



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 5755 of 2024

1. State of Maharashtra,
through its Principal Secretary,
Social Welfare Department,
Mantralaya, Mumbai.

2. The Commissioner,
Social Justice Department,
Maharashtra State, Pune.

..Petitioners

Versus

Bhaurao Ramsingh Chavhan,
Aged about 57 years, Occ. Service,
R/o. Juna Post Pomali, Tah. Umarkhed,
District Yavatmal.

..Respondent

.....
Shri D. P. Thakre, Additional Government Pleader for the petitioners.
Shri N. B. Karade, Advocate for the respondent.
.....

CORAM :- BHARATI DANGRE AND ABHAY J. MANTRI, JJ.

DATE :- 30th SEPTEMBER, 2024

ORAL JUDGMENT (Per BHARATI DANGRE, J.)

Being aggrieved by the judgment dated 18.04.2024 passed by the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur in O. A. No. 252 of 2024, thereby allowing the O. A. by quashing and setting aside the order dated 23.02.2022 and directing the State Authorities to correct the date of birth of the respondent, the State has preferred the present writ petition.

We have heard Shri Deepak Thakre, learned Additional Government Pleader for the petitioners-State and Mr. N. B. Karade, learned counsel for the respondent-Bhaurao Ramsingh Chavhan, who had approached the Maharashtra Administrative Tribunal and was successful in getting his date

of birth corrected in the service book.

2. By consent of the respective counsel for the parties, the petition is taken up for hearing forthwith as we noticed it involve a short legal issue. Hence, Rule. Rule made returnable forthwith.

3. The respondent-Bhaurao Chavhan was appointed as 'Senior Social Welfare Inspector' at Chandrapur on 08.09.1997.

Pursuant to joining the services, on 19.01.1998 he submitted an application to the District Social Welfare Officer, Chandrapur for change in his date of birth. His application was forwarded to the Divisional Social Welfare Officer, Nagpur Division, Nagpur on 27.05.1999.

The Additional Commissioner, Social Welfare, Maharashtra State, Pune 23.01.2015 afforded an opportunity of hearing to all concerned which included the respondent-employee as well as the Officers of the Social Welfare Department and the Office of the Superintendent. in which the respondent was serving.

It was noted by the Additional Commissioner that on being selected for the post of 'Senior Social Welfare Inspector,' the respondent had resumed his services on 30.10.1997 and preferred an application for correction in his date of birth.

On the basis of the documents, the Additional Commissioner took a note of the following facts:

- (i) The School Leaving Certificate of respondent-Bhaurao Chavhan reflected his date of birth as 05.04.1966.
- (ii) The certificate issued by the Maharashtra State Secondary and Higher Education Board on 02.01.1985 reflected his date of birth as 05.04.1966
- (iii) In the certificate issued by the Tahsildar and Executive Officer,

Umarkhed on 29.06.1990 in regards to nationality and domicile, the date of birth mentioned as 05.04.1966.

(iv) In the certificate issued by the Deputy Accountant (Junior), Local Audit Fund, Maharashtra State, Chandrapur dated 03.06.1997 the date of birth of Bhaurao Chavhan is reflected as 05.04.1966.

(v) In his service book the date of birth was entered as 05.04.1966.

4. Despite the aforesaid facts, Mr Bhaurao Chavhan had preferred an application under Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and based upon the entry in Kotwal Book in regards to Mouza Jamuna, Village No.112 Taluka Umarkhed, District Yavatmal, his date of birth along with his name is reflected as 12.09.1967 and a certified copy of the same was obtained on 17.09.1996. In addition, Mr. Chavhan also produced the extract of birth register of his siblings and his own birth register where, against his name, the date of birth is recorded as 12.09.1967.

5. The Additional Commissioner on perusal of the documents produced and in terms of the Government Resolution dated 27.09.1994 and in particular, Rule 38 and the Instruction nos. (1) and (2) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, a decision was arrived at, to rectify the date of birth of respondent-Mr. Chavhan in his service record from 05.04.1966 to 12.09.1967.

Pursuant to the said decision being taken, the report was forwarded to the State Government along with the necessary recommendations.

6. The State Government vide its communication dated 23.02.2022 through the Section Officer of the Social Justice and Special Assistance

Department, communicated to the Commissioner about rejection of the proposal without citing any reason.

The respondent being aggrieved by the decision taken, approached before the Maharashtra Administrative Tribunal, thereby assailing the said order, by contending that the extract of the Kotwal Book and the extract of the birth register were not considered by the State Government.

The Original Application was opposed by the Regional Deputy Commissioner, Social Welfare, Nagpur by filing his submissions and it was contended that the applicant, who was appointed in the year 1997, requested to update his service record to reflect his date of birth to be 12.09.1967 and since there was no clerical error or mistake on the part of anyone other than the respondent himself and though the respondent-employee furnished an abstract from the birth register but since his parents were not clearly identified, the same came to be rejected.

7. The Tribunal considered the rival contentions advanced and specifically reproduced the order dated 23.02.2015 passed by the Additional Commissioner, Social Welfare, Maharashtra State, Pune which recommended the rectification in the date of birth of respondent-Bhaurao Chavhan. The Tribunal also considered the stand of the present petitioner no.2, in specific relying upon Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and also recorded the objection that the date of birth was entered into the service book as per the documents furnished by him and the employee had approached the Tribunal when he was on the verge of retirement and he never pursued the matter and slept over his rights.

8. The Tribunal referred to the additional affidavit filed by the employee before it, which was accompanied with the copy of letter dated 19.08.1999 submitted by him for correction of his date of birth, which was also accompanied with the affidavit of his father and a certificate that Ramsingh Hari Chavhan and Ramsu Hari (Bagari) were one and the same. He also placed on record his clarification dated 06.08.2009, which was a request to take into consideration the extract of Kotwal Book Register where his date of birth is recorded as 12.09.1967 as well as the extract relating to date of birth of his siblings (collectively).

