

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

SECOND APPEAL NO. 407 OF 2023

Suvarna Netaji Patil } ..Appellant

V/S.

Smita Ashok Patil } ..Respondent

WITH

INTERIM APPLICATION NO. 1719 OF 2024

Smita Ashok Patil } ..Applicant

IN THE MATTER BETWEEN :

Suvarna Netaji Patil } ..Appellant

V/S.

Smita Ashok Patil } ..Respondent

Mr. Aseem Naphade with Ms. Deepanjali Mishra i/by. Mr. Vithal Sankpal, for the Appellant.

Ms. Divya Arvind Pawar with Mr. Krishnakant Deshmukh, for Respondent No.1.

Mr. Pankaj Deokar, AGP for State.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 24 April 2024.

Pronounced On : 3 May 2024.

JUDGMENT :

1) Appellant has filed this Appeal challenging the Decree dated 8 February 2023 passed by the District Judge-5, Sangli dismissing Regular Civil Appeal No. 13 of 2021 and confirming the Decree dated 22 December 2020 passed by the 2nd Joint Civil Judge Senior Division, Sangli in Regular Civil Suit No. 506 of 2013. By that Decree, the Trial Court held that the appointment of Appellant (Defendant No.3) as 'Anganwadi Sevika' is illegal and has directed Defendant Nos.1 and 2 to appoint Plaintiff as 'Angandwadi Sevika'.

2) The dispute between Appellant/Defendant No.3 and Respondent/ Plaintiff is about their competing claims for appointment on the post of '*Anganwadi Sevika*' for Village-Jaygavan, Taluka Kavathe-Mahankal, District-Sangli. An advertisement was issued for filling up various posts of *Anganwadi Sevika*, *Anganwadi Madatnis* and *Mini-Anganwadi Sevika*, which included 34 posts of Angadwadi Sevika for various villages, including the Village-Jaygavan. The advertisement prescribed the age limit of minimum 25 years and maximum 35 years as on 21 January 2011. Minimum educational qualification of Matriculation was prescribed for the post of Anganwadi Sevika. Both Plaintiff as well as Defendant No.3/Appellant applied in pursuance of the advertisement. According to the Plaintiff, list of eligible and non-eligible candidates was published, which reflected remark '*ineligible*' against Appellant's name. Plaintiff claims that Defendant No. 3 was age barred on 21 January 2011 as she relied upon School Leaving Certificate which reflected her date of birth as '2 June 1975'. However, Defendant No.3 also relied upon Certificate of Birth issued by the Additional District Registrar of Births and Deaths and Block Development Officer certifying her birth date as '*2 February 1976*'. On the basis of Certificate of Birth issued by Block Development Officer, Defendant No. 3 was allowed to participate in the selection process and was appointed as '*Anganwadi Sevika*' on 28 March 2011.

3) Plaintiff therefore instituted Regular Civil Suit No.506/2013 before the Civil Judge Senior Division, Sangli challenging the appointment of Defendant No.3 and seeking her own appointment on the post of '*Anganwadi Sevika*'. The Trial

Court proceeded to decree the suit on 22 December 2020 and declared that the appointment of Defendant No.3 as '*Anganwadi Sevika*' w.e.f. 28 March 2011 was illegal. Defendant Nos.1 and 2 were directed to appoint Plaintiff as '*Anganwadi Sevika*' within two months. Plaintiff's prayer for permanent injunction and compensation was rejected.

4) Aggrieved by the Decree of the Trial Court, Defendant No.3 filed Regular Civil Appeal No. 13 of 2021 before the District Judge-5, Sangli. Regular Civil Appeal No. 15 of 2021 was also filed by Defendant Nos.1 and 2 challenging the Decree. Plaintiff filed cross-objections in Regular Civil Appeal No.15 of 2021 claiming damages. By decree dated 8 February 2023, the first Appellate Court has dismissed both the Appeals as well as cross-objections and has confirmed the Decree of the Trial Court dated 22 December 2020. Aggrieved by the decree of the first Appellate Court, Defendant No.3 has filed the present Second Appeal.

5) The Second Appeal came to be admitted by this Court by Order dated 7 July 2023 and this Court stayed the operation, execution and implementation of Decrees of the Trial and the first Appellate Court during pendency of Appeal, further directing that services of the Appellant as '*Anganwadi Sevika*' shall not be disturbed.

