

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1384 OF 2022

Hukumchand Mansing Rathod -- Petitioner/s

Vs.

State of Maharashtra & Ors. -- Respondent/s

Mr. S.A. Marathe, Advocate for the Petitioner.

Ms. Ketki Joshi, In-charge Government Pleader for the Respondents/ State.

CORAM : NITIN JAMDAR &
ANIL L. PANSARE, JJ.

DATE : 9 MARCH 2022

P. C. :

Heard learned Counsel for the parties.

2. The Petitioner has sought a direction to the Respondents to correct the date of birth in the service record of the Petitioner from 1 April 1964 to 1 April 1966.

3. The Petitioner joined the services on 27 July 1993. The Petitioner, as per the service record, is due to retire on 31 March 2022. It is at this stage that the Petitioner before us.

4. In various decisions, the Hon'ble Supreme Court has cautioned against the exercise of writ jurisdiction for correction in

the birth records at the end of service, as such orders have a cascading effect.

5. The Petitioner's services are governed by the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter "Rules of 1981" for short). Rule 38 provides for maintenance of service book in respect of date of birth. Sub-rule (2) of Rule 38 provides for the procedure to be followed while recording the date of birth. The copy of the service book is also available with the employee, so the employee is aware of the date of birth in record and on what date he is due to retire. Sub-rule (2) of Rule 38 states that once an entry of age or date of birth in a service book is made, no alteration should be allowed unless it is shown that the entry was due to want of care on the part of some person other than the employee or it is an obvious clerical error.

6. Instruction (1) to Rule 38 states that no application for alteration regarding date of birth in the service book of the employee shall be entertained after a period of five years from entering in the service. Instruction (2), which is important, reads thus :

“(2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested zerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth,

and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.

Therefore, if an application is to be made after a period of five years, it has to be accompanied by attested photocopy of the concerned page of original birth register. This is the procedure and the Rules by which the cause sought to be agitated in this petition is governed.

7. According to the Petitioner, when the Petitioner was informed in the year 1998 to get the caste validity certificate and when he was in the process of collecting documents, he came to know that his actual date of birth was 1 April 1966. He stated that he made representation to the Education Officer on 18 September 2006 for correction in the entry in date of birth, and thereafter made series of representations. Ultimately, the request was rejected. Thereafter, the Petitioner filed an Appeal on 24 August 2020, which was pending.

8. Thus, according to the Petitioner's own assertion, the Petitioner came to know that there was an error in the date of birth in the year 1998. This is a general assertion that can be advanced by anyone as it is not possible to ascertain the state of mind of the Petitioner. Even assuming it was after 1998 that the Petitioner came to know of his date of birth, the application as per law was

filed after 17 years. The Petitioner made an application for the first time in the year 2006. This application did not annex the extract of the birth register, therefore, it was not an application in the eyes of law. The Petitioner was repeatedly informed by the Respondents to submit the birth register and it appears that the Petitioner had given the birth register with the application in the year 2015. This application was rejected in the year 2017.

9. The facts of the case show gross delay by the Petitioner at each stage. The Petitioner had joined the services in the year 1993. According to him, he came to know regarding incorrect date of birth in the service record in the year 1998. Assuming that to be true, till 2017, the Petitioner did not approach the Court. The request was rejected in the year 2017. The Petitioner had earlier filed Writ Petition in the year 2021; that also after a period of four years. This was disposed of by directing the Respondents to decide the Petitioner's representation. It is settled law that the order directing representations to be decided is not to be considered as the starting point to overcome the delays and latches in questioning the original action.

10. There was no impediment for the Petitioner to follow the Rules and annex documents from the year 1998 onwards and to approach the Court early. The attempt of the Petitioner is to somehow seek extension in service.

11. We are not inclined to exercise our writ jurisdiction in light of this conduct of the Petitioner.

12. The Writ Petition is rejected.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]