The Tribunal by recording that, the application for change of date of birth was made within a period of five years after joining the post and his application was positively recommended by the Additional Commissioner on 23.01.2015 and thereafter, it was forwarded to the petitioner no.1 but found that it was kept pending for more than seven years. The Tribunal noted that the applicant was not to be found at fault as he had applied for change in his date of birth well within time and he was also pursuing the matter with great zeal.

Reliance was placed by the Tribunal on the decision of the Bombay High Court in the case of *Smt. Vasundha Gorakhnath Mandvilkar vs. The City and Industrial Development Corporation of Maharashtra Limited (CIDCO)* reported in **[(2009) 120 FLR 267(Bom)]**, to the effect that the record of births and deaths maintained by the Municipal Authority within its limits has to be accorded due weightage, as the birth certificate is a certified copy of the extract of a public document in terms of Section 77 of the Indian Evidence Act, 1872 and such certified copy can be produced in proof of the

contents of the public document of which it purports to be a copy.

9. Since the death and birth register maintained by the statutory authorities/State Authority raise presumption of correctness and the entries made in the statutory register are admissible in evidence in terms of Section 35 of the Indian Evidence Act, 1872, the Tribunal rightly accorded due weightage to it, in absence of any material shown to be contrary and as a result, set aside the impugned order dated 23.02.2022, since it was sans any reason and failed to take into consideration the extract of the birth register produced by the respondent.

10. We have perused the order impugned passed by the Tribunal in the backdrop of Rule 38 of the MCSR Rules of 1981 governing the general conditions of service. Rule 38 specifically prescribes a procedure for writing the events and recording the date of birth in the service book, clause (2) thereof clearly stipulates the procedure to be followed while recording the date of birth.

The date of birth at the time of its recording in the service book is to be verified with reference to a documentary evidence and various contingencies are stipulated when the exact date of birth or both the year and month of birth are known but not the exact date of birth or when a government servant is only able to state his approximate age. Clause (f) of sub-rule (2) of Rule 38 contemplate that once an entry of age or date of birth has been made in service book, no alteration of the entry should afterwards be allowed, unless it is known that the entry was due for want of care on the part of some person other than the individual in question or is

an obvious clerical error.

We must also reproduce the Instructions appended to the said Rule and in particular Instructions (1) and (2) thereof which reads thus:

“(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 the 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, if he produces the attested xerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record.”

11. It is not in dispute that the respondent-Bhaurao Ramsingh Chavhan, preferred an application within five years and there is no reason why his application should not be entertained as Instruction (1) create an embargo that an application for correction of entry regarding date of birth in service book or service roll of a government servant shall not be entertained after a period of five years.

What is most relevant is Instruction No.(2) which clearly contemplate that the correct date of birth of a government servant may be determined, if he produces the attested xerox copy of the concerned page of the original birth register which reflect his name and date of birth and this document is maintained at a place, where the government servant is born and such a document should be considered as unquestionable proof for change of date of birth in service record.

12. The respondent-employee had produced the extract of Kotwal Book Register of Mouze-Jamuna, Village No. 112, where his name is recorded, with the date of his birth as 12.09.1967.

He also produced on record the Notification in the Government Gazette dated 11.05.2000, where his date of birth is corrected to 12.09.1967 from March/April 1966 vide Entry No.C-128.

In addition, the respondent also produced on record the extract relating to his date of birth as well as date of birth of his siblings where his date of birth is recorded as 12.09.1967 and since a presumption is raised under Section 35 of the Indian Evidence Act, which clearly specify that any entry in public or other official book or register stating a fact in issue or a relevant fact and is made by the government servant in discharge of his official duty, or by any person in performance of his duty specifically enjoined by law on him, then the entry in such book, or register is itself a relevant fact.

13. In the wake of the aforesaid provision and the fact that the respondent employee immediately after entering into government service made an application for rectification of date of birth in his service record and the Additional Commissioner recommended its rectification but for unexplained grounds, his application is rejected without attaching value to the two documents produced by him, including the extract of the Kotwal Book and the extract of birth register.

14. We find no legal infirmity in the impugned judgment passed by the Tribunal on 18.04.2024 thereby allowing the Original Application and permitting the rectification of the date of birth of the petitioner in the service record as 12.09.1967 in place of 05.04.1966, the petition filed by the State is dismissed.

15. Shri Thakre, learned Additional Government Pleader has placed on record the Government Resolution dated 14.08.2024 declaring that the respondent stands retired from service retrospectively with effect from 30.04.2024, though the learned counsel Mr. Karade representing the respondent has assertively stated before us that he continues to render his services till the date of issuance of the Government Resolution.

Since we have dismissed the petition by upholding the impugned judgment passed by the Tribunal, even the Government Resolution dated 14.08.2024 must meet the same fate as, according to us, the respondent is entitled to have his date of birth rectified in the service record and therefore, we set aside the Government Resolution dated 14.08.2024.

We direct the Petitioners to implement the decision rendered by the Maharashtra Administrative Tribunal thereby declaring that the correct date of birth of the respondent in service record is 12.09.1967.

The Government Resolution dated 14.08.2024 retiring the respondent with retrospective effect from 30.04.2024 is set aside.

The respondent shall be immediately reinstated in service and permitted to render service till he attain the age of superannuation i.e. 58 years considering his date of birth to be 12.09.1967, in normal

circumstances, with an exception of any adverse action against him, resulting into putting an end to his services.

Rule is discharged. No orders as to costs.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE , J.)

Andurkar.