

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

WRIT PETITION NO.7881 OF 2023

Chandrakant Laxman Devlekar

....Petitioner

Versus

Honourable Principal District Judge,
Ratnagiri & Ors.

....Respondents

Appearances :

Mr. Sanjay Kulkarni for Petitioner.

Mr. Akshay J. Kandharkar, i/b. R. S. Datar for Respondent No.2.

**CORAM: DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 28 JUNE 2023.

P. C.:

By this petition petitioners seeks correction of his date of birth from 1 July 1965 to 7 August 1966 in his service record.

2. Facts of the case are that petitioner came to be appointed in the office of Principal District Judge, Ratnagiri. On the basis of school leaving certificate produced by him, his date of birth is recorded as 1 July 1965. On the basis of date of birth so recorded petitioner is deemed to be retired on 13 August 2023. Few months before his retirement petitioner made application

dated 22 May 2023 for correction of his date of birth from 1 July 1965 to 7 August 1966. Petitioners request has been rejected by the Principal District Judge by order dated 16 June 2023. Aggrieved by the decision, petitioner has filed the present petition.

3. The learned counsel appearing for petitioner has fairly conceded for petitioner did not applied for change of his date of birth within 5 years of entry in the service record. That petitioner made an application for change of date of birth on 22 May 2023. He would rely upon extract of birth register of Khed Nagar Parishad issuing petitioners date of birth as 7 August 1966. He would submit that the entry in the birth register would have more evidentiary value over the entry made in the school leaving certificate. He would rely upon judgment of this court in **Shankar Arjun Nimsarkar Vs. Zilla Parishad, Wardha**, Writ Petition No.4336 of 2022 decided on 14 September 2022 and **Vilas Shankarrao Deshpande Vs. State of Maharashtra**, Writ Petition No.8978 of 2021 decided on 2 December 2022. He would also rely upon circular dated 24 June 1992 issued by General Administration Department of Government of Maharashtra in respect of his contention that request for change of date of birth can be entertained even at the flag end of service.

4. We must observe at the very outset that the petition has been filed in a casual manner without disclosing specific facts. The memorandum of petition does not discloses the exact date of appointment of petitioner or the post on which he was appointed. We therefore not aware of the exact date of appointment of petitioner. However it is undisputed position that petitioner made a request for change of date of birth for the first time on 22 May 2023.

On the basis of the date of 1 July 1965 recorded in his service record, petitioner would retire from service on 31 July 2023. This shows that petitioner has filed application for change of date of birth at the fag end of his service.

5. The Apex Court has repeatedly held that request made for change of date of birth at the fag end of service cannot be entertained. Reference in this regard can be made to the judgments in **General Manager, South-Eastern Coal Fields Ltd. Vs. Avinash Kumar Tiwari**, (2023) Live Law SC 124 and **Bharat Cooking Coal Ltd. and Ors. Vs. Shyam Kishor Sing**, (Civil Appeal No.1009/2020) decided on 5 February 2020.

6. Petitioner has relied upon circular dated 24 June 1992 issued by General Administration Department Government of Maharashtra in support of his contention that the application for change of date of birth made at the fag end of the services can also be entertained. He has relied upon point No.10 of the check list appended to the circular dated 24 June 1992. Object behind issuance of circular dated 24 June 1992 is not to fix any time limit for entertaining application for change of date of birth. The circular dated 24 June 1992 merely circulates the check list to be followed by each department while deciding cases of change of date of birth. The circular itself appeals with Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules.

7. Under Rule 38 time of 5 years is prescribed within which application for change of date of birth can be made. Therefore petitioner's reliance on the circular dated 24 June 1992 is completely misplaced.

8. Petitioner has relied upon judgment of this court in ***Shankar Nimsarkar*** (supra). The facts in that case are however completely distinguishable. In that case petitioner therein was initially appointed under Panchayat Samiti, Chimur under Zilla Parishad primary school. Though his date of birth wrongly recorded in his school leaving certificate as 29 August 1964 instead of 19 February 1966 the Panchayat Samiti accepted petitioner's affidavit and recorded correct date of birth as 19 February 1966. Later on Zilla Parishad Wardha issued an advertisement for filling up 88 post petitioner applied in pursuance of thereof and came to be appointed as primary teacher in Zilla Parishad, Wardha. Immediately after his appointment he made application dated 24 February 1989 for correcting his date of birth which was erroneously recorded based on his school leaving certificate. He also made application dated 23 February 1993 to the Block Educational Officer for correctness of date of birth. Thus, in that case the petitioner therein had taken prompt steps for correction of his date of birth by making application within a period of 5 years as provided under Rule 38. Furthermore the correct date of birth was initially recorded by Panchayat Samiti Chimur to Zilla Parishad, Wardha to change the same by recording erroneous date of birth. Thus, the facts in the case of Shankar Nimsarkar are clearly distinguishable and the said judgment has no application to the present case.

9. Petitioner has also relied upon judgment of this court in Vilas Shankarrao Deshpande delivered by Division Bench (to which one of us Dhirajsing Thakur, J.) was party. Reliance is placed on paragraph No.13 of the judgment.

10. In that case this court held that the petitioner therein failed to prove incorrect entry in the date of birth either on account of clerical error or for want of correctness on the part of some person other than the petitioner. This court ultimately refused to permit change of date of birth. Therefore petitioner's reliance on the judgment *Vilas Shankarrao Deshpande* (supra) is again misplaced.

11. Resultantly we do not find any merit in the present petition. Writ Petition is accordingly dismissed with no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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