

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

WRIT PETITION NO. 13881 OF 2023

**SANJAY
KASHINATH
NANOSKAR**

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1. The State of Maharashtra through
Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai.
 2. The Director General of Police,
Shahid Bhagat Singh Marg,
Colaba, Mumbai 400 001
 3. The Commissioner of Police,
Near CST, Crawford Market,
Mumbai.
- ... Petitioners.
- V/s.

Shri Ghanhasham K. Patil,
Age 53 years, Occ. Police Inspector at
Nagpada Police Station,
R/at Chandramalika, Room No.4.
Sir Pochkhanwala Road, Worli Police
Camp, Worli, Mumbai 400 030.

... Respondent.

Mr.B.V.Samant, Addl.GP with Mr.M.M.Pabale
for the Petitioners.

Mr.Ashwinikumar R. Kapadnis for the Respondent.

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 5 January 2024.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. The learned Counsel
for the Respondent waives service. Taken up for disposal.

2. The Petitioner- State has filed this petition challenging the judgment and order passed by the Maharashtra Administrative Tribunal dated 18 August 2022 allowing the Original Application No.490/2021 filed by the Respondent.

3. The Respondent is working as a Police Inspector at Nagpada Police Station, Mumbai. Through a selection process conducted by the Maharashtra Public Service Commission, the Respondent came to be appointed as Police Sub Inspector on 31 March 1995. At the time of entry in the service, his date of birth was recorded as 1 June 1965 based on his school leaving certificate. On 23 August 2002, Respondent made an application for correction of his date of birth as 22 November 1967 which, according to him, was recorded in the Birth Register. Accordingly, his date of birth was corrected to 22 November 1967, however, upon scrutiny, it was found that the Respondent was not entitled to this correction and the same was cancelled which was communicated to the Respondent on 30 May 2008.

4. The Respondent filed Original Application No.490/2021 contending that his date of birth is 22 November 1967 which is reflected in the Birth Register and based on which a notification in the gazette was also made and, therefore, the action of the Petitioner-State in not treating his date of birth as 22 November 1968 is bad in

law, contrary to the governing Rules and needs to be set aside. The Petitioner filed a reply and contested the claim.

5. The Petitioners contended that the Respondent's date of birth recorded in the service records as 1 June 1965 was on the basis of his own school leaving certificate and the extract of the birth register sought to be relied upon is suspicious. The Petitioners also contended that a change in date of birth towards the end of service should not be permitted. The Tribunal after considering the rival contentions allowed the original application by the impugned order dated 18 August 2022. Challenging this order, the State is before us in this writ petition.

6. We have heard Mr. B.V. Samant, Additional Government Pleader for the Petitioners and Mr. Ashwinikumar Kapadnis, the learned Counsel for the Respondent.

7. Two aspects arise for consideration in this petition. First, the limitation/ period within which the Respondent ought to have applied for correction in date of birth. Second, on merits, whether the claim of the Respondent for change in date of birth should have been granted and whether there was unquestionable material for the same.

8. The procedure for maintaining and correcting the date of birth in the service book of a government servant in the State of

Maharashtra is contained in Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Rule 38 was amended on 24 December 2008. Rule 38(2)(a) and (f) and the instructions are of relevance. They read thus:

“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) *The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;*
 - (b) to (e)
 - (f) *When once an entry of age or date of birth has been made in a service book no alteration 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 alteration 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.*
..... ..
- (2B) *No application for alteration of entry regarding date of birth of the Government servant pending with the Government on the date of commencement of the Maharashtra Civil Services (General Conditions of*

Services) (Amendment) Rules, 2006 shall be processed after the date of retirement of such Government servant and such application shall automatically stand disposed of as rejected on the date of retirement. Any such application made by the retired Government servant shall not be entertained.

..... ”

By the amendment of 2008, Instruction No.1 was inserted, which reads thus:

“Instruction:- (1) Normally, no application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant should be entertained after a period of five years commencing from the date of his entry in Government service.”

