



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO.6635/2023

PETITIONER : Baba s/o Laxmanrao Jawade,
Aged about : 54 years, Occ. : Service,
R/o Chaitanya Colony, Sawangi (Meghe),
Tah. & Dist. Wardha.

...VERSUS...

RESPONDENTS : 1. Zilla Parishad, Wardha, through its
Chief Executive Officer.

2. Education Officer (Primary), Zilla
Parishad, Wardha.

3. State of Maharashtra, through Secretary,
Department of Rural Development, 25,
Marzban Path, Fort, Mumbai.

Mr. P.D. Meghe, Advocate for petitioner
Mr. D.R. Bhoyar, Advocate for respondent nos.1 and 2
Mr. A.S. Fulzele, Addl. G.P for respondent no.3

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.**

Date of reserving the order : 30/04/2024

Date of pronouncing the order : 08/05/2024

O R D E R : (PER : AVINASH G. GHAROTE, J.)

1. On 18/04/2024, the following position is recorded.

*“The petition questions the communication dated
30/06/2023 by which the claim of the petitioner for
correction of his date of birth in service book has been turned
down.*

2) *It is contended that, while appointment with the respondent no. 1 on 30/06/1992, the date of birth of the petitioner was recorded incorrectly as 21/09/1966 on the basis of SSC certificate (Page 30). It is contended that realizing this discrepancy, immediately on 10/08/1993, the application for correction of the date of birth was filed by the petitioner, which came to be decided by impugned communication dated 30/06/2023 (Page 63). It is contended that the date of birth of the petitioner is, in fact, 21/09/1969 for which reliance is placed upon the certificate dated 06/10/1997 issued by the Principal, Primary School Sarod, Panchayat Samiti, Deoli (Page 35) and also the certificate dated 17/01/1990 which certifies the date of birth of the petitioner to be 21/09/1969 (Page 31). Reliance is also placed upon the certificate issued under the Registration of Births and Deaths Act, 1969, on 10/09/2022 which records the date of birth of the petitioner as 21/09/1969 (Page 38). It is, therefore, contended that since an application was made as contemplated by Rule 38 of the MCS Rules within five years from the date of entry in the service book, the fact that it was not decided by the authorities, could not debar the petitioner from claiming correction to be made in the service book in that regard.*

3) *It is contended that rejection by the respondents by the impugned communication is not justified. Reliance is also placed upon Shankar S/o Arjun Nimsarkar vs Zilla Parishad, Wardha & ors., Writ Petition No. 4336/2022 decided on 14/09/2022, which according to us, considers a similar position.*

4) *Mr. Bhoyar, learned Counsel for the Respondent Nos. 1 & 2 submits that, it is too late for the petitioner to claim correction of his date of birth entry in the service book as the petitioner is stated to retire on 30/09/2027. He also placed his reliance upon the instructions issued by way of notification dated 24/08/2008 indicating the manner in which the request for correction of the date of birth entry in the service book is to be processed. He seeks a day's time to place on record the copy of aforesaid notification."*

2. Today, Mr. Bhoyar, learned counsel for the respondent nos.1 and 2 places reliance upon the language of Rule 38 (2) (f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 [“MCS (GCS) Rules, 1981” for short hereinafter] to contend, that unless the requirements contained therein are satisfied, that the entry was due to want of care on part of some person other than the individual in question or is an obvious clerical error, no interference can be made. In support of this, he relies upon *Vijay Karbhari Chaudhari Vs. The State of Maharashtra & Anr. decided on 24/09/2021 [Writ Petition No.5518/2021]* and *State of Maharashtra and others Vs. Sudhir Bhagwat Kalekar 2023 DGLS (Bom.) 3555*, which, according to him, consider similar position. Reliance is also placed upon *Commissioner of Police, Bombay and another Vs. Bhagwan V. Lahane, (1997) 1 SCC 247* and *State of Madhya Pradesh and others Vs. Premlal Shrivastava (2011) 9 SCC 664*. Insofar as reliance placed by the learned counsel for the petitioner upon *Shankar s/o Arjun Nimsarkar Vs. Zilla Parishad, Wardha through its Chief Executive Officer [Writ Petition No.4336/2022, decided on 14/09/2022]* it is contended, that though Rule 38 (2)(f) of the MCS (GCS) Rules, 1981 has been considered, there is no

finding rendered that the entry made in the service book, was not on account of any fault on part of the petitioner at whose behest the entry was made. He, therefore, submits, that the petition needs to be dismissed.