6) By Order dated 24 April 2024, this Court re-framed the substantial questions of law as under:

- (i) Whether Certificate of Birth issued under provisions of Section 17(2) of The Registration of Births and Deaths Act, 1969 is admissible in evidence under provisions of Section 35 of the Indian Evidence Act without the necessity of examining the official who issued the same, especially when the same is marked as Exhibit in evidence ?
- (ii) If no objection is raised at the time of marking of document as Exhibit, whether objection can be subsequently raised for reading the said document in evidence?
- (iii) When there is difference in the date of birth recorded in the school records and in the Register of Births and Deaths, which entry would prevail ?
- (iv) Whether production of document certifying date of birth during currency of selection (which is not produced alongwith application) will have any effect on the validity of selection of a candidate ?

7) Mr. Naphade, the learned counsel appearing for the Appellant would submit that the Trial and the first Appellate Courts have erred in holding that Appellant's appointment as '*Anganwadi Sevika*' is illegal. That alongwith her application, Appellant had produced Birth Certificate dated 17 January 2011 in addition to School Leaving Certificate. That the first Appellate Court has erred in ignoring the Birth Certificate on erroneous ground that the same was not proved before the Trial Court. He would submit that the Trial Court has erred in raising surmises about the stage at which the Birth Certificate was produced by

Defendant No.3 by ignoring a specific remark on the application that there was variance in the birth dates in School Leaving Certificate and Birth Certificate. That the Trial Court ought to have appreciated that both the Certificates were produced by Appellant at the time of submitting her application. Mr. Naphade would further submit that it is settled law that in the event of contest between the birth date reflected in the School Leaving Certificate and the one in Birth Certificate, the latter would prevail. In support of his contention, that Certificate of birth prevails over School Leaving Certificate, Mr. Naphade would rely upon judgment of the Apex Court in *Ishwarlal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Limited and another*¹, *CIDCO Vs. Vasudha Gorakhnath Mandevlekar*² and of this Court, Bench at Aurangabad in *Vishal V/s. Schedule Tribe Certificate Scrutiny Committee, Dhule and Ors.*³ That therefore in the present case, the birth date of the Appellant as reflected in Birth Certificate is required to be taken into consideration by ignoring the birth date in the School Leaving Certificate. That the date of birth reflected in the Birth Certificate is buttressed by an entry in the Register of Births and Deaths.

8) Mr. Naphade would further submit that the Birth Certificate was marked in evidence as Exhibit-60 and therefore it was incumbent for the Trial and the first Appellate Court to read the said Certificate in evidence. That no objection was raised while marking of the document. Relying upon judgment of the Full Bench of this Court in *Hamendra Rasiklal Ghia Vs. Subodh Mody*⁴, Mr. Naphade would contend that the objection with regard

¹ (2014) 6 SCC 434

² (2009) 7 SCC 283

³ MANU/MH/5205/2023

⁴ (2008) 6 Mh.L.J. 886

to admissibility and marking of document must be raised at appropriate time and omission to raise objection later becomes fatal. Raising of such objection subsequently results in denial to a party his/her right to prove the document by examining the witnesses.

9) *Per-contra*, Ms. Pawar the learned counsel appearing for Respondent No.1-original Plaintiff would oppose the Appeal submitting that the date of birth reflected in the School Leaving Certificate of Defendant No.3 was required to be taken into consideration and was indeed taken into consideration for declaring her ineligible. That she subsequently procured Birth Certificate after she was declared ineligible. She would rely upon list of eligible and ineligible candidates, in which remark was made against the name of the Appellant that she was ineligible. She would further submit that apart from School Leaving Certificate, there are several other documents, in which the date of birth of Defendant No.3 is reflected as 2 June 1975. She would invite my attention to the marksheets of Secondary and Higher Secondary Education Boards. That the remark allegedly made on the application of Defendant No.3 does not bear the signature and has rightly been ignored by the Trial Court. That Defendant No.3 subsequently got Public Gazette Notification issued in respect of her date of birth on 24 March 2011, which again shows that all the documents are subsequently created by her and the same could not have been taken into consideration for deciding her eligibility for appointment as *Anganwadi Sevika*.

