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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.1322 OF 2024

Shri. Satishkumar Sukhlal Valmiki Chaudhary,
Age: 55 years, Occu. Service,
R/o. Old Custom House Staff Quarters,
Ground Floor, Chawl No.1, Room No.1,
Fort, Mumbai – 400 001.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Collector, Mumbai City,
Office at Old Custom House,
S.B.S. Marg, Fort, Mumbai.

.. Respondents

Mr.H.S. Shinde for the petitioner.
Mr.N.C. Walimbe, Addl. G.P a/w Mr.A.R. Metkari, AGP for respondent-
State.

***CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.***

DATE : 30th January 2024

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr.Walimbe, learned Additional Government Pleader
waives service for respondent-State. By consent of the parties, the
petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge an order passed by the Maharashtra Administrative Tribunal, Mumbai Bench ("Tribunal") dated 24th January 2024 whereby Original Application No.602 of 2023 seeking rectification of his date of birth in the service book has been rejected.

3. Brief facts are as under :-

- (i) On 31st May 2005, the petitioner was appointed as a Peon with the respondents. At the time of his appointment, the petitioner mentioned his date of birth as 19th January 1964 and the same was recorded in the service book of the petitioner by the respondents.
- (ii) On 9th November 2011, the petitioner made an application to the respondents requesting for rectification of his date of birth in the service book since the date mentioned in the service book 19th January 1964 was by mistake a wrong date and the correct date was 25th February 1968.
- (iii) On 18th June 2012 and 3rd July 2012 the State Government requested its officers to examine the application and take an appropriate action.
- (iv) On 14th January 2015, the respondents rejected the application of the petitioner for change in the date of birth on the ground that

the application is made after expiry of 5 years from the date of appointment. The petitioner in his letter of 24th December 2021 has also referred to this letter of 14th January 2015 which indicates that he was aware about this rejection.

- (v) On 30th March 2021 and 24th December 2021, the petitioner once again reminded the respondents of his earlier applications for rectification of birth date. However, the same was not considered favourably. The petitioner was due to retire on 31st January 2024.
- (vi) On 23rd May 2023, the petitioner filed Original Application No.602 of 2023 before the Tribunal seeking quashing of orders dated 20th January 2022, 8th February 2022 and 10th March 2022 (these orders are not placed before us but same are referred in prayer clause of the Original Application) whereby the application for date of birth was rejected by the respondents.
- (vii) On 24th January 2024, the Tribunal dismissed the Original Application by relying on Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (for short 'Rules of 1981') since rectification was sought after the expiry of 5 years from the date of recording of birth date in service book, no correction could be allowed. It is on this backdrop, the petitioner is before us.

4. The petitioner submitted that although admittedly the application for correction of date of birth has been made after the period of 5 years but since he came to know about the correct date of birth only in November 2011, he immediately made an application for change of date of birth in the service book. The petitioner therefore, submitted that the Tribunal is not correct in rejecting the application. The petitioner relied upon the decisions in case of *Vasudha Goraknath Mandvilkar Vs. City and Industrial Development Corporation of Maharashtra Ltd.*¹ and in case of *Ashok Pralhad Meshram Vs. Head Master, Zilla Parishad High School*² and prayed for appropriate directions against the respondents permitting the change of date of birth from 19th January 1964 to 25th February 1968 in the service book. The petitioner also submitted that Instruction Nos.1 and 2 to Rule 38(2) are not applicable because he was appointed prior to insertion of these instructions.

5. The respondents opposed the petition and supported the order of the Tribunal and submitted that such an application cannot be made after a period of 5 years under Rule 38 (2) of Rules of 1981 and therefore, prayed for dismissal of the petition.

6. We have heard the learned counsel for the petitioner and

1 2008 (5) Mh.L.J. 147

2 2014 (6) Mh.L.J. 590

the learned counsel for the respondents.

7. The issue which arises for our consideration is whether an application for change of date of birth in the service book can be made after expiry of 5 years from the date of entry in the Government Service records. In this connection, it is relevant to reproduce Rule 38 of Rules of 1981 as amended by Maharashtra Amendment No. MCS 1007/CR7/07/SER-6 dated 24-12-08. :-

“38. Procedure for writing the events and recording the date of birth in the service book :

- (1) ...
- (2) While recording the date of birth, the following procedure should be followed:-
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) When once an entry of age or date of birth has been made in a service book no alternation 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:-

- (1) No application for alternation 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.
- (2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined.