3. What is material to note, is that when the petitioner joined services, he was aware of the requirement of submitting the correct date of birth, for the purpose of entering in his service book. It is true that it is at the behest of the petitioner, that the date of birth 21/09/1966 came to be recorded in his service book on the basis of his SCC certificate, consequent to his appointment on 30/06/1992, however, it is equally true that the petitioner upon realizing this position had filed an application on 10/08/1993 with the respondent nos.1 and 2 for correction of date of birth in the service record. Once this was done, it was for the authorities to have processed the application and decided it one way or the other, however, it is only by the communication dated 30/06/2023 (pg. 63) that the request came to be rejected. It would, therefore, be apparent, that the application, for change in the date of birth, came to be filed within the time frame of five years, as contemplated by

Instruction No.1, appended below Section 38 (2) of the MCS (GCS) Rules, 1981.

4. What is therefore, required to be considered, is whether the second limb of Rule 38 (2) (f) of the MCS (GCS) Rules, 1981 that the entry was due to want of care on part of some person other than the individual in question, or was an obvious clerical error.

5. That an entry in the service book can be corrected on account of “obvious clerical error” has been held by the Full Bench in *Janabai d/o Himmatrao Thakur Vs. The State of Maharashtra and others 2020 (1) ALL MR 360 (F.B.)*.

6. The recording of an entry regarding date of birth in the service book, has serious consequences, as it determines the tenure of employment of the employee, which would in turn, also have a cascading effect, upon the vacancy to be created on account of the superannuation of the employee. Rule 38 of the MCS (GCS) Rules, 1981, therefore, mandates that it is necessary for an employee, to ensure, recording of the correct date of birth, in the service book and in case it is incorrectly done, to get it corrected as early as possible, with which purpose Instruction No.1 appended below Rule 38 of the MCS (GCS) Rules, 1981 requires the application in that regard, is to

be made within a period of five years from the date of the entry. The obligation, of the employee, does not stop there, but for getting the entry corrected, he has to fulfill the requirement as enumerated in Rule 38 (2) (f) of the MCS (GCS) Rules, 1981, which mandates that no alteration in the entry should be allowed, once it is made in the service book, unless it is known, that the entry was due to want of care on part of some person other than the individual in question or is an obvious clerical error. The expression “the entry was due to want of care on part of some person other than the individual in question”, as occurring in Rule 38 (2) (f) of the MCS (GCS) Rules, 1981, would necessarily relate to the entry made in the service book and therefore, has to be necessarily demonstrated to be attributable to some person other than the petitioner, when the entry is made in the service book. No doubt, that the entry can also be corrected on account of “obvious clerical error”, as indicated in Rule 38 (2) (f) of the MCS (GCS) Rules, 1981, which cannot be construed narrowly, so as to restrict it, at the point of time, when the entry is made in the service record, but has to be given an expanded meaning to include an error, which may have occurred even earlier thereto, in view of the fact, that it is not qualified and the provision contemplates, grant

of an opportunity to the employee to ensure the correct date to be recorded in the service book, and therefore, would take into its compass, errors which have occurred in recording the date of birth in documents earlier to the entry in the service book, the incorrectness of which can be demonstrated to be obvious in nature.

7. It is, however, equally trite that such a correction, has to be ensured by the employee, to be carried out, within a reasonable period of time and though it would be the duty of the employer once an application is made within the time frame of five years, as indicated by Instruction No.1 appended below Rule 38 (2) of the MCS (GCS) Rules, 1981, to decide the same within a reasonable period of time, so that, in case of any rejection of the claim of the employee, the remedy to approach the higher authorities, or appropriate Court, would be available and not lost to him, it would be equally the responsibility of the employee to ensure that the application for correction of date of birth is pursued by the employee and got decided. The employee, cannot be permitted to say that he has made an application for correction of date of birth within the time frame stipulated by the rules applicable and thereafter forgot about the same, for decades together and then woke from his

slumber, at the fag end of his service to revive the claim regarding the correction in his date of birth. As held by the Hon'ble Apex Court in a catena of decisions, that the claim for correction of the date of birth, has to be made and got decided, at the earliest, and cannot be permitted to be raised at the fag end of the service, as the general principle of delay and latches, would clearly be attracted [*see : Union of India Vs. Harnam Singh (1993) 2 SCC 162; The General Manager South Eastern Coalfields Ltd. and Others Vs. Avinash Kumar Tiwari 2023 LiveLaw (SC) 124.*]

8. In the instant case, though the petitioner had made an application on 10/08/1993, the petitioner, did not pursue the same till 14/09/2022, which is nearly a period of 29 years from his initial application. Even thereafter, the petitioner merely continued making several representations on 29/11/2022, 30/12/2022 and 03/01/2023, well knowing that considering the age of retirement of teachers with the Zilla Parishad schools was 58 years, which considering the date of birth of 21/09/1966, as recorded in his service book, was to superannuate on 20/09/2024. The silence on part of the petitioner, for nearly a period of 29 years, is telling. The petitioner cannot be permitted to sleep over his rights, for decades

together and then one fine morning realizing that his retirement is approaching fast, make an attempt, to correct his date of birth. The entire petition, does not disclose any reason whatsoever, for this 29 years hiatus on part of the petitioner, in pursuing his application for correction of the date of birth. No explanation whatsoever is forthcoming for explaining the delay and latches on the part of the petitioner.

