

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6976 OF 2023**

1. State of Maharashtra
Through Additional Chief Secretary
Home Department, Mantralaya, Mumbai.

2. The Director General of Police,
Shahid Bhagat Singh Marg, Colaba
Mumbai-1.

3. The Commissioner of Police, Mumbai
Near CST, Crawford Market, Mumbai **...PETITIONERS**

V/S.

Sudhir Bhagwat Kalekar
Age-58 years, Occ. Assistant Commissioner
of Police (Traffic), South Mumbai and
Residing at 2/2/3, Police officers Quarters,
Kandivali Police Station Compound,
S.V. Road, Kandivali (W), Mumbai-67. **...RESPONDENT**

Mr. B.V. Samant, AGP for the Petitioner-State.

Ms. Vaishali Jagdale, for the Respondent.

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

Date : 23 June 2023.

Judgment (Per : Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith. With the consent
of the parties, taken up for final disposal.

2. Petitioner-State Government has filed this petition challenging judgment and order dated 21 April 2023 passed by the Maharashtra Administrative Tribunal (**Tribunal**) in Original Application (OA) No. 280/2023. The Tribunal has allowed the O.A. filed by the Respondent directing Petitioners to correct Respondent's date of birth as 23 November 1965 in place of 23 May 1965 in service records and to accord necessary consequential service benefits to him.

3. Respondent came to be appointed on the post of Police Sub-Inspector through selection process conducted by Maharashtra Public Service Commission (**MPSC**) on 17 August 1992. At the time of his appointment, he relied upon School Leaving Certificate which reflected his date of birth as '23 May 1965'. Even in his Matriculation certificate, the date of birth is reflected as 23 May 1965. Accordingly, Respondent's date of birth came to be registered in the service records as 23 May 1965. Later, he made an application dated 22 July 1994 for correction in his date of birth as 23 November 1965 by relying upon Birth Certificate issued by the Municipal Corporation of Greater Mumbai (**M.C.G.M.**). No action was taken on application dated 22 July 1994. The Respondent did not take any steps for correction of his date of birth for a considerable period of time and made the next application after ten years on 29 January 2004. He made few more applications during the years 2004 and 2005. After brief hiatus, he resumed making applications in the year 2011 and continued doing so during the years 2013 and 2014 as well. Some internal correspondence also took place on the request made by him. Respondent was promoted from time to time to various posts and was functioning on the post of Assistant Commissioner of Police at the time of his retirement which

scheduled on 31 May 2023. He made representation dated 22 July 2022 for correction of date of birth. His application was rejected on 1 March 2023. He filed O.A. No. 280/2023 in March 2023 before the Tribunal for correction of his date of birth. The Tribunal has proceeded to allow the O.A. directing Petitioners to correct the date of birth in the service record as 23 November 1965. Aggrieved by the order of the Tribunal, Petitioners have filed the present petition.

4. Appearing for Petitioners, Mr. Samant the learned AGP would submit that the Tribunal ought to have rejected the Original Application filed for change of date of birth at the fag end of service. He would rely upon provisions of Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (**Rules of 1981**) in support of his submission that the alleged erroneous entry was neither an obvious mistake nor attributable to any person other than the Respondent. That therefore the case of Petitioner is not covered by Rule 38 (2a)(f) of the Rules of 1981.

5. Mr. Samant would further submit that if the date of 22 November 1965 is taken as the correct date of birth of Respondent, he would be ineligible to seek admission in Grade-1 on 23 May 1971. In that regard, he would rely upon provisions of The Right of Children to Free and Compulsory Education Act, 2009 which envisages admission in a school at the age of six years. He would further submit that, Respondent's reliance on the Birth Certificate allegedly issued by the M.C.G.M. dated 5 July 1986 is irrelevant as Respondent did not rely upon the said document at the time of his appointment in service in the year 1992. He would submit that the Original Application of the

Respondent was barred by limitation and ought not to have been entertained by the Tribunal.

