

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

WRIT PETITION NO. 7880 OF 2021

Sanjay Purushottam Patel .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. S. Panpatte, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for Respondent Nos. 1 to 4.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

DATE : 23RD JULY, 2021.

FINAL ORDER :

. The application of the petitioner for correction of date of birth in the service record is rejected. Aggrieved thereby present petition.

2. Mr. Panpatte, the learned advocate for the petitioner strenuously contends that the correct date of birth of the petitioner is 22.08.1968 and wrongly the date of birth of the petitioner in the school record is recorded as 01.06.1966. The learned counsel submits that, adhar card and pan card record date of birth of the petitioner as 22.08.1968. Same is correct date of birth of the petitioner. The learned counsel also relies on horoscope to substantiate that the petitioner was born on 22.08.1968. The petitioner has placed on record the copy of certificate issued by the office of Tahsildar, Shahada under the

Birth and Death Registration Act. The said certificate, it appears is issued in the year 2002.

3. The learned counsel further submits that, because of the illiteracy of the parents, the date of birth has been wrongly recorded as 01.06.1966 in the school record and the same date of birth is recorded in the service book of the petitioner. The petitioner's name has been changed. The date of birth has also been changed as 22.08.1968 in the Government Gazette in October 2019. According to the learned counsel, there was no impediment for the authorities to consider the case of the petitioner. The learned counsel relies upon Rule 38 of the Maharashtra Civil Services (General Condition of Service) Rules, 1981 (for short "Rules of 1981"). The learned counsel further submits that, the procedure as contemplated under Rule 38 of the Rules of 1981 has not been followed by the authorities while rejecting the application of the petitioner. When there are documents on record to substantiate the case of the petitioner i. e. date of birth as 22.08.1968, the correction as contemplated under Rule 38 of the Rules of 1981 ought to have been effectuated.

4. We have also heard the learned Assistant Government Pleader for respondent Nos. 1 to 4. The learned A. G. P. also relies upon the Rule 38 of the Rules of 1981 and submits that the application for correction cannot be entertained after five years.

5. It appears that, the petitioner was appointed on 01st July 2000. His date of birth is recorded in the service book as 01.06.1966. The same is in consonance with the date of birth recorded in the school record of the petitioner. The date of birth recorded in the service book of the petitioner is as per representation of the petitioner. It cannot be said that mistake was committed by the authorities while recording the date of birth in the service record. The presumption to the entry of birth under the Birth and Death Registration Act would arise if the entry is taken by the authority by following the procedure as contemplated under the Act. The certificate placed by the petitioner on record only states date of birth of the petitioner. The same does not clarify as to who intimated the birth of the petitioner and all other aspects as required.

6. The Division Bench of this Court in a case of **Gangadhar Gonduram Tadme Vs. Trimbak Govindrao Akingire and others** reported in ***2005(1) Mh. L. J. 94*** has observed that, the presumption cannot be attached to the certificate of the authority under Birth and Death Registration Act unless the entry taken in the same register is after following the procedure laid down therein.

7. Rule 38 of the Rules of 1981 states that, once a entry of age or date of birth has been made in the service book no alteration of entry should afterwards be allowed unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical

error. As observed above, it is not the case of the petitioner that, the entry in the service record of his date of birth as 01.06.1966 was taken due to want of care on the part of some other person other than the petitioner or as an obvious clerical error. The date of birth recorded in the service book is in tune and in consonance with the school record of the petitioner, which the petitioner himself has produced. The date of birth is recorded as per entry in the school record. The application, it seems has been made after twenty years of joining the service.

8. In the light of the above, impugned order cannot be faulted with. The writ petition as such is dismissed. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/July 21