



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

Writ Petition No.6608 of 2022

Ishwar Pandurangji Nikude Versus The Zilla Parishad, Bhandara, through its Chief Executive Officer and others

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Gaurav Gadge, holding for Shri P.S. Kshirsagar, Counsel for Petitioner.
Shri R.S. Khobragade, Counsel for Respondent Nos.1 and 2.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 22nd JANUARY, 2024

1. The petitioner, who is working as Assistant Teacher in the employment of the respondent No.1-Zilla Parishad, Bhandara since 29-7-1995, has sought correction in the date of birth from 8-5-1971 to 1-6-1973, based on the entry in the date of birth certificate.
2. The submissions of the learned counsel for the petitioner are that the incorrect recording of date of birth in the service record is recently noticed as same was found to be contrary to the birth certificate. As such it is claimed that the petitioner got knowledge of recording incorrect date of birth on 29-5-2015. As such, the learned counsel for the petitioner would urge that the limitation for correction has to be considered from the said date.
3. As against the aforesaid, the learned counsel for the respondent Nos.1 and 2 would urge that at the fag end of his service career, the petitioner is seeking correction in the date of birth in the service record so as to draw undue benefits ahead of his retirement. According to him, the correction of date of birth in service record is sought after the limitation of five years has expired.
4. We have appreciated the submissions of the learned counsel appearing for the parties.

5. Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 contemplates the procedure for writing the events and recording the date of birth in the service book. The said provision reads thus :

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

(1) In the service book every step in a Government servant’s official life, including temporary and officiating promotions of all kinds, increments and transfers and leave availed of should be regularly and concurrently recorded, each entry being duly verified with reference to departmental orders, pay bills and leave account and attested by the Head of the Office. If the Government servant is himself the Head of an Office, the attestation should be made by his immediate superior.

¹*[(2) After the commencement of the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2021 while recording the date of birth, the following procedure shall be followed :—*

(a) Every person newly appointed in the service or a post under Government shall, at the time of the appointment, declare his date of birth according to the Gregorian calendar with confirmatory documentary evidence. Where prescribed qualification for appointment is Matriculation or above in such cases Matriculation Certificate shall be treated as valid document. In other cases, Birth Certificate issued by Local bodies or Certificate from the recognized school last attended shall be treated as a valid document. He shall give undertaking in Appendix-5-A for his date of birth.

Note.— *At the time of appointment of a person in Government service, the undertaking for date of birth shall be obtained from the concerned employee for recording the date of birth in his service book. The undertaking shall be kept in his service book and in personal file. After recording the date of birth on the first page in the service book his signature will be obtained in the column of signature of Government servant with date.*

(b) After an entry of date of birth is recorded in a service book no alteration of the entry shall be allowed, unless it is known, that the entry

was due to want of care on the part of some person other than the person in question or is an obvious clerical error:

Provided that, for the contingencies specified in this clause, the application shall not be entertained after a period of one year commencing from the date of his entry in the Government service.

Instructions.—

(1) If the Government servant applies to change the date of birth, the Head of Office shall verify that the date of birth mentioned in the documents submitted as per the clause (a) of sub-rule (2) of this rule, by the concerned Government employee at the time of appointment to the office, for recording date of birth and the actual entry of date of Birth recorded in the service book are different.

(2) If a discrepancy is noticed in record as per the instruction (1), the Head of department shall record the correct date of birth as per the provisions of clause (a) of sub-rule (2) of this rule.]

(3) Officers of a rank not lower than the Principal District Officer in the Department concerned may correct errors in the service book ²[excluding cases of amendment in the date of Birth entry] which are obviously clerical. Cases in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority.

(4) Finger-prints of a Government servant who is not literate enough to sign his name in English, Hindi or Marathi should be recorded in the column headed “Personal marks of identification” in the service book itself. The impressions should not be taken on separate slips of paper and pasted to the service book.

Exemptions.—

When a military employee is transferred to a civil department and assumes a civilian status or when a military employee discharged from the army without earning a pension is employed in a post in a civil department in which his military service counts towards pension, the date of birth to be entered in his service book or roll shall be either that entered by the Military Authorities in his form of attestation when he first joined the army or, if at the time of attestation he stated only his approximate age, the date

arrived at by deducting the number of years representing his age from his date of appointment.

Note 1.— *The latest discharge certificate (printed as Appendix V) issued to military employees on release of discharge does not provide for the age on the date of attestation or enrolment. It does, however, provide inter alia for (i) age at the time of completion of the certificate and (ii) date of enrolment. In such cases the age at the time of enrolment (attestation) should be worked out as indicated below :—*

(a) Calculate the difference between (i) the date of Commanding Officer's signature (vide space provided below serial No.8 in the certificate) and (ii) the date of enrolment.

(b) Deduct the period calculated as per (a) above from the age at the time of completion of the certificate (the date of the completion of the certificate vide serial No.2 in the certificate).

Once the age at the time of enrolment is calculated the date of birth should be calculated as per the exemptions above.

Note 2.— *Cases in which the date of birth has been deduced by any other method, from the age at appointment or attestation, or cases in which Government have passed specific orders accepting a particular date of birth, need not be re-opened.*

1. Sub-rule (2) substituted by Notification No.MCS-2019/C.R.19/SER-6, dated 30.12.2021.

*2. Inserted, *ibid.*”*

6. Once such entries are made in the service book, the same can be corrected within a period of five years from the date of entries of such events in the service book, including that of the date of birth.

7. The petitioner is banking on the date of birth certificate dated 29-5-2015. Perusal of the said certificate depicts that the entry as regards the date of birth of the petitioner was taken in the service record on 3-7-1973. Under the provisions of Rule 38 of the Rules of 1981, there is a presumption that the entry of date of birth in the service record is carried out as per the information supplied by the

petitioner and that too based on the documentary evidence as service book entries are carried out as per information provided by the employees like petitioner.

8. To rebut such presumption that the date of birth was wrongly recorded, the petitioner must discharge such burden by demonstrating that (a) the date of birth was intentionally wrongly recorded by the Appointing Authority, and (b) the fact about incorrect date of birth was well within the knowledge of the Appointing Authority which fact was brought to the notice by the petitioner well within the limitation prescribed under Rule 38 of the Rules of 1981.

9. The date of birth certificate of the petitioner depicts that his date of birth of 8-5-1973 was recorded as 8-5-1971, and based on the same, the petitioner further pursued his studies. The petitioner in such an eventuality ought to have demonstrated that his other document is S.S.C. board certificate contains the correct date of birth, that is 1-6-1973. The petitioner has not produced any such document on record to justify his claim.

10. Apart from above, the impugned communication refusing to carry out correction in the date of birth is based on the request application dated 21-11-2021. The petitioner has preferred such application for correction in the date of birth after a lapse of five years, as has been prescribed under Rule 38 of the Rules of 1981 from the date of issuance of the birth certificate, which is produced at Annexure-4 dated 29-5-2015.

11. In the aforesaid background, it cannot be said that there are *bona fide* efforts on the part of the petitioner to seek correction in the date of birth in the service record. Rather the fact about the narration of recording of the date of birth in the service record is based on the information supplied by the petitioner. That being so, no case for causing any indulgence is made out. The petition *sans* merit. The same stands dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

LANJEWAR