9. It was debated before the Tribunal as to whether this period of limitation introduced by the amended provision would apply to the case of the Respondent. The Tribunal held in favour of the Respondent that the amendment of 2008 is not retrospective and as per the old Rules there was no ban on considering the application for change in date of birth after the period of five years. Mr. Samant learned Additional Government Pleader submitted that the State is not pressing this point as the Tribunal is right in holding that the Respondent's case would be governed by the old Rules which do not provide for limitation. This brings us to the position before the amendment of 2008 and the Second aspect, the ground for the change in date of birth.

10. The Petitioners have placed on record the Government Circular dated 3 March 1998. This circular is issued with reference to Rule 38 of the MSC Rules of 1981. Paragraph-4 of the said Circular refers to the position where the entries in the service records regarding the date of birth are made on the basis of school leaving certificates and quite often there is difference between the date of birth in the school leaving certificate and the birth register. As per the said Circular, when such conflict arises, the date in birth register should have primacy, however, care must be taken that it is unquestionable and the extract from the birth register must be tallied with the original birth register and once the date of birth so recorded the same should not be changed. The learned Additional GP contended that therefore even assuming that in case of conflict between the date of birth as per the school leaving certificate and date of birth recorded in the birth register the birth register can be considered, but the same must be unquestionable. Proceeding on this basis, we have to note that as regards the date of birth in the school records of the Respondent is 1 June 1965 and the same is continued to be the same even as of today. Therefore, if the Respondent's date of birth is taken as 22 November 1967 based on the birth register as contended, this position must not admit any doubt. In that context, the circumstances surrounding the birth certificate, the manner in which the Respondent has proceeded will have to be examined.

11. In the school leaving certificate and in the service records, the Respondent has given his name as Ghanhasham Krishnarao Patil. The school leaving certificate is issued under the signature of the Head Master of the School. This entry, as stated earlier, has remained unchanged. The Secondary Schools Code covers the subject matter of school records. The learned Additional GP points out that under clauses 26.3 and 26.4 of said the Code, after the student has left the school, change of date of birth is not permissible, however, as per the decision of the Full Bench of this Court in case of *Janabai v. State of Maharashtra*¹, in case of an obvious mistake an application for alteration of date of birth can be considered even after the student has left the school. In the case at hand, the Respondent has not made any attempt to get his date of birth changed in the school leaving certificate or his further education certificates and his date of birth in those documents continues as 1 June 1965.

12. It is now the theory of the Respondent that the Respondent is also known by another name, that is, Subhash Krishnarao Patil. His affidavit and the affidavit of his mother to that effect are placed on record. The Respondent has placed these affidavits on record stating that in the birth register his name is mentioned as Subhash and his father's name as Krishnarao Sadashiv. It is above Subhash that Ghanashyam is written. The entry "Ghanashyam" appears to be in different handwriting. The Assistant Police Commissioner (Administration) had called for information from the concerned

¹ 2020 (1) ALL MR 360

Tahsildar regarding the original birth register. The Tahsildar, Pachora wrote to the Senior Police Inspector on 26 October 2023 along with the copy of the original birth register which shows that there is only one entry in the birth register and the name mentioned is only "Subhash". The Tahsildar clarified that the extract of the birth register did show both names Ghanashyam alias Subhash, however, in the original birth register the only name Subhash appears. Therefore, a doubt arises when the Tahsildar himself states that in the original birth register, the entry is of Subhash Krishnarao Patil and when the Respondent's name in the service records is Ghanashyam Krishnarao Patil. At no point in time, during the entry into the service, that the Respondent inform the authorities that he is also known by the name Subhash.

