

(Reportable)

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

WRIT PETITION NO.9285 OF 2017
WITH CA/8553/2018 IN WP/9285/2017

VISHAL VILASRAO DAWKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Nagargoje Ankush N.
AGP for the Respondents/ State : Shri P.K. Lakhotiya
...

**CORAM : RAVINDRA V. GHUGE
&
S.G. DIGE, JJ.**

DATE :- 28th March, 2022

ORAL ORDER:-

1. By this petition, the petitioner seeks correction of his date of birth from 06.04.1979 to 17.08.1980. He is aggrieved by the order dated 22.05.2017 issued by respondent No.2/ Education Officer (Secondary) refusing to correct his date of birth.

2. On 11.07.2018, this Court had passed the following order :-

“1. *Our attention is invited to order passed by the Division Bench of this Court dated 30.06.2017. It is further informed that in view of two views adopted by the Division Bench, the matter is referred to Larger Bench for consideration of the issue. It will not be out of place to refer to the order passed by Division Bench of this Court dated 30.06.2017. Reliance*

was placed on the judgment in the matter of Shaikh Shafi Ahmed Vs. State of Maharashtra, 2012(5) Mh.L.J.35, Swapneel s/o. Maroti Sonwale Vs. State of Maharashtra & Ors., 2013(6) Mh.L.J.400 and Vilas s/o. Dattatraya Ransubhe Vs. State of Maharashtra & Ors., 2013(1) Mh.L.J.851. Then it was brought to the notice of Division Bench that there was contrary view taken by other Division Bench in the matter of Captain Anil vasantrao Bhat & Anr. Vs. Divisional Secretary, Maharashtra State Board of Secondary Education, Nagpur Divisional Board, Nagpur (Special Civil Application No.1048 of 1971). The Division Bench was pleased to observe that the Division Bench adopting a contrary view taken in SCA No.1048 of 1971, was not brought to the notice of the Court, which dealt with the issue subsequently. It will also be useful to refer to the further observations of the Division Bench, as reliance is placed on judgment dealing with Rule 26.4 and the Division Bench was pleased to observe thus:-

“14 We are of the view that the limitation enunciated in Rule 26.4 that an application can be entertained seeking change or correction in the date of birth, name, surname, caste, etc., entered in the General Register from or on behalf of a pupil who is attending a school; and that if correction is required in the school record by a student desirous of securing admission to another educational institution and the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth, etc., and in such bonafide cases, where wrong spelling of a word or an obvious mistake of the type mentioned in sub-rule 3 is noticed, such application shall be entertained.

15 It is, thus, clear that if an application is made by a student/pupil, for recording change in entries who has left the school for the purposes of securing admission to another education institution, the application shall be entertained and not otherwise and that the request for effecting change shall be consistent with Rules

26.3 and 26.4 read with Appendix Six of the Secondary Schools Code. The issue, as to whether an application seeking correction in the school record can be entertained even after the pupil has left school and is no more a student, needs to be considered.

16 In view of the conflict between judgments (cited supra) and in view of the discussion as recorded above, we deem it appropriate that the issue deserves to be considered by a Larger Bench. The following issues need to be referred for consideration of the Larger Bench.

(A) Whether an application seeking alteration, change or correction in the name, surname, date of birth, caste, or other entries entered in the General Register, including correction in spelling of name, surname, date of birth, caste, as recorded in the General Register, shall be entertained by or on behalf of the pupil who has left the school and the change in the aforesaid entries, is necessitated for the purposes like securing an admission to another educational institution and the School Leaving Certificate is relied upon as an evidence for name, surname, caste, date of birth, etc.

(B) Whether the view adopted by the Division Bench in the matters of (i) Swapneel s/o Maroti Sonwale Vs. State of Maharashtra & others, reported in 2013 (6) Mh.L.J. 400; (ii) in the matter of Vilas s/o Dattatraya Ransubhe Vs. State of Maharashtra & others, reported in 2013(1) Mh.L.J. 851; and (iii) Arshad Khalid Jamal Vs. State of Maharashtra & others, reported in 2012(4) Mh.L.J. 646, deserves to be upheld or whether the view adopted by the Division Bench at Nagpur in Special Civil Application No.1048 of 1971, decided on 5th April, 1973 (Captain Anil Vasantrao Bhat & another Vs. Divisional Secretary, Maharashtra State Board of Secondary Education, Nagpur Divisional Board, Nagpur & another), is a correct view.

