

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

WRIT PETITION NO. 5562 OF 2016

Shri. Shashikant Vishnu Deshmukh	}	Petitioner
Versus		
Chief Engineer, Maharashtra State	}	
Electricity Distribution Company Ltd.	}	Respondent

Mr. Vijay Killedar for the petitioner.

Ms. Anjali R. Shiledar-Baxi for the respondent.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: NOVEMBER 11, 2022

P.C.:

1. By instituting this writ petition dated 8th March 2016, the petitioner seeks, *inter alia*, the following relief: -

“b] This Hon’ble Court be pleased to issue writ of mandamus or any other appropriate writ in the nature of writ of mandamus and be pleased to direct the Respondent to take appropriate decision in respect of application of the Petitioner regarding change in date of birth dated 05.07.1994 and proposal dated 07.07.2013 bearing outward No. J.E./Mayani/GAD/137 forwarded by Sub Engineer, Maharashtra State Electricity Distribution Company Ltd., Section Mayani.”

2. It is undisputed that pursuant to an appointment letter dated 4th June 1994 issued by the erstwhile Maharashtra State Electricity Board (hereafter “the MSEB”, for short), the petitioner joined as a Junior Operator. At the time of applying for the post of Junior Operator, the petitioner had, *inter alia*,

produced his School Leaving Certificate (hereafter "SLC", for short). Such SLC recorded the petitioner's date of birth as 1st June 1965. After being appointed as Junior Operator, the petitioner declared 1st June 1965 as the date of birth for preparation of his service record. He, thereafter, appears to have addressed a letter to the Executive Engineer, MSEB dated 5th July 1994 claiming that he has since secured documentary evidence from the office of the Tahsildar, Vaduj (Khatav) to the effect that his date of birth is 7th March 1967. Alleging that the date of birth in the SLC has been wrongly recorded as 1st June 1965, the petitioner prayed for correction of his date of birth as 7th March 1967 instead of 1st June 1965.

3. It is further not in dispute that in terms of the date of birth recorded in the SLC as well as in the service-book of the petitioner, i.e., 1st June 1965, he is due to retire, on attaining the age of superannuation, on 31st May 2023.

4. Appearing in support of the writ petition, Mr. Killedar, learned advocate for the petitioner submits that ever since the petitioner joined the service of the erstwhile MSEB, he has been representing for change of his date of birth in his service-book. He has invited our attention to various documents forming part of the petition memo, which includes representations made from time to time by the petitioner as well as correspondence exchanged by and between the petitioner and the Maharashtra State Electricity Distribution Company Limited (hereafter "the Company", for short) on the issue of change of date of birth. However, it is his specific contention that the Company has not acceded to the request of the petitioner, for which he has been compelled to invoke

the writ jurisdiction of this Court.

5. Responding to our query as to precisely when did the petitioner secure the extract of the birth register showing 7th March 1967, Mr. Killedar invited our attention to page 14 of the petition memo. The document is in vernacular. What it records is, a child named "Sopan" was born on 7th March 1967 to Vishnu Desaibuva Deshmukh and Anusaya Desai Deshmukh. According to Mr. Killedar, they are the parents of the petitioner.

6. However, in our view, such extract from the birth register is hardly conclusive proof of birth of the petitioner, who is named as Shashikant, on 7th March 1967. Although an attempt has been made by Mr. Killedar to convince us that Shashikant and Sopan are two names of the petitioner (usual first name and pet name), we are not at all impressed by such an attempt. Reasons for this are simple. First, in view of refusal of the Company to accept the extract from the birth register as relatable to him, the petitioner ought to have obtained a declaratory decree and sought for appropriate relief from the civil court. Secondly, and more importantly, if indeed the petitioner's pet name is Sopan and the extract from the birth register was made available to him on 26th July 1993, as it appears from the endorsements in Marathi, it defies logic as to why the petitioner while offering his candidature for the post of Junior Operator in 1993 did not rely upon the extract from the birth register by enclosing it with his application and, instead, enclosed the SLC. By the time the petitioner came to be appointed and declared his date of birth for being inserted in the service book, he had

with him the extract of the birth register; however, why he did produce the same is known only to him.

