr. A. R. Pitale, learned counsel for Respondent No.2. We have perused the impugned order dated 30th August 2018.

5] It is indisputable that the Petitioner has made an application for correction in the date of birth within five years of joining service, as is the requirement under the rules. The impugned order further reveals that the Respondents had taken cognizance of such application and a report was received to the effect that the date of birth of the Petitioner was 12th April 1962. However, no action was taken thereon, on the premise that the true copy of the original birth extract was not produced. Ultimately, the request of the Petitioner was rejected on the last day of the service of the Petitioner on the ground that now the entries in the birth register

are not legible. It is pertinent to note that had timely action been taken by the Respondent authorities, immediately after the application alongwith the report of the Tahsildar was submitted by the Petitioner, they would have had the benefit of the extract of the birth register. For the fault on the part of the Respondents, the legitimate claim of the Petitioner cannot be allowed to be defeated.

6] It was brought to our notice that the Petitioner retired from the service on the very day i.e. on 30th August 2018, on which the impugned order came to be passed. We find that the claim of the Petitioner is legitimate and he ought to have been given the benefit of the corrected date of birth i.e. 12th April 1962. Thus, we are inclined to allow the Petition, however, since the Petitioner has not worked in the interregnum, we do not consider it appropriate to direct the payment of the salary for the said period.

7] In the result, following order is passed :-

ORDER

I] The Writ Petition stands allowed.

- II] The date of birth of the Petitioner be corrected in the record of the Respondents as 12th April 1962.
- III] The Petitioner be allowed to resume the service from 1st March 2019 and be allowed to continue in service till the period he would complete the age of superannuation reckoned from 12th April 1962.
- IV] The Petitioner will not be entitled to backwages for the intervening period, i.e. 30th August 2018 to the date he rejoins the post. However, the Petitioner will be entitled to continuity in service for the said period.
- V] It is made clear that the pension, if paid to the Petitioner for the said period, shall not be recovered.
- VI] The pensionary and other terminal benefits be accordingly re-computed on the basis of the said date of retirement.

VII] The terminal benefits which the Petitioner has already received on the basis of the order of retirement, as of 30th August 2018, be refunded by the Petitioner to the Respondents.

8] Rule made absolute in aforesaid terms. No order as to costs.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]