(C) Whether the change, sought to be requested by the petitioner, is required to be consistent with Rules 26.3 and 26.4 read with Appendix Six of the Secondary Schools Code, meaning thereby, bona fide cases where wrong spelling of a word or an obvious mistake of the type mentioned in Rule 26.3, can only be directed to be corrected.

2. In view of order passed by the Division Bench dated 30.06.2017, in our opinion, it would be in the fitness of things that this Court should wait for the consideration of the issue by the Larger Bench.
3. The parties are at liberty to circulate the petition as and when the Larger Bench considers the issue.”

3. The learned Full Bench of this Court dealt with Writ Petition No.8085/2017 filed by ***Janabai Himmatrao Thakur vs. The State of Maharashtra and others, [2019 (6) Mh.L.J. 769]***, vide the judgment dated 17.10.2019. Three issues as were referred by the learned Division Bench were answered by the learned Full Bench in paragraphs 39 and 40 as under :-

- “39. This being the position, We answer Question Nos. (A) & (C) in the following terms :
- (a) An application for alteration in the entries in the General Register is permissible, with the previous permission of the appropriate authority at any time when the pupil is attending the school.
 - (b) No application for alteration in the figure of date of birth is permissible, after the student has left secondary school, except correction in the nature of 'obvious mistakes' as indicated in Clause 26.3 i.e. of a nature where the date of a particular month

- which does not exist in the calendar and likewise.*
- (c) *Thus, in light of the above, an application for change in the name, surname or caste, either due to reasons / cause unnoticed before or even occurring subsequently, being errors which fall within the category of 'obvious mistakes', can be made, even after the student has left school in light of the language of Clause 26.3 in the manner as indicated by Appendix Six in the forms as prescribed in the S.S. Code.*
- (d) *For the purposes like admission to another educational institution, in cases of obvious mistakes as prescribed in Clause 26.4, a change/ correction in the school leaving certificate, so as to make the entry consistent with the corresponding entries in the General Register of the School is permissible, which in fact is in consonance with (c) above.*
40. *In so far as Question (B) is concerned, we are of the opinion that neither the judgments in Swapnil Sonawale, Vilas Ransube and Arshad Khalid (supra) or judgment in Capt Anil Bhat (supra) correctly interpret the provisions of Clause 26.3 and 26.4 of the S.S. Code. While Swapnil Sonawale, Vilas Ransube and Arshad Khalid (supra) takes a very wide view, which is not indicated by the language of the Clauses 26.3 and 26.4, Capt Anil Bhatt takes a very narrow and restricted view, which again is contrary to the purport and intent of Clauses 26.3 and 26.4. This being the situation, we are of the opinion that the view adopted in neither Swapnil Sonawale, Vilas Ransube and Arshad Khalid (supra) nor in Capt Anil Bhatt is the correct view. The answer to Question (A), in our opinion is the correct view."*

5. Considering the above, we find that clauses (b) and (d) in paragraph 39 reproduced above, would be relevant while deciding the case of the petitioner.

6. The petitioner has placed before us the admission record of Jaibhavani Secondary and Higher Secondary School, Gadhi, Taluka Georai, District Beed, which indicates his date of birth as being 06.04.1979. His date of entry in the school in the 5th standard is 16.06.1989, which would indicate that he was 10 years and about 02 months old when he was admitted in the 5th standard in the said school. Consequentially, this leads to a presumption that he was admitted in the first standard when he was 05 years and 02 months old, in the Zilla Parishad Primary School, Sugar Factory, Gadhi, Taluka Georai, District Beed, which is quite probable. Conspicuously, though this petition is pending for the last 05 years, the petitioner has not placed on record the school admission record when he took admission in the first standard in the Zilla Parishad school at Gadhi.

7. The contention of the petitioner as set out in the petition is that his date of birth as 06.04.1979 was also entered in the school record of the Zilla Parishad school when he took his admission in 1984. He further submits that the reason why he has moved the authority for correction of his date of birth is that he has applied for the post of Senior Scientist with the National Chemicals Laboratory, Pune. If his date of birth as existing in the

records consistently since 06.04.1979 is accepted, he would become barred by age for the said post. If his date of birth is corrected so as to be 17.08.1980, he would be eligible and would be saved from the bar of age.