6. *Per-contra*, Ms. Jagdale the learned Counsel appearing for Respondent would oppose the Petition and support the order passed by the Tribunal. She would submit that the Birth Certificate issued by M.C.G.M. has more evidentiary value over the School Leaving Certificate. That Respondent was requesting for change of his date of birth right since 22 July 1994. That his case was under active consideration which is the reason why he did not approach the Tribunal earlier. That the Tribunal has harmoniously construed the provisions of Rule 38 of the Rules of 1981 and has directed correction of date of birth on account of production of conclusive evidence by Respondent. That Respondent's application was rejected on 1 March 2023 and that therefore O.A. was within limitation.

7. Rival contentions of the parties now fall for our consideration.

8. Respondent joined service on 17 August 1992 and filed Original Application for correction of his date of birth 31 years later in March 2023. He was due to retire on attaining the age of superannuation on 31 May 2023. Thus the Original Application was filed couple of months before his retirement.

9. Rule 38 of the Rules of 1981 deals with correction of date of birth of Government Servants. Relevant portion of Rule 38 reads thus:

“38(2)(a) The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;

(f) When once an entry of age or date of birth has been made in a service book no alteration of the entry should afterwards be allowed, unless it is known, that the entry was due to want of care on the part of some person other than the individual in question or is an obvious clerical error.

Instruction :- (i) No application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant, who has entered into the Government service on or after 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.”

10. Thus, an application for change of date of birth can be entertained only within a period of five years from the date of appointment. It is Respondent's contention that such an application was made by him on 22 July 1994, i.e. within a period of two years from his appointment. It was sought to be suggested on behalf of the Petitioners that there is no evidence of submission of application dated 22 July 1994 as the office copy of the letter produced by the Respondent does not bear any acknowledgment. However Petitioners did not dispute submission of the application dated 22 July 1994 by the Respondent in their affidavit-in-reply filed before the Tribunal. It was never their case before the Tribunal that the application dated 22 July 1994 was not received by them. Therefore, the Petitioners now cannot be permitted to dispute submission of receipt of application

dated 22 July 1994. We therefore proceed on an assumption that the application dated 22 July 1994 was indeed submitted by the Respondent.

11. At the time of entry into service, the Respondent submitted and relied upon College Leaving Certificate, as well as Matriculation Certificate. In both the documents, his date of birth was recorded as 23 May 1965. No efforts were made by him for change of entry of date of birth in the School/College records or in the Matriculation Certificate. As a matter of fact, under the provisions of Clauses-26.3 and 26.4 of the Secondary School Code, change in date of birth is not permissible after student leaves the school. Thus, under the Code, there is complete prohibition on alteration of entry relating to date of birth from school records after the student passes out or leaves the school. The said provision has been interpreted by the Full Bench of this Court in **Janabai V/s. State of Maharashtra, 2020 (1) ALL MR 360** holding that in cases of 'obvious mistake', application for alteration of date of birth can be entertained even after the student leaves the School.

12. In the present case, however, the Respondent did not make any attempt to get the date of birth corrected in his school records. Upon correction of date of birth in the school records, Respondent could have got the same corrected in the Matriculation Certificate as well. However, even this was not done. Therefore, as of today, both in school/college records as well as in the Matriculation Certificate, Respondent's date of birth continues to be reflected as 23

May 1965. In that view of the matter, permitting Respondent to correct his date of birth in service record would result in incongruous situation where there would be different dates recorded in his school records/matriculation certificate and service records.

13. The three documents relied upon by the Respondent for correction of his date of birth are (i) Certificate dated 27 June 1986 issued by The Bombay Mothers & Children Welfare Society, (ii) Certificate of birth dated 25 July 1986 issued by the M.C.G.M., and (iii) Horoscope. So far as the third document (horoscope) is concerned, no evidentiary value can be attached thereto and therefore the same deserves to be ignored all together. It is a weak piece of evidence. So far as the first two documents are concerned, they were issued on 27 June 1986 and 25 July 1986. Respondent came to be appointed on the post of Police Sub Inspector on 17 August 1992. No explanation is however forthcoming as to why the Respondent did not rely upon the said two documents at the time of his entry into service but chose to rely upon the College Leaving Certificate and Matriculation Certificate for recording his date of birth.

