

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11531 OF 2023

. Asha D/o. Namdevrao Kadam,
Age: 54 years, Occ: Service,
R/o.: Raigad Nagar, Near MGM College,
Nanded, Tq. and Dist. Nanded

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of School Education and
Sport, Mantralaya, Mumbai – 400032
2. The Chief Executive Officer,
Zilla Parishad, Nanded,
Tq. and Dist. Nanded
3. The Education Officer,
Zilla Parishad, Nanded,
Tq. and Dist. Nanded
4. The Head Master,
Zilla Parishad Primary School,
Pangri, Tq.: Ardhapur,
Dist.: Nanded
5. The Head Master,
Zilla Parishad Primary
(Womens) School, Tamsa,
Tq. : Hadgaon, Dist.: Nanded
6. The Head Master,
Zilla Parishad High School,
Tamsa, Tq.: Hadgaon,
Dist.: Nanded

...Respondents

...

Mr. Panditrao S. Anerao, Advocate for the Petitioner

Mr. A. V. Deshmukh, A.G.P. for Respondent / State
Mr. S. B. Pulkundwar, Advocate for Respondent No.2

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
& ARUN R. PEDNEKER, J.**

DATE : 13th OCTOBER, 2023.

P.C. :

1. By the present writ petition under Article 226 of the Constitution of India, the Petitioner seeks directions to the respondents / authorities to correct the date of birth of the Petitioner in her service book record in terms of the communication dated 29.01.2020 issued by Respondent No.3 - The Education Officer (Primary), Zilla Parishad, Nanded to Respondent No.5 - The Head Master, Zilla Parishad Primary (Womens) School, Tamsa, Taluka - Hadgaon, District - Nanded, whereby the Education Officer has issued communication to the Head Master that the date of birth of the Petitioner in the school record mentioned as 15.01.1969 be corrected as 15.01.1971.

2. Mr. Panditrao S. Anerao, learned counsel for the petitioner submits that the petitioner has been appointed on the post of Assistant Teacher from 01.01.1997 against open category and presently the petitioner is working as Assistant

Teacher at Primary School, Limbgaon, Taluka and District – Nanded. The learned counsel for the Petitioner submits that the Petitioner has made representation to the authorities regarding correction of her date of birth in the service book, so also, in the service record. He further submits that as per the request of the Petitioner, Respondent No.3 – The Education Officer, Zilla Parishad, Nanded has issued communication dated 29.01.2020 to Respondent No.5 – The Head Master, Zilla Parishad Primary (Womens) School, Tamsa, Taluka – Hadgaon, District – Nanded, directing to correct the date of birth of the Petitioner in the school record. The learned counsel for the Petitioner submits that, Respondent No.5 has not corrected the school record as directed. Hence, the present writ petition is filed.

3. Per contra, Mr. S. B. Pulkundwar, learned counsel appearing for Respondent No.2 – The Chief Executive Officer, Zilla Parishad, Nanded submits that the Maharashtra Zilla Parishads District Service Rules, 1968 are applicable to the Petitioner and in terms of Rule 8 (1), which is quoted below, the provision of the Maharashtra Civil Services Rules relating to the terms and conditions of service in respect of

matters shall mutatis mutandis apply in relation to such matters of Parishad employees as they apply in relation to members of the services of the State Government.

"8. Regulation of all other terms and conditions of service.-

(1) *Subject to the rules made under clause (a) of section 248 if any, and sub-rule (2) of this rule, the provision of the Maharashtra Civil Services Rules relating to the terms and conditions of service in respect of matters (other than those hereinbefore provided and payment of other allowances, if any) shall mutatis mutandis apply in relation to such matters of Parishad employees as they apply in relation to members of the services of the State Government."*

4. The learned counsel has taken us through the provisions of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, more particularly, Rule 38 (2)(b), which is quoted below. In terms of Rule 38(2)(b) also, after the date of birth is recorded in the service book, no alteration of the entry shall be allowed unless it is known, that the entry was due to want of care on the part of some person other than the person in question or is an obvious clerical error. Provided that, for the contingencies specified in clause (2)(b), the application shall not be entertained after a period of one year commencing from the date of his entry in the Government service.

Rule 38(2)(b) is quoted below:-

"38. Procedure for writing the events and recording the date of birth in the service book.-

(1) ...

(2) ...

(a)

(b) After an entry of date of birth is recorded in a service book no alteration of the entry shall be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the person in question or is an obvious clerical error:

Provided that, for the contingencies specified in this clause, the application shall not be entertained after a period of one year commencing from the date of his entry in the Government service."

5. The learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble and others, 2010 (14) SCC 423**, wherein the Hon'ble Supreme Court has interpreted Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and has held at para 19 as under:

"19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in Secretary and Commissioner, Home Department & Ors. v. R. Kribakaran, (supra) reads as under:

An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion forever. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible and before any such direction is issued, the court must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."

6. In view of the Judgment cited supra of the Hon'ble Supreme Court, so also, plain reading of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 would indicate that the birth date cannot be altered in the service record after 1 year commencing from

the date of entry in the Government Service. Even the earlier unamended rules did not permit the alteration of the birth date in the service record beyond 5 years. The petitioner is in service from 01.01.1997 and the application is made in the fag end of her career in the year 2019. The service record cannot be altered in view of the above service rules and the law laid down by the Hon'ble Supreme Court cited supra at the fag end of service.

7. In view of the same, the Writ Petition is dismissed.

(ARUN R. PEDNEKER, J.)

(CHIEF JUSTICE)

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