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SALUNKE
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SALUNKE J V
Date: 2023.04.06
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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8670 OF 2021

Ramdas Mahadeo Khedekar } Petitioner
 versus
 The State of Maharashtra & Ors. } Respondents

Ms. Purvi Doctor with Ms. Shweta R. Rathod
 i/b. Elixir Legal Services for the petitioner.

Mr. M. M. Pabale, AGP for State (R-1 to 6).

CORAM: S. V. GANGAPURWALA, Act.CJ.&
 SANDEEP V. MARNE, J.

DATE: APRIL 5, 2023

P.C.:-

1. The petitioner seeks correction of the date of birth in the service records.
2. The learned advocate for the petitioner strenuously contends that though the date of birth of the petitioner is recorded as 1st June 1971 in the school records so also the service records; however, the correct date of birth is 24th December 1973. The petitioner could realise the same only in March 2018 when he had visited the native place of his grandfather where renovation work was going on. The petitioner could lay his hands upon a handwritten date of birth maintained by the grandfather of the petitioner. At that time, it was realised that the correct date of birth of the petitioner is 24th December 1973. The learned advocate for the petitioner further submits that in fact, the date of birth of other two brothers of the petitioner is also recorded as 1st June; however, different years are recorded. This would demonstrate that the date of birth recorded in the school record was not accurate, but was merely on approximation. The learned advocate submits that only because an application is not made within 5 (five) years, that would not be sufficient to negate the case of the petitioner. This

Court can consider the correct date of birth of the petitioner and direct the employer to change the date of birth in the service records.

3. The learned advocate for the petitioner, to buttress her submission, relies upon a judgment of the Division Bench of this Court in *Prabhat Kumar Titus vs. Western Coalfields Ltd., Nagpur & Ors.*, reported in **2021 (6) Mh.L.J. 706**.

4. The learned AGP submits that the petitioner had never made any application within 5 (five) years of the date of joining. As such, now he is not entitled to the correction.

5. The petitioner was first appointed as District Agriculture Officer at Zilla Parishad on 13th January 1997. In the service records at that time, the date of birth is recorded as 1st June 1971. The petitioner, thereafter, appeared through MPSC and got selected as Sales Tax Officer in June 1997. The date of birth of the petitioner at that time is also recorded as 1st June 1971. The petitioner, thereafter, in December 2001 is appointed as Deputy Collector, Nashik and today, the petitioner is working as Resident District Collector. The service book of the petitioner consistently records the date of birth of the petitioner as 1st June 1971.

6. It is not disputed that the petitioner, at no point of time, had filed application for correction of date of birth in the service records prior to approaching this Court. The petitioner is in government service for more than 22 (twenty-two) years. However, he has never applied for correction of the date of birth in the service records. The case of the petitioner is that in March 2018 he had been to the native place of his grandfather and there he could find the handwritten dates recorded by the grandfather and the date of birth of the petitioner in handwriting was recorded as 24th December 1973.

7. This court, in writ jurisdiction under Article 226 of the Constitution of India, would not determine the correct date of

birth of the petitioner. This court would only consider whether, after rendering 22 years of service, the petitioner can be permitted to correct the date of birth in the service records. Admittedly, every time the petitioner entered the service, his date of birth is recorded as 1st June 1971. It is also admitted by the petitioner that in the school record also the date of birth is recorded as 1st June 1971.

8. If the transfer certificate of the petitioner of the 10th Standard is perused and if the date of birth of the petitioner, as contended by the petitioner is accepted, viz. 24th December 1973, then, the petitioner took admission in the 10th Standard at the age of 13 years. Be that as it may, we may not enter into this aspect. Suffice it to observe that as per Rule 38(1) of the Maharashtra Civil Service (General Conditions) Rules 1981, an application ought to have been made within 5 (five) years from entering into the service.

9. In the seniority list maintained by the employer, the date of birth of the petitioner is recorded as 1st June 1971. No objection was raised by the petitioner at any material point of time prior to filing of the present writ petition.

10. In the case of *Prabhat Kumar Titus* (supra), relied upon by the petitioner, the delay was caused by the employer in deciding the application of the petitioner therein. The application of the petitioner therein was not decided for 9 (nine) years and 4 (four) months. In light of that, the Division Bench of this Court had entertained the writ petition.

11. In light of the above, no case for interference is made out. The writ petition is dismissed. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)