10) Ms. Pawar would submit that the date of birth reflected in the School Leaving Certificate is required to be taken into consideration and entries in the Government Gazette are irrelevant. In support, she would rely upon the judgment of this Court in ***Shri Chhatrapati Sahakari Sakhar Karkhana Limited Vs. Shri Janu Gajaba Zagade***⁵. Relying on Division Bench judgment of this Court in ***State of Maharashtra and others Vs. Sunil Bhagwat Kalekar***⁶, Ms. Pawar would submit that correction in the date of birth in Matriculation Certificate is mandatory as failure to effect such correction results in incongruous situation, where different dates are recorded in school records and in service records. She would also rely upon Division Bench judgment of this Court, Bench at Aurangabad in ***Shobhana Dilip Kahane Vs. State of Maharashtra and others***⁷, in support of her contention that Certificate of Birth could not have been taken into consideration. She would also rely upon judgment of Hyderabad High Court in ***Ch. Chinnakishore Venukoti Vs. The State of Telangana and others***⁸ in support of her contention that the date of birth recorded in the school records would prevail over other documents and that in the absence of correction of date in school records, the Birth Certificate cannot be relied upon.

11) Ms. Pawar would submit that there are concurrent findings of fact recorded by the Trial and the first Appellate Court and in absence of any palpable error, this Court may not interfere in well-reasoned decisions of the Trial and the first Appellate Court

⁵ Writ Petition No. 721 of 2002 decided on 10 March 2017.

⁶ Writ Petition No. 6976 of 2023 decided on 23 June 2023.

⁷ Writ Petition No. 14147 of 2018 decided on 7 May 2021.

⁸ AIR 2017 Hyderabad 107

in exercise of jurisdiction under Section 100 of the Civil Procedure Code. Ms. Pawar would pray for dismissal of the appeal.

12) Rival contentions of the parties now fall for my consideration.

13) Plaintiff and Defendant No.3 have contesting claims about the right to seek appointment on one post of *Angadwadi Sevika* in respect of Village-Jaigavan. Plaintiff filed suit challenging the appointment of Defendant No.3 hoping that if appointment of Defendant No.3 is rendered illegal, she would secure appointment on that post. Before going into the merits of the contesting claims between the Plaintiff and Defendant No.3, it must be observed that Integrated Child Development Services Program is a scheme employed by the State Government under the sponsorship of the Central Government under which Anganwadis and Mini Anganwadis are established in various villages. The post of Mini Angandwadi Sevikas and Anganwadi Madatnis are to be filled on honorarium basis. They are neither paid regular salary nor are entitled to any pensionary benefits. Thus, appointment as *Anganwadi Sevika* is not a regular appointment in State Government or Zilla Parishad service and the scheme envisages women residing in local villages and tribal areas to be engaged as *Angadwadi Sevikas, Madatnis* etc. on honorarium basis. In the light of the nature of appointment and the benefits attached to it, what is perplexing is that Plaintiff has engaged in a long litigation for the last 11 long years to seek engagement as *Angandwadi Sevika* for uprooting the appointment of Defendant No.3, which is made 13 years ago on 28 March 2011.

14) The first issue for consideration is whether Defendant No.3 proved the Certificate of Birth dated 17 January 2011, which is marked as Exhibit-60 by the Trial Court. Though no specific finding appears to have been recorded by the Trial Court with regard to the proof of the Birth Certificate dated 17 January 2011 in its judgment, it appears that the first Appellate Court has held that “*However, the defendant no.3 has not proved the certificate issued by the Block Development Officer by examining any witness*”. Thus, the Certificate of Birth is taken as proved by the Trial Court, whereas proof thereof is doubted by the first Appellate Court. In the light of this position, the issue that arises for consideration is about the manner in which the Birth Certificate dated 17 January 2011 was required to be proved. The said Certificate is issued by the Government Official (Block Development Officer) on the basis of information taken from the original record of birth in the Register maintained at Village-Jaigaven, Taluka-Kavathe-Mahankal, District-Sangli. Thus, the Certificate is nothing but a mere extract of information maintained in the Register. Under Section 17(2) of the Registration of Births and Deaths Act, 1969, all certificates given under Section 17 are to be certified by the Registrar or by any officer authorized by the State Government to give such extract as provided under Section 76 of the Indian Evidence Act, 1872 and that such Certificate becomes admissible in evidence for the purpose of proving the birth or deaths to which the entries relate. Section 17 reads thus :

