

IN THE HIGH COURT OF JUDICATURE AT BOMBAYNAGPUR BENCH : NAGPURWRIT PETITION NO.1359 OF 2021

Dilip s/o Pukhraj Rathi,
 aged about 54 years,
 occupation : Service, r/o Takiya
 Road, in front of Kabra Metal,
 Bhandara.

... Petitioner

- Versus -

- 1) State of Maharashtra, through
 its Secretary, School Education and
 Sports Department, Mumbai-32.
- 2) The Deputy Director of Education,
 Nagpur Division, Balbharati Bhavan,
 Dhantoli, Nagpur.
- 3) The Education Officer (Secondary),
 Zilla Parishad, Bhandara.
- 4) The Head Master, Bansilal
 Lahoti Nutan Maharashtra
 High School, Bhandara,
 Taluq and District Bhandara.
- 5) The Nutan Maharashtra Vidya
 Vikas Mandal, Bhandara,
 through its President/Secretary,
 Taluq and District Bhandara.

... Respondents

Shri S.G. Joshi, Advocate for petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for respondent
 nos.1 to 3.

Shri S.P. Kshirsagar, Advocate for respondent nos.4 and 5.

CORAM : A.S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATED : JULY 19, 2023

ORAL JUDGMENT (PER A.S. CHANDURKAR, J.) :

Rule. Rule is made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

2) The challenge raised in the present writ petition is to the order passed by the Deputy Director of Education, Nagpur Division, Nagpur on 23/5/2018 rejecting the appeal preferred by the petitioner for challenging the order dated 28/2/2017 passed by the Education Officer (Secondary).

3) It is the case of the petitioner that his date of birth is 12/6/1967. The petitioner came to be appointed on the post of Assistant Teacher at the respondent no.4 School run by the respondent no.5 Society. In his service book, his date of birth was shown as 12/6/1967. On the basis of the complaint made, the Education Officer (Secondary) passed an order on 28/2/2017 by which the School was directed to correct the service book and record the date of birth of the petitioner as 12/6/1965 instead of 12/6/1967. Being aggrieved by the aforesaid order, the petitioner preferred an appeal before the Deputy Director of Education on

12/4/2017. By the impugned order that appeal has been dismissed by observing that it was necessary to have the date of birth corrected within a period of five years of entering in service. Since the petitioner had rendered service of 25 years, the claim of the petitioner was not decided.

4) On hearing the learned Counsel for the parties, it is seen that while entering the service, the petitioner's date of birth was recorded as 12/6/1967 in his service book. On the basis of the complaint received by the Education Officer (Secondary), he directed to Head Master of the School on 28/2/2017 to record the date of birth of the petitioner as 12/6/1965. The appeal preferred by the petitioner was against the said direction and he was not seeking change in his date of birth as recorded in the service book. On the contrary, he was aggrieved by such change being directed by the Education Officer (Secondary). The Deputy Director of Education while dismissing the appeal has proceeded on an incorrect premise that the petitioner was seeking change of his date of birth as recorded in the service book. On that basis it was observed that such change was permissible within a period of five years. We find that the reason assigned by the Deputy Director of Education is not in

accordance with the factual matrix. We find it necessary to direct the Deputy Director of Education to re-consider the said appeal and decide the same in accordance with law in the light of grounds raised in the memorandum of appeal.

5) For the aforesaid reasons, the following order is passed :

(i) The impugned order dated 23/5/2018 passed by the Deputy Director of Education is set aside.

(ii) It is directed that the appeal preferred by the petitioner on 12/4/2017 for challenging the order dated 28/2/2017 shall be re-considered and decided afresh by hearing all the parties and giving them due opportunity.

(iii) To enable consideration of such appeal, the parties shall appear before the Deputy Director of Education on 1/8/2023.

(iv) The said appeal shall be decided within a period of six weeks and decision be communicated to the parties.

(v) All points on merit of the writ petition are kept open.

6) Rule is made absolute in the aforesaid terms. No costs.

JUDGE

JUDGE

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