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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 WRIT PETITION NO.2658 OF 2020
WITH CA/2846/2021 IN WP/2658/2020

**BHAUSAHEB RAMKRUSHNA BARGAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Mr D. R. Irale Patil, Advocate for petitioner;
Mr S. G. Sangle, A.G.P. for respondent No.1;
Mr R. A. Tambe, Advocate for respondent No.2

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 10th August, 2021

PER COURT:

1. On 20/07/2021, we had passed the following order :

“1. Shri Tambe, learned advocate, causes an appearance on behalf of respondent No.2/ Education Officer (Primary).

2. There is no dispute that the petitioner has joined services in the District Central Cooperative Bank Limited. The date of joining duties is not mentioned in the petition. However, there is no contradiction that in his service book, his date of birth is recorded as 02.04.1962.

3. Rule 26.4 of the Secondary School Code permits correction of date of birth within a particular limit. The learned Full Bench of this Court has dealt with the issue of correction of date of birth, caste, name, surname, etc.,

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in ***Janabai Himmatrao Thakur vs. The State of Maharashtra and others, 2019(6) Mh.L.J. 769 (FB)***. It is equally undisputed that the petitioner retired from service on 30.04.2020. Surprisingly, respondent No.2/ Education Officer, in a single sentence reason, has corrected the date of birth of the petitioner from 02.04.1962 to 02.04.1964, by his order dated 22.10.2020.

4. We, therefore, direct respondent No.2/ Education Officer (Primary) to file an affidavit in reply to indicate the source of his power in correcting the date of birth of the petitioner after four decades of his leaving the school and after his retirement from employment. Let the reply be filed on or before 06.08.2021.

5. We are listing this petition on 10.08.2021. Respondent No.2 shall note that if we find his conduct to be contrary to the legal provisions, we would not hesitate to initiate strict action against him and impose heavy costs.”

2. It is informed that the Education Officer (Primary), who has passed the order dated 22/10/2020, correcting the date of birth of the petitioner, has superannuated from employment.

3. The petitioner had approached this Court by putting forth prayer clauses (B) and (B-1), which read as under :-

“B) The Hon’ble court may be pleased under appropriate order call school record i.e. Pravesh Nirgam register of Zilla Parishad Primary School Babulkheda Tq. Vaijapur District Aurangabad as well

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as School Entry of students record maintained by Zilla Parishad High School Manoor Tq. Vaijapur.

B-1) The Hon'ble Court may be pleased to pass necessary appropriate order and direct the Education Officer (Primary) Z.P. Aurangabad to pass appropriate order considering the original record of School Nirgam Extract of the Zilla Primary School Babulkheda as well as Z.P. H.S. Manoor and correct the date of birth as 2.4.1964 accordingly."

3. Before this Court could deal with this petition, respondent No.2 issued an order on 22/10/2020, wherein he has not assigned a single reason in support of exercising his powers under Rule 26.4 of the Secondary School Code. Therefore, we had noted in our order dated 20/07/2021 that he had passed a single sentence order for correcting the date of birth of the petitioner from 02/04/1962 to 02/04/1964. There is no dispute that the petitioner has superannuated from employment on 01/04/2020 since his service book undisputedly carried his date of birth as 02/04/1962, for more than three decades of his employment.

4. The learned Advocate representing respondent No.2 submits, on the basis of the record, that he would not canvass that the order dated 22/10/2020 is a reasoned order. The then Education Officer (Primary) has not assigned any reason and has merely corrected the date of birth since the petitioner initially

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obtained a fresh school leaving certificate on 17/01/2019 to indicate his date of birth as 02/04/1964.

5. We find that, it is well settled law that the date of birth of any candidate should not be corrected at the fag end of his career. Page 16 of the petition paper book is an application dated 27/11/2019, which the petitioner has addressed to his employer stating that his date of birth is 02/04/1964 and not 02/04/1962 and since he had acquired a fresh certificate on 17/01/2019 from the school, he requested the employer to correct his service record, when he had only four months left for superannuation. Apparently, the petitioner's employer refused to correct the record since the date of birth of an employee cannot be corrected at the fag end of the career.

6. We have perused the judgment delivered by the learned Full Bench of this Court in **Janabai Himmatrao Thakur vs. the State of Maharashtra and others, 2019 (6) Mh.L.J. 769 (FB)**, wherein, this Court has laid down strict parameters for correcting the date of birth or the caste or the name or the surname of the person. The crystallized position of law that the date of birth of any candidate should not be corrected at the fag end of his employment, is settled for at least three decades.

7. We have perused the copy of the entry of the petitioner in the Students General Register maintained by the Zilla Parishad Primary School, Manoor, Tq. Vaijapur. It indicates that his date of birth was 02/04/1962 and he had entered the school on 09/07/1975. In June 1980, he was admitted to the 10th Standard in the said school. The document at page No.12 is a freshly acquired document from the Zilla Parishad Primary School at Babhulkheda, Tq. Vaijapur, dated 17/01/2019 to indicate that his date of birth is 02/04/1964. A certificate from the Headmaster of the said school was obtained on 25/11/2019 to reiterate that his date of birth is 02/04/1964.

8. In the above backdrop, we do find that the entire record appears to have been created from January 2019 on-wards. There is no record placed before us which would indicate that the date of birth of the petitioner is 02/04/1964.

9. The learned Advocate representing respondent No.2 relies on the affidavit filed by Smt. Ashwini Anilrao Latkar, Deputy Education Officer, Aurangabad and places before us a photostat copy of the page of the 'प्रवेश निर्गम पत्रक, सन १९६४ ते १९७१'. According to him, from the handwriting, it would appear that the

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petitioner's date of birth is 02/04/1964. Therefore, according to the learned Advocate, the said Education Officer has corrected the entry on 22/10/2020. From the said letter, we find that the Education Officer does not appear to have referred to the record since it is noted in Marathi that difference in the date of birth as per the school record has been communicated by the petitioner to the Education officer. We, therefore, find the said order to be unsustainable and we have no reason to accept that order.

10. In the above backdrop, taking into account, an application moved by the petitioner to his employer on 27/11/2019, it is apparent that the petitioner wanted an extension of his service tenure and therefore, when he had four months left for superannuation, he had approached the Headmaster and obtained a freshly issued school leaving certificate showing his date of birth as 02/04/1964.

11. In paragraph No.39(c) of the judgment delivered by the learned Full Bench in Janabai Himmatrao Thakur vs. the State of Maharashtra and others (supra), the date of birth can be corrected if the mistake is such that it could not have been noticed and had gone unnoticed. The present petitioner has obtained Education upto the 12th Standard. While seeking admission in the 11th and

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the 12th standard in the Junior College, he has filed his application form as well as tendered his school leaving certificate, which would indicate the details as regards his name, caste and the date of birth. For three decades, he was in employment. Service book carries his date of birth as 02/04/1962 which, going by the usual practice, carries the signature of the employer. We, therefore, do not believe that such purported mistake has gone unnoticed and that it could be cured in such a way. The view taken in *Janabai Himmatrao Thakur vs. the State of Maharashtra and others* (supra), would not permit such correction after more than 30 years.

12. In view of the above, we are not inclined to entertain this petition. The same is, therefore, dismissed.

13. The pending civil application, would not survive and the same stands disposed off.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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