17. Search of births and deaths register.—

(1) Subject to any rules made in this behalf by the State Government, including rules relating to the payment of fees and postal charges, any person may—

(a) cause a search to be made by the Registrar for any entry in a register of births and deaths; and

(b) obtain an extract from such register relating to any birth or death:

Provided that no extract relating to any death, issued to any person, shall disclose the particulars regarding the cause of death as entered in the register.

(2) All extracts given under this section shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872), and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

15) Thus, every Certificate issued under Section 17(2) of the Registration of Births and Deaths Act, 1969, becomes admissible in evidence under Section 35 of the Indian Evidence Act, 1872 as an entry in any public or any other official book, register or record stating the fact in issue is a relevant fact. Section 35 of the Evidence Act reads thus:

35. Relevancy of entry in public record or an electronic record made in performance of duty.- An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

16) As observed above, the Certificate dated 17 January 2011 has been marked as Exhibit-60 in evidence. Though mere marking of document may not mean that the Court must accept its contents to be true, but when a document relating to a certificate or extract of records maintained by Government is marked as Exhibit in

evidence, its existence gets proved. Since the contents of those certificates/ extract become admissible in evidence under Section 17(2) of the Registration of Births and Deaths Act, 1969 coupled with Section 35 of the Indian Evidence Act, it would be too hyper-technical to expect a litigant to examine the concerned government official to prove contents of such Certificate/extract. If Plaintiff had any objection about genuineness of the Certificate of Birth dated 17 January 2011, she ought to have raised objection about the marking of the said document as Exhibit. If she was to raise objection while marking the document as Exhibit, Defendant No.3 would have then examined the concerned Government Official to prove its existence. However, once Plaintiff failed to raise an objection about marking of the document as Exhibit, its existence cannot later be disputed by raising technical plea that the author of the document was not examined as a witness. This position is well settled and reliance of Mr. Naphade on the judgment of Full Bench of this Court in *Hemendra Rasiklal Ghia* (supra) is apposite in this regard. *Justice V.C. Daga*, speaking for the Full Bench has held in para-80 of its judgment as under:

80. In the second category of the case, the objection should be taken when the evidence is tendered. Once the document has been admitted in evidence and marked as an exhibit, the objection that it should not be admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. This proposition is rule of fair play. **The crucial test is whether an objection, if taken at the appropriate time, would enable the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object become fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt**

objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility there and then; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.

(emphasis supplied)

17) In my view therefore, once the Birth Certificate dated 17 January 2011 was marked as Exhibit in evidence, the same being extract of entries made in the Register of Births and Deaths, the it ought to have been read in evidence and the first Appellate Court has committed an error in holding that the said document was not proved by examining any witness. First and the second questions of law are answered accordingly.

18) The next issue is about contest between the entry of date of birth made in school records versus the entry made in Register of Births and Deaths. In the present case, the entry relating to date of birth in the Register of Births and Deaths in respect of third Defendant is '2 February 1976'. However, in the school records, her date of birth is recorded as '2 June 1975'. It is Mr. Naphade's contention that the entry made in the Register of Births and Deaths will have more probative value than the one made in the school records. He has relied upon judgment of the Apex Court in

Iswarlal Mohanlal Thakkar (supra) in which the Apex Court has held in para-19 as under:

