

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 WRIT PETITION NO.14802 OF 2019

Hajra Begum D/o Khajamiyan,
Age 48 years, Occupation at present NIL
resident of Qayyum complex,
Degloor Naka, Nanded

.. Petitioner

Versus

- 1) The State of Maharashtra
Through Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 400 032
- 2) The Chief Executive Officer,
Zilla Parishad, Nanded
- 3) Education Officer (Primary),
Zilla Parishad,
Nanded
- 4) Baitul Uloom Education Society
Azad Nagar, Nayi Abadi, Nanded
Through its Secretary
Abdul Razzak S/o Abdul Jabbar
Age 65 years, Occupation Pensioner
resident of Waghi road,
Behind Coaching Classes,
Nanded 431 702
- 5) The Head Master,
Baitul Uloom Urdu Primary School,
Nayi Abadi, Nanded

.. Respondents

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Advocate for Petitioner : Mrs. A.N. Ansari
AGP for the respondent – State : Mr. A.S. Shinde
Advocate for the respondents no. 2 and 3 : Mrs. Yogita Kshirsagar (Thorat)
Advocate for respondent no. 4 : Mr. M.V. Ghatge
Advocate for respondent no. 5 : Mr. I.D. Maniyar

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 22 AUGUST 2022

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is aggrieved by incorrect recording of the date of birth in the service book on the basis of which she has been superannuated. According to her, her correct date of birth is 5 June 1970 whereas it was erroneously mentioned as 5 August 1959 in the service book.

4. Mrs. Ansari would vehemently submit that soon after joining the service, as is required by the rules, representations were made to the respondent – school for correction of the service book in the year 1993-94. The school had not taken further steps. She was in the meantime superannuated on 31-08-2017.

5. She would further submit that her proposal was not being forwarded by the school. She had to approach this Court by filing a writ petition, pursuant to which direction was issued for considering her proposal. Ultimately, the matter had reached the Government and by order under challenge, the Government has rejected the proposal on the flimsy grounds which are not tenable. It has been rejected by

observing that it could not be ascertained as to which documents were annexed to her application dated 15-07-1992 purportedly submitted by her to the school for correction of the service book.

6. Mrs. Ansari would submit that petitioner's school record contained correct date of birth but the error had occurred when the secondary school certificate was issued to her wherein incorrect date of birth was mentioned which error has perpetuated. If the error is not corrected, the petitioner would suffer irreparable loss.

7. Learned advocate for the respondent – management and school support the petition.

8. Learned AGP would submit that as per Rule 38 of the Maharashtra Employees of Private Schools (Conditions of Service), Rules, 1981 (MEPS Rules), any correction in the service book could be made provided the request was received within 5 years of joining the service. He would submit that there is absolutely no record to substantiate the stand of the petitioner that she had made any such request within the stipulated time. It is also not clear from the copy of the application as to which annexures were forwarded along with it. Based on the factual scenario, the decision has been taken refusing to carry out any such correction.

9. We have carefully considered the rival submissions and perused the papers. There can be no dispute about the fact that as per Rule 38 of the MEPS Rules, any change in the service record must be requested within five years of joining the service. Apparently, the petitioner is relying upon the representations dated 15-07-1992, 18-08-1993 and 01-12-1993, copies of which have been annexed with the petition purportedly bearing endorsements with signature of the secretary of the respondent – management acknowledging to have received the applications / representations.

10. As is mentioned herein-above, even the respondents – the management and the school are supporting this stand. However, conspicuously, their reply is silent as to exactly on which dates these applications were thereafter acted upon and forwarded to the concerned if those were received in the year 1993-94. It would be convenient for management / school to simply support the employee without seeking to substantiate the stand by concrete material. The only response from the respondent – Education Officer that is filed on record can be found (Exhibit - A and Exhibit - C) showing that the proposal / representation was received from the management in January 2017 and then in July 2017. The petitioner or even the respondents – management / school have been unable to point out with tangible material as to if any such request was ever forwarded by

them to the Education Officer at any earlier point of time more so, when the petitioner's representations were received in the year 1993 – 94.

11. Pertinently, assuming for the sake of arguments that the respondent – management / school was at fault in not taking steps promptly, even the petitioner's conduct is not befitting a person having a bona fide claim. If at all she was aware since inception that her incorrect date of birth was recorded in the service book and she had made the representation way back in the year 1993-94, her subsequent conduct is far from satisfactory, in keeping mum for several years and even till the fag end of her employment. There is absolutely no material produced by either the petitioner or the respondent – management / school as to what steps were taken by them for this period interregnum. This conduct of the petitioner speaks in volumes.

12. We are afraid the stand of the Government in being circumspect and expecting tangible material cannot be faulted with when it could not be demonstrated and ascertained as to what were the documents which were forwarded along with the representation dated 15-07-1992 and whether those were indeed reflecting the correct date of birth.

13. Considering all the afore-mentioned circumstances, the petition suffers from delay and laches and the petitioner has to blame herself for the situation she is in.

14. The petition is dismissed.

15. Rule is discharged.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/