



REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 WRIT PETITION NO. 6275 OF 2024

NIJAM MAHEEBUB SHAIKH

VERSUS

THE CHIEF EXECUTIVE OFFICER AND OTHERS

...

Shri S.G. Karlekar, Advocate i/by Shri V.S. Panpatte, Advocate
for the Petitioner.

Shri S.B. Pulkundwar, Advocate for Respondent Nos.1 to 3/ZP.

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CORAM : RAVINDRA V. GHUGE

&

Y. G. KHOBRAGADE, JJ.

DATE :- 28th June, 2024

ORAL ORDER (Per Ravindra V. Ghuge, J.) :-

1. The date of birth of the Petitioner is 01.07.1966.

According to the Petitioner, who is to attain the age of
superannuation on coming Sunday i.e. 30.06.2024, his date of
birth is wrongly recorded in the service book as 01.07.1966
instead of 01.07.1972.

2. The learned Advocate for the Petitioner submits that
he has acquired the School Leaving Certificate from the Zilla
Parishad Primary School at Mugaon, Tq. Naigaon, Dist. Nanded,

on 28.07.2021, so also, the School Admission extract, wherein, the date of birth of the Petitioner is entered as 01.07.1972. He has taken admission in the 1st standard on 09.07.1979 and he has left the School nine years later, on 28.01.1988, while taking education in the 4th standard from 1983 till 1988 and left the school on 28.01.1988 in the 4th standard.

3. The learned Advocate for the Petitioner draws our attention to Criminal Misc. Application No.169/2020 filed by the Petitioner before the Trial Court, wherein, the Trial Court has passed a short order on 13.01.2021, concluding that the Petitioner's date of birth is 01.07.1972. Based on such order, the Petitioner has got the school records corrected.

4. The learned Advocate for the Petitioner places reliance upon the judgment delivered by the Honourable Supreme Court in ***Secretary and Commissioner, Home Department & others vs. R. Kirubakaran, 1994 Suppl.(1) SCC 155***, wherein, it was concluded that an application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. Any such direction for

correction of the date of birth of a public servant concerned has a chain reaction, inasmuch as others waiting for years below him for their respective promotions, are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever.

5. The learned Advocate clarifies that reliance is placed on these observations in view of the fact that the Petitioner is a Driver, who would be demitting office on attaining the age of superannuation, within 48 hours. Even if he continues in service for six more years by correcting his date of birth from 01.07.1966 to 01.07.1972, no other driver is likely to be affected by his continuance.

6. The learned Advocate for the Zilla Parishad has strenuously opposed this petition. He places reliance upon the following judgments:-

(a) Karnataka Rural Infrastructure Development

Limited vs. T.P. Nataraja and others, 2021 (12) SCC 27.

(b) Bharat Coking Coal Limited and others vs. Shyam Kishore Singh, 2020 (3) SCC 411.

(c) Mohan Bhauraoji Yeole vs. Principal, Shri Ayurved Mahavidyalaya, 2024(2) Bom. C.R. 876.

(d) Hukumchand Mansing Rathod vs. State of Maharashtra and others, Writ Petition No.1384/2022, decided on 09.03.2022 (Nagpur Bench).

(e) Pankaj Janardhan Chaudhari vs. Chief Engineer, Bhusawal and another, Writ Petition No.11316/2021, decided on 20.12.2021 (Aurangabad Bench).

(f) Asha d/o Namdevrao Kadam vs. The State of Maharashtra and others, Writ Petition No.11531/2023, decided on 13.10.2023 (Aurangabad Bench).

7. Having heard the submissions of the learned Advocates for the respective sides, we have perused the Petition Paper book with their assistance and have gone through the cited reports.

8. We find that the Full Bench of this Court has held in

Janabai Himmatrao Thakur vs. The State of Maharashtra and others, 2019 (6) Mh.L.J. 769, that firstly, correction in the date of birth should not be permitting at the fag-end of the service period. Secondly, there has to be an overwhelming evidence to convince the Authority for permitting such correction. Thirdly, as set out in paragraph No.39, unless there is an obvious mistake in the record and an error falling in the category of obvious mistake alone, could permit the correction of date of birth.

9. The judgments relied upon by the learned Advocate for the Zilla Parishad are on the same analogy that the date of birth in the service records cannot be changed at the fag-end of the service tenure. In paragraph No.10 of ***Karnataka Rural Infrastructure Development Limited (supra)***, the Honourable Supreme Court has culled out the principles as under:-

- “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 latches 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.”

10. Thus, the purport of the judgment in ***Karnataka Rural Infrastructure Development Limited (supra)***, is that even if there is a cogent evidence, the same cannot be claimed as a matter of right and the application has to be rejected particularly for the reason that a proceeding is taken out at the stroke of superannuation of an employee. Same is the view taken by the Honourable Supreme Court in ***Bharat Coking Coal Limited (supra)***. This Court has also held in ***Mohan Bhauraoji Yeole (supra)***, that an entry in the register of birth made pursuant to the directions of the Magistrate, is not a provision, whereby, an aggrieved party can get an adjudication of his disputed date of birth. Such an order of the Magistrate binds the Registrar and none else. In ***Hukumchand Mansing Rathod (supra)***, this Court has also taken the same view, thereby, refusing to entertain a petition for change in the date of birth at the stroke of superannuation. Same view is taken by this Court in ***Asha d/o Namdevrao Kadam (supra)*** and in ***Pankaj Janardhan Chaudhari (supra)***, concluding that such tendency to seek

rectification in the date of birth at the stroke of superannuation, should be curbed.

11. In view of the above and the fact that the Petitioner would be superannuating within 48 hours in accordance with the date of birth recorded decades ago in his Service Book, that we refuse to exercise our Writ jurisdiction.

12. **This Writ Petition is dismissed.**

13. No order as to costs.

kps (Y. G. KHOBRADE, J.) (RAVINDRA V. GHUGE, J.)