19. Therefore, in view of the above judgments we have to hold that the High Court has committed a grave error by setting aside the findings recorded on the points of dispute in the Award of the labour court. **A grave miscarriage of justice has been committed against the appellant as the respondent should have accepted the birth certificate as a conclusive proof of age, the same being an entry in the public record as per Section 35 of the Indian Evidence Act, 1872 and the birth certificate mentioned the appellant's date of birth as 27.6.1940, which is the documentary evidence. Therefore, there was no reason to deny him the benefit of the same, instead the respondent-board prematurely terminated the services of the appellant by taking his date of birth as 27.6.1937 which is contrary to the facts and evidence on record. This date of birth is highly improbable as well as impossible as the appellant's elder brother was born on 27.1.1937 as per the School Leaving Certificate, and there cannot be a mere 5 months difference between the birth of his elder brother and himself. Therefore, it is apparent that the School Leaving Certificate cannot be relied upon by the respondent board and instead, the birth certificate issued by the BMC which is the documentary evidence should have been relied upon by the respondent. Further, the date of birth is mentioned as 27.6.1940 in the LIC insurance policy on the basis of which the premium was paid by the respondent to the Life Insurance Corporation on behalf of the appellant. Therefore, it is only just and proper that the respondent should have relied on the birth certificate issued by the BMC on the face of all these discrepancies as the same was issued on the order of the JMFC.**

19) Mr. Naphade, has relied upon the judgment of the Apex Court in ***Vasudha Gorakhnath Mandevlekar*** (supra), in which the Apex Court has held in para-18 as under:

18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of proof that same was recorded at the instance of the guardian of the respondent. (See *Birad Mal Singhvi v. Anand Purohit*.)

(emphasis supplied)

20) Mr. Naphade has placed reliance on Division Bench judgment of this Court in ***Vishal*** (supra), in which the Division Bench has held in para-18 as under:

18. A detailed discussion of facts and law lead us to arrive at the conclusion that the birth entries would prevail over the entries in the school registers. The Petitioner failed to prove his Caste as Tokare Koli, Scheduled Tribe as recorded in his caste certificate issued by the Sub-Divisional Officer, Faijapur, Dist. Jalgaon. Nonetheless, the caste certificate which was issued in favour of the Petitioner bearing outward No. MAG/ WS/ ST/ 1693/2010 dated 23.05.2010 by the Divisional Officer, Jalgaon was found to be fabricated and bogus by Respondent No.1. Therefore, vide order dated 01.08.2022, Respondent No.1 confiscated the said fabricated and bogus certificate and the Petitioner was directed to obtain a fresh caste certificate. However, the Petitioner obtained another caste certificate from the Office of Sub-Divisional, Faijapur, through the online process on 14.09.2022, which resulted in it's invalidation. The Petitioner failed to produce any substantial documents to prove his caste claim "Tokre Koli Scheduled Tribe". The findings recorded by the Scrutiny Committee are well founded on documentary evidence. Thus, it is not permissible for this Court to interfere with such findings of facts in our Writ jurisdiction. No interference is thus warranted.

(emphasis supplied)

21) On the other hand, it is Ms. Pawar's contention that the entry of date of birth made in the school records would prevail over any other records. In support of her contention, she has relied upon Division Bench judgment of this Court in ***Sudhir Bhagwat Kalekar*** (supra), in which this Court has held in paras-12, 13 and 14 as under:

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 reply 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.

22) However, in *Sudhir Bhagwat Kalekar*, the issue was slightly different. The Respondent therein had relied upon School Leaving Certificate at the time of his entry into government service and the date of birth recorded therein was entered in his service book. He did not make any efforts to get his date of birth changed in the school records and approached the Maharashtra Administrative Tribunal at the fag end of his service for correction of date of birth. There is specific prohibition in the service rules for entertaining application for change of date of birth beyond the period of five

years from the date of appointment. In the light of this position, this Court made observations in paras-12, 13 and 14 of the judgment about incongruity about different dates being recorded in the school records/matriculation certificate and in service records. The judgment in ***Sudhir Bhagwat Kalekar*** would therefore be of no assistance for deciding the issue involved in the present case.

23) Ms. Pawar has relied upon judgment of this Court in ***Shobhna Dilip Kahane*** (supra). The case before the Division Bench again related to change of date of birth in service record. In that case as well, Petitioner therein had relied upon her School Leaving Certificate at the time of making application for compassionate appointment. She did not produce the Birth Certificate at the time of making application for compassionate appointment. The Division Bench has observed that the Petitioner therein received intimation about her alleged correct date of birth from the Municipal Council for the first time on 12 May 2008. It is in this factual background that this Court refused to correct the date of birth in her service records.

