

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 541 OF 2024

Pawlas Namdev Dabhade } **..Petitioner**

: Versus :

1. State of Maharashtra
2. The Municipal Commissioner, M.C.G.M.
3. The Assistant Commissioner, M/West Ward } **..Respondents**

Ms. Sharon Fernandes with Mr. Sulaiman Bhimani i/by. The Law Suits, for the Petitioner.

Mrs. Jyoti Chavan, Additional Government Pleader, for State-Respondent No.1.

Ms. Shilpa Redkar for M.C.G.M.-Respondent Nos.2 and 3.

***Coram : Sandeep V. Marne, &
Dr. Neela Gokhale, JJ.
(Vacation Court).***

Dated : 16 May 2024.

P.C. :

1) Petitioner has filed this petition seeking correction of his date of birth in the service record from '14 June 1966' to '14 June 1972'.

2) Petitioner came to be recruited in the service of the Respondent-Municipal Corporation on 1 June 1994. At that time, his date of birth was recorded as '14 June 1966' on the basis of information given by him while conducting his medical examination. The said date of '14 June 1966' came to be reflected in his service records. According to Petitioner,

his correct date of birth is '*14 June 1972*'. According to him the said date of '*14 June 1972*' has been recorded in his school records and accordingly reliance is placed on School Leaving Certificate. He made application for change of date of birth on 19 June 2019 and followed up with several applications thereafter. Petitioner is due for retirement on 30 June 2024 and has accordingly filed the present petition seeking the correction of his date of birth.

3) We have heard Ms. Fernandes, learned counsel appearing for the Petitioner, Ms. Redkar, the learned counsel appearing for Respondent-Corporation and Ms. Chavan, the Additional Government Pleader for State Government.

4) After having heard the submissions canvassed by the learned counsel appearing for rival parties and after perusal of documents placed on record alongwith the petition, it is seen that Petitioner made application for correction of his date of birth for the first time on 19 June 2019. He has been appointed in municipal service on 1 June 1994 and thus the first application made by him appears to be after 25 long years. In ordinary course, the application for change of date of birth is required to be made within 5 years of entry into service. In this regard, the Municipal Corporation has issued Circular dated 11 March 2011 prescribing the period of 5 years for making an application for correction in the date of birth in the service record. Admittedly, in the present case such application was made by the Petitioner for the first time on 19 June 2019. Therefore, such belated application made after 25 long years of entry into service could not have been entertained.

5) Petitioner is due to retire on 30 June 2024 and has filed the present petition at the fag end of service. This Court in **State of Maharashtra V/s. Sudhir Bhagwat Kalekar**¹ has held in paras-14 to 18 under :

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.

15. The Apex Court has time and again held that applications for change of date of birth at the fag end of service cannot be entertained. Reference in this regard can be made to the judgments of the Apex Court in (i) **General Manager, Southeastern Coal Fields Ltd. V/s. Avinash Kumar Tiwari** (2023) Live Law (SC) 124; and (ii) **Bharat Cooking Coal Ltd. & Ors. V/s. Sham Kishore Singh** (Civil Appeal No. 1009/2020) decided on 5 February 2020.

16. In **Union of India v. Harnam Singh**, (1993) 2 SCC 162, the Supreme Court has held:

“ A Government servant, after entry into service, acquires the right to continue in service till the age of retirement, as fixed by the State in exercise of its powers regulating conditions of service, unless the services are dispensed with on other grounds contained in the relevant service rules after following the procedure prescribed therein. The date of birth entered in the service records of a civil servant is, thus of utmost importance for the reason that the right to continue in service stands decided by its entry in the service record. A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim

¹ Writ Petition No.6976 of 2023 decided on 23.12.2023

correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by the courts and tribunals. It is nonetheless competent for the Government to fix a time-limit, in the service rules, after which no application for correction of date of birth of a Government servant can be entertained. A Government servant who makes an application for correction of date of birth beyond the time, so fixed, therefore, cannot claim, as a matter of right, the correction of his date of birth even if he has good evidence to establish that the recorded date of birth is clearly erroneous. **The law of limitation may operate harshly but it has to be applied with all its rigour and the courts or tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.”**

(emphasis ours)

17) The Tribunal has also erred in interpreting the provisions of Rule 38 of the Rules of 1981. It is not Respondent's case that the error is attributable to any other person other than himself. Respondent himself produced College Leaving Certificate and Matriculation Certification, on the basis of which his date of birth was recorded as 23 May 1965. He therefore cannot blame any other person for the alleged error. So far as the second ground of 'obvious clerical error' is concerned, it cannot be stated that there has been any obvious or clerical error in recording Respondent's date of birth. The date of birth has been recorded on the basis of the documents produced by the Respondent. Even today, the said documents continue to reflect 23 May 1965 as Respondent's date of birth. Therefore, the case of Respondent is not covered by the expression 'obvious clerical mistake'.