7. There is one other reason for which we feel the petitioner has not approached the Court *bona fide*. Assuming that the petitioner's SLC recorded an incorrect date of birth, as contended by Mr. Killedar, what was required of the petitioner in terms of the provisions contained in the Secondary Schools Code was an approach to the school from which he qualified the Secondary School Certificate Examination (SSC). We have not found a single document forming part of the petition memo from which we could discern that the provisions contained in the Secondary Schools Code were adhered to by the petitioner.

8. There is one other aspect that cannot be ignored. At page 76 of the petition memo is a letter dated 3rd October 2012 issued by the Superintendent Engineer, Satara of the Company. By that letter, the petitioner was specifically called upon to produce the corrected SLC. Despite such instructions given to the petitioner, he did not seek to have his SLC corrected.

9. Mr. Killedar has taken pains to show to us that the petitioner had approached the School Education Board. It is his contention that the Board refused to correct the date of birth on the ground that it has no such authority. Indeed, in terms of the provisions of the Secondary Schools Code, the Board has no such power. The application ought to have been made by the petitioner before the school and not before the Board. The provisions of law that permitted correction of date of birth not having been followed by the petitioner, he himself

has to blame for the position in which he finds himself now.

10. We have looked into the Maharashtra Electricity Distribution Company Limited Employees Service Regulations. Regulation 9(2) thereof provides as follows: -

"9(2) "Age"

(a) Age shall be computed from the date of birth, evidence of which shall be produced by the employee to the satisfaction of the Competent Authority at the time of employment or within such period as the Competent Authority may direct, in any case within six months of appointment failing which his service shall automatically stand terminated after expiry of six months.

*****"

11. Undisputedly, the petitioner produced the SLC as the evidence of his date of birth and, therefore, if any change in the date of birth recorded in his service book were to be effected, that could have been done only on the basis of a corrected SLC if at all issued in favour of the petitioner. We do not see reason to hold, on the basis of our reading of the service regulations, that a change of date of birth could be asked for on the basis of a document different from the document which was furnished by the employee at the time of responding to the advertisement inviting applications as well as at the time of accepting the offer of appointment.

12. Mr. Killedar has placed reliance on the decisions of the Supreme Court in **Jabar Singh vs. Dinesh and Anr.**¹ and **Ravinder Singh vs. State of U. P.**².

13. We have looked into the cited decisions.

14. Jabar Singh (supra) considered a case where a dispute

¹ (2010) 3 SCC 757

² AIR 2006 SC 2157

arose regarding the age of the accused. If the accused were a juvenile, he would be required to be tried in terms of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The decision in **Ravinder Singh** (supra) is also related to a case where commission of offence by an alleged juvenile was under consideration of the Court. The Court did not rely on the school leaving certificate because it was the second copy. On perusal of the said decisions, we are of the view that law laid down in such different facts and circumstances would have little bearing in respect of a dispute raised in a writ petition by an employee for change of date of birth in his service book, more so at the fag end of his service career.

15. Decisions of the Supreme Court are legion that no claim for change of date of birth several years after appointment in service ought not to be ordinarily entertained by a court. The petitioner, as per his own admission, had documentary evidence showing two dates of birth from public records, i.e., 1st June 1965 as per the SLC and 7th March 1967 as per the extract from the birth register. If indeed the birth register was the best evidence available to him in respect of his date of birth, the normal human reaction a reasonable person would expect of him is to produce such extract from the birth register at the time of applying for appointment. We do not know, at this distance of time, whether the petitioner obtained any benefit by projecting 1st June 1965 as his date of birth. It is well settled that any application for change of date of birth must be made as early as possible after appointment in terms of the extant service regulations. Indeed, the petitioner seems

to have made his first application on 5th July 1994, i.e., days after appointment, but the same by itself does not enure to his benefit. First, because the Court has been approached more than two decades later. The response of Mr. Killedar that the petitioner was vigilant and making representations one after the other is absolutely unconvincing. The issue stood closed after the petitioner failed to comply with the requirement of the letter dated 3rd October 2012 issued by the Superintendent Engineer, Satara of the Company. That apart, we have recorded above that based on a different document, the petitioner could not have disputed his recorded date of birth and sought for alteration. Regulation 9(2) would be a bar.

16. For the reasons aforesaid, we find no merit in the writ petition. The same stands dismissed.

17. No costs.

SALUNKE
J V

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by SALUNKE J V
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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)