

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2149 OF 2022

Surekha Sambhaji Fulzele,
Aged about 57 years Occ : Service
R/o. Ghugus,
Tah. & Distt. Chandrapur.

.....**Petitioner**

...**Versus**...

(1) Deputy Director of Education,
Nagpur Division, Nagpur.

(2) Zilla Parishad, Chandrapur,
Through its
Education Officer (Primary)

(3) Principal, Mahila Ashram Junior
College of Education, Wardha.

.....**Respondents**

Mr. N. R. Saboo, Advocate for the petitioner
Mr. N. S. Rao, A. G. P. for respondent 1
Mr. Suyash Agrawal, Advocate for respondent 2
None for respondent 3

CORAM : **ROHIT B. DEO AND M. W. CHANDWANI, JJ.**
DATE : **16-06-2023**

ORAL JUDGMENT : (PER ROHIT B. DEO, J.)

Heard.

2. Rule. Rule made returnable forthwith. With consent,
heard finally.

3. The petitioner claimed that she was born on 24-4-1966. She learnt at the fag end of her service tenure as Primary Teacher on the establishment of Zilla Parishad, Chandrapur that in the service book, her date of birth is recorded incorrectly as 24-4-1964. She sought correction, which was refused and she was relieved on 30-4-2022 on the premise that she attained age of superannuation.

4. We may only note broad facts, which are not in serious dispute.

5. Petitioner was appointed as Assistant Teacher in the Primary School, Belsani.

6. The petitioner avers that in the primary school record, her date of birth is correctly recorded as 24-4-1966. In the secondary school record also, her date of birth is correctly recorded as 24-4-1966. The certificate issued by the Maharashtra State Board of Secondary and Higher Secondary Education correctly records the date of birth as 24-4-1966. At this stage, we may note, that the said averments are fairly not disputed by the respondents.

7. The petitioner sought admission in the D.Ed course on the basis of certificate issued by the Maharashtra State Board of Secondary and Higher Secondary Education. She secured admission in Mahila Ashram Adhyapika College, Wardha and she successfully cleared the D.Ed examination.

8. Petitioner applied for the post of Assistant Teacher (Primary) in response to advertisement issued by the Zilla Parishad and submitted all relevant documents including her school certificates and college certificates. She was selected and appointed vide order dated 1-7-1988.

9. Petitioner avers that in the college leaving certificate, her date of birth is incorrectly shown as 24-4-1964. Notwithstanding that there was overwhelming documentary material to show that the petitioner was born on 24-4-1966 in the form of, *inter alia* the school leaving certificate, the Zilla Parishad recorded the date of birth as 24-4-1964 in the service book.

10. The zilla parishad however, contends that while service book may not have been made available to the employee for perusal annually, her signature was obtained on the first page

of the service book which records the date of birth as 24-4-1964.

11. The petitioner submits that every seniority list which is published correctly records the date of birth as 24-4-1966 and the date of superannuation as 30-4-2024.

12. Petitioner submits that in as much as Rule 41 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 obligates the zilla parishad to make available the service book to the employees every year and to obtain the signature of the employee confirming the inspection of the service book, the zilla parishad clearly violated the said rule, with the result that the petitioner relying on the seniority lists published from time to time laboured under the impression that her date of birth is correctly recorded as 24-4-1966.

13. It was only in 2021 that the petitioner realized that the service book records incorrect date of birth and she submitted applications dated 26-3-2021/21-5-2021 seeking correction of the service book. The applications came to be rejected by the Education Officer by communication dated 14-1-2022. The Education Officer reasons that the application is time barred in as

much as correction ought to have been sought within five years from securing employment.

14. Petitioner submits that since she is superannuated on 30-4-2022 on the basis of incorrect date of birth, the purported superannuation partakes the character of illegal termination of service.

15. The respondents are fairly not joining issues with the petitioner on the aspect of the date of birth. Respondents are not denying that the correct date of birth is as a fact 24-4-1966. However, the respondents would submit inter alia relying on the decision of the Hon'ble Supreme Court in *Civil Appeal No. 5720 of 2021 (Karnataka Rural Infrastructure Development Ltd. Vs. T. P. Nataraja and ors.)* and *5721 of 2021 (Karnataka Rural Infrastructure Development Ltd. Vs. M. C. Subramaniam Reddy) dated 21-9-2021* that since the application was preferred by the petitioner at the fag end of her service tenure and beyond the time limit prescribed, she is not entitled to any relief.

16. Learned Assistant Government Pleader Mr. Rao would invite our attention to paragraph 10 of the decision supra which

we extract.

“10. Considering the aforesaid decisions of this Court the law on change of date of birth can be summarized as under :

- (i) application for change of date of birth can only be as per the relevant provisions/regulations applicable;*
- (ii) even if there is cogent evidence, the same cannot be claimed as a matter of right;*
- (iii) application can be rejected on the ground of delay and laches also more particularly when it is made at the fag end of service and/or when the employee is about to retire on attaining the age of superannuation.”*

17. We are respectfully bound by the law laid down by the Hon’ble Supreme Court.

18. However, in the glaring facts of the present matter, we are more than satisfied that the petition shall have to be allowed.

19. The distinguishing feature in the present matter is that the date of birth, which is claimed by the petitioner, is not in dispute. It is further not in dispute that every seniority list which was published records the correct date of birth and obviously the petitioner was justified in labouring under the impression that her

date of birth is correctly recorded, in the service book, in any event, she would be superannuated on 30-4-2024, as is mentioned in the seniority list published. Having led the petitioner down the garden path, we are not inclined to accept the submission of the zilla parishad that the petitioner be non-suited on the premise that she staked claim to correction of her date of birth belatedly. Perhaps, the petitioner had not occasion to seek correction of date of birth, since she was justified in believing the representations which were made to her by employer in the seniority list published which clearly spell out the date of birth as 24-4-1966 and the date of superannuation as 30-4-2024.

20. We may further note that the zilla parishad is not claiming that the provisions of Rule 41 supra were complied with and that the petitioner was as a fact shown the service book annually as is the mandate of the said Rule.

21. In our considered view, the facts are too glaring for us to refuse to interfere in writ jurisdiction. The decisions impugned including the order of superannuation/relieve stand quashed.

22. We declare that the correct date of birth of the petitioner as 24-4-1966.

23. We further declare that the petitioner is entitled to continue in service till her date of superannuation which is 30-4-2024.

24. The petitioner shall be treated as in continuous service and shall be entitled to every consequential relief.

25. The petition is allowed in the aforesaid terms. No costs.

(M. W. Chandwani, J.)

(Rohit B. Deo, J.)

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