18. The Tribunal ought not to have entertained the O.A. filed by Respondent two months before his retirement. The objective behind formulating rule/administrative instructions to bar correction of date of birth after five years of entry into service is to give finality and achieve

certainty with regard to the rights of the Government Servants. The issue of correction of date of birth cannot be kept pending till the fag end of an employees' retirement. This would create uncertainty, as has happened in the present case. The Tribunal has allowed the O.A. of the Respondent a month before his date of retirement thereby creating confusion and uncertainty. The pension papers of the Government Servant are processed well before his retirement with a view to ensure timely payment of retirement benefits to him. The anticipated vacancy created due to retirement is taken into consideration for various purposes like effecting promotions, effecting transfers, etc. Sometimes date of birth becomes a relevant factor for determining seniority of officers appointed/promoted on same day. In such circumstances, entertaining litigation filed couple of months before the date of retirement with the sole objective of seeking extension of tenure of service, would lead to uncertainty and chaos in the administration. An officer may casually make application for change of date of birth within 5 years of his entry in service (so as to meet technical requirement of the rules/administrative instructions) and not pursue the same for years together. He cannot then knock the doors of courts/tribunals at the fag end of service for correction of date of birth. The objective behind prescribing time limit for seeking correction of date of birth is required to be kept in mind. The objective is to achieve clarity and prevent uncertainty not only about the officer's career but also in the area of administrative management. If an application for correction of date of birth is made within 5 years of entry into service and if the same is not acted upon, remedy in respect of such inaction must be exercised in a timely manner and filing of litigation at the fag end of service is required to be discouraged. Mere rejection of request for change of date of birth by the employer before date of retirement would not revive the cause which got time barred by officer's failure to exercise remedies in a timely manner. Entertaining Respondent's for correction of date of birth OA instituted at the fag end of service on specious plea of rejection of request on 1 March 2023 would completely frustrate the objective behind prescribing time limit for seeking correction in date of birth under Rule 38. The Tribunal therefore ought to have avoided entertaining Respondent's application for correction of date of birth filed in March 2023 when he was slated to retire on 21 May 2023.

6) Similarly in case relating to a Municipal employee, this Court held in **Anant Madhukar Bhagwatkar V/s. The Municipal Corporation of Greater Mumbai²** as under :

5. It must be noted at the very outset that on the basis of date of birth of June 3, 1965 recorded in service records, Petitioner is due for retirement on superannuation on June 30, 2023. He has filed the present petition on April 27, 2023 at the fag end of his service. The Apex Court has repeatedly frowned upon attempts made by employees to seek change in the date of birth at the fag end of their services. Reference in this regard can be made in the judgments in case of General Manager, South-Eastern Coal Fields Ltd. Vs. Avinash Kumar Tiwari, (2023) Live Law SC 124 and Bharat Cooking Coal Ltd. and Ors. Vs. Shyam Kishor Sing, Civil Appeal No.1009/2020 decided on 5 February 2020.

6. It is also required to be borne in mind that Petitioner did not make any application for change in date of birth within 5 years of his entry into service. For the first time, he made application for change in date of birth on July 21, 2008 i.e. after 18 years of entry into service. Thereafter again, he waited for a long period of time did not exercise any remedy relating to his grievance. He has filed the present petition at the fag end of his service when he is due for retirement. In these circumstances, no case is made out by Petitioner for our interference in the impugned decision of the Municipal Corporation. Writ Petition being devoid of merits, is dismissed with no order as to costs.

Therefore, Petitioner's request for change of date of birth in service records cannot be accepted at such distant point of time.

7) There is yet another reason why the present petition must be dismissed. It appears that Petitioner had filed Writ Petition (Lodg.) No.19659/ of 2023 in this Court seeking very same prayer of correction of

² Writ Petition (L) No. 12088 of 2023 decided on 22 June 2023.

date of birth. The Writ Petition was however unconditionally withdrawn by Order dated 7 August 2023. Therefore, Petitioner cannot file another petition seeking same relief. Also, instead of disclosing the factum of filing of the said Petition, Petitioner has falsely stated in paragraph 11 of Petition that no previous petition was filed. Such conduct of Petitioner is deprecated.

8) After considering the overall conspectus of the case, we are not inclined to entertain the present petition. Writ Petition is accordingly dismissed. No costs.

(Dr. Neela Gokhale, J.)

(Sandeep V. Marne, J.)