(emphasis supplied)

8. There is no dispute that the application for change of date of birth in the service book has been made after expiry of 5 years. Rule 38(2)(f) prescribes that once an entry of age or date of birth has been made in a service book, no alternation 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. It is not the case of the petitioner that the mistake was due to person other than himself nor it is the case of the petitioner that the same was on account of a clerical error. Therefore under Rule 38(2)(f) being negatively couched no amendment to the date of birth can be allowed. Therefore, even if it is assumed that 2008 amendment to Rule 38(2) by which Instruction Nos.1 and 2 are not applicable then also under main clause (f) the petitioner's application is not maintainable.

9. Alternatively, Instruction No.1 to Rule 38(2) provides that no application for alteration of the entry regarding date of birth shall be entertained after a period of 5 years commencing from the date of his entry in Government Service. Instruction No.2 is subject to Instruction No.1. Therefore, on a conjoint reading of Rule 38(2) with Instruction Nos.1 and 2 which have again been negatively worded, no application can be entertained after expiry of 5 years from the date of entry in the Government Service. Admittedly in the instant case, the petitioner's

application is after expiry of 5 years and therefore, the same is barred under Instruction No.1 to Rule 38(2) of Rules of 1981.

10. In our view, the 2008 amended Rule will be applicable to the petitioner's application because the amended Rule was in force on the date of application which was on 11th November 2011 and not Rule 38 as it existed prior to 2008. The limitation of 5 years would be applicable to all the applications which were pending on the date of amendment and therefore even on this count the petitioner is not justified in seeking the change in date of birth.

11. It is also important to note that Rule 38 does not provide for any provision for condonation of delay in entertaining the application after expiry of 5 years. In the absence of any such power being granted to the authority under the said Rule, delay in filing the application cannot be condoned.

12. The petitioner in his letter dated 24th December 2021 has referred to an internal communication of the respondents dated 14th January 2015 wherein his request was rejected. The petitioner being aware of the said rejection in 2015 did not take any steps to challenge the same for a period of almost 6 years, but in the year 2021 again made

representation to the respondents reminding of his earlier applications. The respondent thereafter in 2023 approached the Tribunal at the fag end of his superannuation. The respondent ought to have been more vigilant by taking timely action to redress his grievance. Even the Original Application filed before Tribunal is barred under Section 21 of the Administrative Tribunal Act. The Tribunal has also doubted the documents on the basis of which rectification is sought. Therefore even without going into instruction Nos. 1 and 2, the petition deserves to be dismissed.

13. Therefore in our view looked from any angle, the Tribunal has correctly analyzed the provisions of Rule 38(2) and dismissed the Original Application.

14. The decision relied upon by the respondents before the Tribunal in case of ***State of Maharashtra & Anr. Vs. Gorakhnath Sitaram Kamble & Ors.***³ squarely applies to the facts of the present petition and therefore, the Original Application has been correctly dismissed.

15. The decision relied upon by the petitioner does not apply to the facts of the present petition inasmuch as in the case of ***Vasudha Goraknath Mandvilkar (supra)***, the issue of entertainability of the

3 (2010) 14 SCC 423

application after expiry of 5 years under Rule 38(2) was not before the High Court and also on facts the petitioner's case stands on different footing.

16. In the second decision relied upon by the petitioner in the case of *Ashok Pralhad Meshram Vs. Head Master, Zilla Parishad High School (supra)*, the application was filed on 20th November 2006 that is before 2008 amendment by which Instruction Nos.1 and 2 to Rule 38(2) were inserted whereas in the present case the application is made in 2011 after the 2008 amendment. Therefore, even this decision relied upon by the petitioner can be of any assistance.

17. In view of the above discussion, we do not find any reason to interfere in the impugned order of the Tribunal.

18. Petition stands dismissed. No order as to costs.

JITENDRA JAIN, J.

A.S. CHANDURKAR, J.