24) Ms. Pawar has relied upon single Judge of Hyderabad High Court in ***Ch. Chinnakishor Venukoti*** (supra). The case involved correction of date of birth by a candidate who was aspiring to become All India Rank Officer by participating in examination conducted by UPSC. He made attempts to correct entry of date of birth in school records with a view to save himself from maximum age bar to appear in UPSC examination. The High Court rejected his case mainly on the ground of delay of 19 years in not making attempts to change the date of birth in school records. Thus, ***Ch.***

Chinnakishore Venukoti relates to permissibility of change of date of birth in school records after period prescribed in the Regulation. The judgment again does not provide much assistance to the issue in hand.

25) In ordinary circumstances, entries consistently made in the school and college records would have higher probative value and Ms. Pawar cannot entirely be faulted in submitting that the date of birth of Defendant No.3 reflected in her school records must be taken into consideration for determining her eligibility for being appointed as '*Anganwadi Sevika*'. Ms. Pawar has submitted that in addition to her School Leaving Certificate, the date of 2 June 1975 is also reflected in third Defendant's SSC Passing Certificate/Mark List. If Defendant No.3 was to secure an appointment in service by relying upon entry of date of birth made in the school records and thereafter was to make attempts to effect change in the service record after considerable period of time, what Ms. Pawar submits could be of relevance. In the present case, it is the case of Defendant No.3 that she has presented two documents of date of birth being School Leaving Certificate and Birth Certificate during the course of selection process and that the date reflected in the Birth Certificate has rightly been accepted by the Appointing Authority. The issue thus is the correctness of discretion exercised by the Appointing Authority in accepting the date of birth reflected in the Birth Certificate and ignoring the one reflected in the School Leaving Certificate. When the Appointing Authority is presented with two documents showing two different dates of birth and the Authority chooses to rely upon the date of birth reflected in the Birth Certificate, the question is whether the Courts can interfere in

such discretion of the Appointing Authority, that too on a complaint made by a non-selected candidate. The answer, to my mind, appears to be in the negative. Therefore, rather than holding that in every case, the date of birth reflected in the Birth Certificate/Birth register would prevail over the one recorded in the School Leaving Certificate, it would be appropriate to hold that answer to that question would depend upon the facts and circumstances of each case. Third question is answered accordingly.

26) Rather than determining the contest between the entries made in the two documents, what is relevant in the present case is the discretion exercised by the Appointing Authority in relying on birth date recorded in Birth Certificate issued by the Block Development Officer, on the basis of entries made in the Register of Births and Deaths maintained at the village.

27) Coming to the fourth question of law, it is seen that the Trial Court appears to have recorded a finding that Defendant No.3 did not produce Birth Certificate issued by Block Development Officer alongwith her application and the same was produced only after she was declared ineligible. There appears to be some ambiguity about the factual position as to whether the Birth Certificate dated 17 January 2011 was produced at the time of submission of application by Defendant No.3. What is in favour of the third Defendant is an endorsement on the application about variance in the date of birth in the Birth Certificate and School Leaving Certificate. The Trial Court has proceeded to ignore the said endorsement on the ground that the endorsement does not bear any

signature. On the contrary, it is Plaintiff's contention that the third Defendant procured and submitted Certificate of Birth issued by Block Development Officer only after she was declared ineligible. In the Written Statements filed by Defendant Nos.1 and 2 as well as Defendant No.3 there is no specific averment that the Certificate of Birth dated 17 January 2011 was submitted alongwith the application filed by Defendant No.3 and this aspect has been highlighted by the Trial Court by decreeing the suit of the Plaintiff. In her Written Statement, Defendant No.3 averred as under :

वादीनी याकांमी हजर केलेले बाल विकास प्रकल्प अधिकाऱ्यांचे दिनांक २७/४/२०११ चे पत्रामध्ये प्यारा ४ प्रमाणे "सुवर्णा नेताजी पाटील हरकती कालावधीमध्ये जन्म मृत्यू विवाह नोंदणी कायदा १८८६ कलम ९ नुसार जन्माचा दाखला गट विकास अधिकारी यांचा सादर केलेमुळे सदरचा अर्ज पात्र ठरविणेत आलेला आहे " असा स्पष्ट अभिप्राय दिलेला आहे त्यामुळे प्रस्तुत प्रतिवादी यांची मूळ जन्मतारीख दिनांक २/२/१९७६ अशी निश्चित होऊनच त्याच जन्मतारखेचे आधारे प्रस्तुत प्रतिवादी यांना अंगणवाडी सेविका या पदावर नियुक्त केलेले आहे.