13. The second theory of the Respondent is that he was not aware of this birth register and during a wedding in the year 1998 his brother showed this extract of the birth register wherein the entry of his date of birth is mentioned as 22 November 1967. Such assertions are easy to make but difficult to counter because it is difficult to lead proof against such vague and generalized assertions. Once the Tahsildar states that the original birth register bears another name then this document, that is, the extract of the birth register cannot be used to overreach the school leaving certificate. The learned counsel for the Respondent sought to give various explanations, such as to ignorance of the family and practices followed, however, as stated

earlier, if the entry regarding the date of birth made in the service records based upon the school leaving certificate is to be altered based on the entry in the birth register, then such a birth register must be an unquestionable document. It cannot be that lengthy arguments advanced to establish the genuineness of the document which *prima facie* appears to be doubtful to override the school leaving certificates and other education certificates showing the entry to the contrary.

14. The Respondent sought to contend that it is because of the change of date of birth notified in the government gazette that an application for a change of date of birth was made which was initially accepted. As pointed out by the learned Additional GP, there is no merit in the contention because the declaration in the gazette, as the gazette itself would show, is a self-declaration and it is made explicitly clear in the gazette that merely because information is published in the gazette, the State does not accept any responsibility for its truthfulness. Therefore, the self-declaration stated to be based on the birth register, which itself is unquestionable, cannot be a conclusive proof.

15. Lastly, as per the school leaving certificate, the Respondent joined the school in the first standard on 23 June 1972. If his date of birth as contended by him is 22 November 1967, then he would have been 4 years and 7 months old at the date of joining the school. As per the provisions of the Primary Education Act, 1947 'child' is

defined as not having the age less than 6 years. On the other hand, if the date of birth is taken as 1 June 1965, then he would have been 7 years old. Presumption would follow that the Respondent's entry into the school would be legal and as per the provisions of the Primary Education Act and not otherwise. The generalized contention of the Respondent that it could be that he was admitted at a younger age cannot be accepted.

16. The Respondent relying on the decision of the Supreme Court in *CIDCO v. Vasudha Gorakhnath Mandvekar*², contended that the death and birth register maintained by the statutory authorities raise a presumption of correctness and would prevail over the school leaving certificate. This principle is also reflected in the Circular of 1998. However, before this principle is applied, the extract of the birth register itself must be unquestionable. When there is no dispute about both the documents, that is, birth register and school leaving certificate, then issue may arise as to which of these entries in these documents would have primacy. But in the case at hand, there is serious doubt about the entry in the birth register, not only from the bare perusal of the original birth register, but from the clarification by the Tahsildar, the custodian of the death and birth register, and the overall conduct of the Respondent, and the fact that no efforts were made to change the date of birth in the school records.

2 (2009) 7 SCC 283

17. The Tribunal in the impugned judgment, after noting that the amendment prescribing period of five years did not apply to the Respondent, has simpliciter reproduced the case of the Respondent and accepted it. It is settled law that the change in the date of birth towards the end of the service career of the employee cannot be casually granted. The Tribunal has sidestepped the aspects which needed scrutiny and has straightway directed change in the date of birth. The learned Additional GP rightly makes a grievance that such a change in the date of birth, apart from unjustly benefiting the Respondent would negatively impact career advancement opportunities for the other employees and fresh recruitments.

18. The learned counsel for the Respondent contended that the impugned order of the Tribunal has been implemented and, therefore, the Petitioners cannot challenge the same. The learned Additional Government Pleader submitted that the Petitioner- State has not given up its right of challenging the impugned order and after taking a considered decision, the writ petition is filed challenging the impugned order on the grounds which we have dealt with above.

19. Considering the overall circumstances of the case, we are of the opinion that the Tribunal has committed a serious error in allowing the Original Application and directing the State to change the date of

birth of the Respondent. As a result, the Petitioners are entitled to succeed.

20. Writ petition is accordingly allowed. The impugned judgment and order dated 18 August 2022 passed by the Maharashtra Administrative Tribunal in Original Application No.490/2021 is quashed and set aside.

21. Rule is made absolute in the above terms. No costs.

22. At this stage, the learned counsel for the Respondent states that the Respondent is currently in service and intends to challenge the order in higher forum. In light thereof, no coercive action be taken against the Respondent based on this judgment for a period of four weeks. The salary, if paid to the Respondent for this period, will be subject to the further orders, if any.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)