8. The learned advocate for the petitioner has strenuously canvassed that in 2017, he noticed the mistake in his date of birth and therefore, he has moved the authorities for seeking correction. He has drawn our attention to the grounds formulated in the memo of the petition and he relies upon the following judgments :-

(a) Kishor s/o Sukhdeo Walhekar vs. State of Maharashtra, 2009 (4) Mh.L.J. 817.

(b) Shaikh Shafi Ahmed Khadarsab vs. State of Maharashtra, 2012 (5) Mh.L.J. 36.

(c) Arshad Khalid Jamal vs. State of Maharashtra, 2012(4) Mh.L.J. 646.

(d) Vilas Dattatraya Ransubhe vs. State of Maharashtra, 2013 (1) Mh.L.J. 851.

(e) Pralhad Manik Tupsaunder vs. The Education Officer (Primary), Jalna, Writ Petition No.10982/2010 decided on 09.12.2010 (Aurangabad Bench).

(f) Pralhad Manik Tupsaunder vs. The Education Officer (Primary), Jalna, Writ Petition No.8403/2011 decided on 09.12.2011 (Aurangabad Bench).

(g) Shankar Pandharinath Nagare vs. The State of Maharashtra, Writ Petition No.972/2011 decided on 13.09.2011 (Aurangabad Bench).

(h) Dilip Shivmurti Bondar vs. The State of Maharashtra, Writ Petition No.2553/2015 decided on 17.04.2015 (Aurangabad Bench).

9. Insofar as the judicial pronouncements cited by the petitioner are concerned, all are prior to the decision of the learned Full Bench in *Janabai Thakur (supra)*. As such, the last of the judicial pronouncements having binding effect would be the view taken by the learned Full Bench in *Janabai Thakur (supra)*. It is, thus, clear that a litigant can seek correction of his date of birth if it is established that it was an 'obvious mistake'.

10. The learned advocate for the petitioner has strenuously canvassed that the petitioner banks on this ground of 'obvious mistake'. It is from this angle that we have scrutinized the case of the petitioner. From the fact situation emerging from

the record, we find that when he decided to apply for the post of the Senior Scientist, he realized that his date of birth 06.04.1979 bars him by age and he would, therefore, not be eligible. He has drawn the copy of the school record pertaining to Jaibhavani School on 07.07.2017. Prior thereto, he had applied to the Health Department at Dhoki office in Taluka and District Osmanabad on 13.03.2017 and he has received the birth certificate showing his date of birth as 17.08.1980.

11. There is no dispute that the petitioner has acquired qualification of M.Sc. and it is conceded that right from the entry in the school in the first standard till he completed his M.Sc., his date of birth has been recorded as 06.04.1979. As such, on preponderance on the principles of probabilities, we are of the view that when the petitioner realized that he was age barred, that he has approached the Health Department and has been successful in getting the birth certificate on 13.03.2017 showing his date of birth as 17.08.1980. In these circumstances, it can be said that the entire educational record of the petitioner right from the entry in the first standard till his passing out from the M.Sc. Degree course, he has indicated his date of birth as 06.04.1979. Even the school record indicates that he was admitted in the first

standard in a small village when he was 05 years and 02 months old. If his proposed date of birth is to be taken into account, he would be 03 years and 10 months old while entering the first standard in the school, which seems to be absolutely improbable.

12. The judgment of the learned Full Bench in ***Janabai Thakur (supra)*** binds us within its parameters set out in clauses (a) to (d) in paragraph 39, out of which, Clauses (b) and (d) apply to this case. We are, therefore, of the view that the case of the petitioner does not appear to be the case of obvious mistake. Rather, the petitioner has acquired his birth certificate only after he realized that he would be age barred from being selected for the post of Senior Scientist and hence, he moved the authorities for seeking correction of his date of birth. In view of the law crystallized in ***Janabai Thakur (supra)***, we do not find that this is the fit case to exercise our jurisdiction under Article 226 of the Constitution of India.

13. This Writ Petition is, therefore, dismissed. The pending Civil Application would not survive and stands disposed off.