14. Even if it is assumed that Respondent did make an application for change of date of birth on 22 July 1994, he failed to pursue his remedies in respect of his grievance, immediately thereafter. He slept over the matter for ten long years and made the next representation only on 29 January 2004. Respondent thereafter went on making various representations but did not approach the Tribunal for correction of his date of birth. He was due to superannuate on 31 May 2023 on the basis of his date of birth of 23 May 1965 recorded in

service. Two months before his retirement, he filed O.A. before the Tribunal in March 2023.

15. The Apex Court has time and again held that applications 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 of the Apex Court in (i) **General Manager, Southeastern Coal Fields Ltd. V/s. Avinash Kumar Tiwari** (2023) Live Law (SC) 124; and (ii) **Bharat Cooking Coal Ltd. & Ors. V/s. Sham Kishore Singh** (Civil Appeal No. 1009/2020) decided on 5 February 2020.

16. In **Union of India v. Harnam Singh**, (1993) 2 SCC 162, the Supreme Court has held:

“ A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of

date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. **The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.”**

(emphasis ours)

17. The Tribunal has also erred in interpreting the provisions of Rule 38 of the Rules of 1981. It is not Respondent's case that the error is attributable to any other person other than himself. Respondent himself produced College Leaving Certificate and Matriculation Certification, on the basis of which his date of birth was recorded as 23 May 1965. He therefore cannot blame any other person for the alleged error. So far as the second ground of 'obvious clerical error' is concerned, it cannot be stated that there has been any obvious or clerical error in recording Respondent's date of birth. The date of birth has been recorded on the basis of the documents produced by the Respondent. Even today, the said documents continue to reflect 23 May 1965 as Respondent's date of birth. Therefore, the case of Respondent is not covered by the expression 'obvious clerical mistake'.

18. The Tribunal ought not to have entertained the O.A. filed by Respondent two months before his retirement. The objective behind formulating rule/administrative instructions to bar correction of date of birth after five years of entry into service is to give finality and achieve certainty with regard to the rights of the Government

Servants. The issue of correction of date of birth cannot be kept pending till the fag end of an employees' retirement. This would create uncertainty, as has happened in the present case. The Tribunal has allowed the O.A. of the Respondent a month before his date of retirement thereby creating confusion and uncertainty. The pension papers of the Government Servant are processed well before his retirement with a view to ensure timely payment of retirement benefits to him. The anticipated vacancy created due to retirement is taken into consideration for various purposes like effecting promotions, effecting transfers, etc. Sometimes date of birth becomes a relevant factor for determining seniority of officers appointed/promoted on same day. In such circumstances, entertaining litigation filed couple of months before the date of retirement with the sole objective of seeking extension of tenure of service, would lead to uncertainty and chaos in the administration. An officer may casually make application for change of date of birth within 5 years of his entry in service (so as to meet technical requirement of the rules/administrative instructions) and not pursue the same for years together. He cannot then knock the doors of courts/tribunals at the fag end of service for correction of date of birth. The objective behind prescribing time limit for seeking correction of date of birth is required to be kept in mind. The objective is to achieve clarity and prevent uncertainty not only about the officer's career but also in the area of administrative management. If an application for correction of date of birth is made within 5 years of entry into service and if the same is not acted upon, remedy in respect of such inaction must be exercised in a timely manner and filing of litigation at the fag end of service is required to be discouraged. Mere rejection of request for change of date of birth by the employer before

23 June 2023

date of retirement would not revive the cause which got time barred by officer's failure to exercise remedies in a timely manner. Entertaining Respondent's for correction of date of birth OA instituted at the fag end of service on specious plea of rejection of request on 1 March 2023 would completely frustrate the objective behind prescribing time limit for seeking correction in date of birth under Rule 38. The Tribunal therefore ought to have avoided entertaining Respondent's application for correction of date of birth filed in March 2023 when he was slated to retire on 21 May 2023.

19. We therefore find the impugned judgment and order of the Tribunal to be indefensible. Judgment and order dated 21 April, 2023 passed by the Tribunal in O.A. No. 280/2023 is therefore set aside and the O.A. filed by the Respondent stands dismissed. Respondent's pension and pensionary benefits be computed by taking into consideration his date of retirement as 31st May 2023.

20. Writ Petition is allowed. Rule is made absolute. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)

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