28) Thus, in the Written Statement itself, the third Defendant admitted that the Certificate of the Block Development Officer was submitted by her during objection period. This would indicate that she did not submit the said certificate alongwith her application. To make things clearer, there is a specific admission given by the third Defendant that during the course of her cross-examination that she submitted the said Birth Certificate during objection period. The relevant portion of her cross-examination is an under:

१३. माझी मुलाखत तारीख २५/०३/२०११ रोजी झाली. मी माझ्या जन्माचा दाखला हा हारकतीच्या कालवधी मध्ये दिलेला आहे. गॅझेट हे २४/०३/२०११ रोजी दिले. ते दाखल करणेस मला अधिका-यांनी सांगितले होते. मला ते गटविकास अधिकारी व प्रकल्प अधिकारी यांनी सांगितले होते.

29) She further stated in her cross-examination as under :

त्याप्रमाणे मी शाळा सोडलेचा दाखला जोडलेला होता जन्माचा दाखला जोडलेला नव्हता.

Thus, there are specific admission by the third Defendant that she did not produce the Certificate of birth alongwith her application. This shows that the third Defendant was permitted to produce Certificate of Birth dated 17 January 2011 after she was declared ineligible. The question is whether, this is permissible? In the present case, the selection committee and the appointing authority have apparently permitted third Defendant to produce the Certificate of Birth issued by the Block Development Officer. It appears that the candidates were permitted to clear objections in their application and during such exercise, third Defendant appears to have produced the Certificate of Birth. The said certificate has not been falsified. It is marked in evidence. It is required to be read and has been read in evidence by the Trial Court. The issue therefore is whether selection and appointment of third Defendant is to be disturbed only on the ground that the said certificate was produced by her during currency of selection. In the facts and circumstances of the case, the answer, to my mind, appears to be in the negative. I have held that the discretion exercised by the Appointing Authority to accept the date of birth recorded in the Birth Certificate dated 17 January 2011 could not be interfered with by the Courts.

30) The first Appellate Court has highlighted an admission on the part of the Appellant in her cross-examination that her date of

birth is '2 June 1975'. I have gone through her cross-examination. It reads thus:

माझा पूर्वीच्या जन्माच्या दाखल्यावरती तारीख ०२/०६/१९७५ अशी होती, हे म्हणणे ३ खरे आहे. साक्षीदार परत सांगते की, शाळा सोडल्याच्या दाखल्यावरती तशी तारीख होती.

31) Thus, third Defendant immediately clarified that her statement is about recording of date of birth of '2 June 1975' in School Leaving Certificate. It therefore cannot be inferred that there was any admission on her part that her correct date of birth is '2 June 1975'.

32) By now period of 13 long years has elapsed from the date of appointment of Defendant No. 3. As observed above, this is not a regular appointment in Zilla Parishad or State Government service. It is merely an engagement on honorarium basis under a Scheme. It is not that Defendant No. 3 is totally ineligible to hold the post or that there is any material irregularity in the selection process. The only possible flaw in the selection process, which Plaintiff was able to prove is about permitting Defendant No. 3 to produce the certificate of birth during currency of selection. I have already held that this is not a material irregularity, considering the facts and circumstances of the case, so as to vitiate the entire selection process.

33) Considering the overall conspectus of the case, I am of the view that the decree passed by the Appellate Court confirming Trial Court's decree is indefensible and is liable to be reversed.

Second Appeal accordingly succeeds and I proceed to pass the following Order:

- (i)** Decree dated 8 February 2023 passed by the District Judge-5, Sangli dismissing Regular Civil Appeal No. 13 of 2021 and confirming the Decree dated 22 December 2020 passed by the 2nd Joint Civil Judge Senior Division, Sangli in Regular Civil Suit No. 506 of 2013 is set aside.
- (ii)** Plaintiff's Regular Civil Suit No. 506 of 2013 is dismissed.
- (iii)** There shall be no order as to costs.

34) With disposal of the Appeal, Interim Application No. 1719/2024 does not survive. The same also stands disposed of.

SANDEEP V. MARNE, J.