

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

961 WRIT PETITION NO.8793 OF 2021

**SUBHASH SONAJI NIVARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner: Mr. Shaikh Kayyum Najir
AGP for Respondents/State: Mr. A. R. Kale

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

DATE: 12th AUGUST, 2021

PER COURT:

1. The petitioner had filed Original Application before the Maharashtra Administrative Tribunal seeking correction of date of birth.

2. The learned Counsel for the petitioner submits that the date of birth of the petitioner is 04.01.1965. It is wrongly recorded in the school record and the service record as 01.04.1963. The learned Counsel submits that in the year-1997, the petitioner had applied to the Collector for correction of date of birth, however, he replied that the same cannot be done by him. Thereafter, the petitioner in the

year- 2018 applied to the department for correction of the date of birth in the service book. The same is not considered in correct perspective by the employer. The learned Counsel further submits that the Horoscope very clearly suggests that the date of birth of the petitioner is 04.01.1965. The petitioner has 2 elder brothers and the date of birth of the eldest brother is recorded as 01.01.1959 and the date of birth of second eldest brother is recorded as 12.08.1962. If the date of birth of the petitioner is considered as 01.04.1963 the same would on the face of it appear to be incorrect. The difference would be only 8 months between the elder brother of the petitioner and the petitioner. All these aspects are not considered by the tribunal while dismissing the Original Application.

3. The learned A.G.P. supports the Judgment of the tribunal and submits that Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 permits the correction of the date of birth in the service record within 5 years

and that too if there is a mistake of a third party in recording the date of birth in the service record. The date of birth in the service record was recorded on the basis of the representation of the petitioner and his school record.

4. We have considered the submissions canvassed by the learned Counsel for the parties.

5. The petitioner joined services with the respondent on 29.11.1993. The date of birth in the service book was recorded as represented by the petitioner and as per the documents produced by the petitioner such as the school record. The date of birth as claimed by the petitioner viz. 04.01.1965 is recorded by the Grampanchayat purportedly under the Births and Deaths Registration Act in the year-2018. No presumption can be attached to the said date of birth recorded. Reliance can be had to the Judgment of the Division Bench of this Court in case of **Gangadhar Gonduram Tadme Vs. Trimbak Govindrao**

Akingire and others reported in 2005 (1) **Mh.L.J.**
94.

6. Moreover, considering Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 the correction cannot be considered at the fag end of the service. The petitioner had moved for correction at the fag end of his service career. The same is also not permissible. No authenticate document is placed on record. The tribunal has rightly considered the said aspect. No interference called for.

7. Writ Petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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