

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 226 OF 2021

Prakash Maruti Patil

... **Petitioner**

versus

The State of Maharashtra, through
Secretary & Anr.

... **Respondents**

Mr. Pratap Patil for the petitioner.

Mr. B.V. Samant, AGP for the State.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- MARCH 4, 2021

PC :

1. This writ petition is directed against the order of dismissal of the petitioner's original application (OA No. 797 of 2017) by a Judicial Member of the Maharashtra Administrative Tribunal, Mumbai vide judgment and order dated January 30, 2020.

2. The petitioner was appointed as a Lecturer on June 20, 1992. At the time the petitioner entered service, June 1, 1961 was recorded as his date of birth. On June 16, 1997, the petitioner applied for correction of date of birth from June 1, 1961 to March 1, 1963. The said application was rejected by

the Government by an order dated September 16, 2003. The petitioner did not challenge the order of rejection dated September 16, 2003 before the Tribunal within the period of limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985. Instead, a second application dated November 25, 2003 for correction of date of birth was made by the petitioner. This application came to be rejected by the Government by an order dated July 21, 2004. Even then, the petitioner did not approach the tribunal. The petitioner went on making repeated applications, which were continuously rejected. However, one application was not considered for which the petitioner had moved the tribunal before. His original application was disposed of with a direction to consider the application. In pursuance of such order, the Government once again considered and rejected the petitioner's application for correction of date of birth by an order dated March 15, 2017, which came to be challenged before the tribunal in OA No. 797 of 2017.

3. The tribunal by the impugned judgment and order held OA No. 797 of 2017 to be time barred. Besides, the tribunal

also considered the merits of the matter and proceeded to spurn the petitioner's challenge even on merits.

4. We have heard learned advocates for the parties and perused the impugned judgment and order of the tribunal. Apart from the authorities cited before the tribunal and relied on by it to rule against the petitioner, we are of the considered opinion that the petitioner's right to move the tribunal stood somewhat extinguished upon expiry of the period of limitation prescribed in Section 21 of the Act after rejection of his first application dated September 16, 2003 for correction of date of birth. Although the petitioner could have prayed for condonation of delay in approaching the tribunal with an original application, he did not take recourse thereto. As has been noticed above, he went on submitting one application after the other which were, from time to time, rejected. The tribunal was moved a second time only after the rejection order dated March 15, 2017 was passed. The law laid down by the Supreme Court in its decision in **Union of India & Ors. vs. M.K. Sarkar**, reported in **(2010) 2 SCC 59**, reads thus:

“15. When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

5. On the weight of the above authority, we find absolutely reason to hold that the tribunal erred in holding the original application to be time-barred. Law is also well-settled that correction of date of birth cannot be asked for at the fag end of an employee’s service. The tribunal was justified in holding that the original application is devoid of merits.

6. There is, thus, no reason to interfere. This writ petition stands dismissed, without order for costs.

7. Since the petitioner is due for retirement on May 31, 2021, we hope and trust that the respondents shall proceed to settle his retiral benefits in accordance with law as early as possible.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)