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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8310 OF 2021

Trambak s/o Rambhau Khairnar .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr. Vivek V. Salunke for petitioner.

Mr. M. M. Pabale, AGP for State.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE : NOVEMBER 30, 2022

P.C.:

1. The petitioner's original application (Original Application No. 471 of 2019) has been dismissed by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) by an order dated 20th December, 2019. Such order is the subject matter of challenge in this writ petition.

2. We have heard Mr. Salunke, learned advocate for the petitioner. Mr. Pabale, learned AGP appearing for the State is not called upon to respond.

3. The petitioner joined as a Junior Engineer (Class-III) in the Public Works Department on 8th December, 1982. At the time of his appointment, the petitioner had relied on a certificate of date of birth issued by the Primary School

where he had studied as a child. Such certificate recorded that 1st June, 1961 was the date of birth of the petitioner. On 16th May, 1986, the petitioner made an application to the Executive Engineer, Public Works Department, seeking correction of his date of birth from 1st June, 1961 to 21st August, 1964. Long 29 (twenty-nine) years later, a proposal dated 3rd October, 2015 was generated from the office of the Superintending Engineer of the relevant department but nothing happened thereafter. During the 33 (thirty-three) years since date of the application seeking correction of his date of birth, the petitioner did not move any Court or Tribunal for a direction on the respondents to consider such application.

4. The petitioner approached the Tribunal for the first time by instituting Original Application No. 377 of 2019. It was disposed of on 11th April, 2019 with a direction to the Government to pass an appropriate order on the proposal which was forwarded from the office of the Superintending Engineer within a month. In compliance with such order of the Tribunal, the Government by an order dated 6th May, 2019 rejected the application of the petitioner for correction of date of birth. This order of rejection was subjected to challenge in Original Application No. 471 of 2019.

5. The Tribunal has given detailed reasons for not accepting the claim of the petitioner. We share the view expressed by the Tribunal. However, we may record an additional reason for not entertaining the petitioner's claim.

6. Admittedly, the petitioner approached the Tribunal by instituting Original Application No. 377 of 2019 a month prior to his retirement on superannuation on 31st May, 2019. Although in Original Application No. 471 of 2019, the order dated 6th May, 2019 was made the subject matter of challenge and the original application ostensibly appeared to have been instituted well within the period of limitation, the legal position flowing from the decision of the Supreme Court reported in (2010) 2 SCC 59 (**Union of India vs. M. K. Sarkar**) unmistakably leads us to form the firm opinion that the Tribunal on the previous occasion having directed consideration of a stale claim, the order dated 6th May, 2019 passed by the Government in terms of the order dated 11th April, 2019 could not have been considered as the starting point for counting limitation. The limitation was required to be counted from 16th May, 1987, i.e., completion of one year of the petitioner's application dated 16th May, 1986 for correction of date of birth, in terms of the provisions contained in section 21 read with section 20 of the Administrative Tribunals Act, 1985. The original application being hopelessly time barred, no decision, in fact, was required to be rendered on the merits of the petitioner's claim; however, the Tribunal in its wisdom proceeded to examine the claim on merits and, as we have observed above, applied the right test for declining the petitioner's claim.

7. Having remained in service since 1982 on the basis of production of a certificate of date of birth recording 1st June, 1961 as the date of birth and derived benefits of such date

at the time of recruitment in service, the petitioner could not have on the verge of his superannuation, as per the recorded date of birth, approached the Tribunal with a stale claim for decision.

8. There is no merit in the writ petition. The same is dismissed. No costs.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)

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DASHARATH
PANDIT
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