9. Examining the position in the instant case, in light of the above dictum, it would be necessary to note, that in support of his claim that the correct date of birth of the petitioner was 21/09/1969, the certificate of the Principal, Primary School, Sarul, Panchayat Samiti, Deoli dated 06/10/1997 (pg.35), which certifies this position, on the basis of the school admission register has been relied upon. A copy of the school register is also placed on record at page 37, which also affirms this position. Reliance is also placed upon the certificate issued by the authority under the Registration of Births and Deaths Act, 1969, (pg.38) which certifies the date of birth of the petitioner as 21/09/1969. A perusal of the entry of change of school (pg.36) of the Higher Primary School, Takli (Chana), Deoli Panchayat Samiti, Zilla Parishad, Wardha indicates, that while

changing the school, the date of birth of the petitioner has been incorrectly recorded as 21/09/1966 instead of 21/09/1969, which unfortunately has been carried forward. However, in spite of this position, the petitioner, has made no attempt, to get the date of birth corrected, in the records of the Higher Primary School, Takli (Chana), Deoli Panchayat Samiti, Zilla Parishad, Wardha or for that matter, in his SSC certificate corrected at any point of time, in spite of realizing as far back as in 1993 itself the fact that the date of birth, as entered therein, was incorrect. Rather on the contrary, the petitioner continued to be said the date of birth, throughout, and the position is that even today, the date of birth, in the register of the aforesaid school, as well as the SSC certificate continues to be recorded as 21/09/1966 in stead of 21/09/1969, which is claimed by the petitioner to be his correct date of birth.

10. ***Vijay Karbhari Chaudhari*** (supra) upon which reliance has been placed by Mr. Bhoyar, learned counsel for the respondent nos.1 and 2, was a case, in which after joining the Government service on 09/10/1997 as an Agricultural Extension Officer, whereupon the date of birth was recorded as 01/06/1971 an application for correction to record it as 17/10/1972 was made on

17/11/2000, which application was rejected by the order dated 10/02/2003, challenge to this before the Maharashtra Administrative Tribunal in Original Application No.949/2004 was dismissed by the order dated 05/01/2006, which had attained finality in absence of any challenge thereto. It was seven years thereafter that again an application was filed for change of date of birth on 28/06/2013, which also came to be rejected on 30/07/2014, which rejection was never challenged. Again, for a third time, an application came to be filed for correction on 26/08/2015, which came to be rejected on 22/05/2018, which was challenged in the petition. It was, therefore, in this background, held that though the application for correction of date of birth in the service book was made within three years from the date of entering services, however, the law did not permit repeated filing of applications, the rejection of which, had already attained finality.

11. ***Sudhir Bhagwat Kalekar*** (supra) on which reliance is also placed by Mr. Bhoyar, learned counsel for respondent nos.1 and 2 was also a case, in which the employee who had entered services consequent to 17/08/1992 wherein his date of birth was recorded as 23/05/1965 had filed an application on 22/07/1994 for

correction of his date of birth as 23/11/1965 by relying upon the birth certificate issued by the Municipal Corporation of Greater Mumbai, on which no action was taken, whereupon again an application was made after 10 years on 29/01/2004, which were followed by the applications in 2004, 2005, 2011, 2013 and 2014. In March, 2023, Original Application No.280/2023 came to be filed on account of rejection of his representation dated 22/07/2022 on 01/03/2023, for correction of date of birth, which Original Application was allowed, on account of which, the petition came to be filed, in which, it was held that on account of absence of any efforts to get the entry of date of birth in the school/college records or in the matriculation certificate, the same could not be permitted at the fag end of his career. These judgments, are clearly in consonance with the settled position of law that correction in the entry of the date of birth, cannot be permitted at the fag end of the career.

12. Though reliance is placed by Mr. Meghe, learned counsel for the petitioner upon ***Shankar s/o Arjun Nimsarkar*** (supra), in which, upon entering service with the Zilla Parishad, Wardha consequent to the advertisement dated 23/09/1986, the petitioner

on 24/02/1989 had pointed out to the Chief Executive Officer regarding incorrect recording of his date of birth in the school leaving certificate as 29/08/1964, the correct date of birth being 19/02/1966, in support of which, an affidavit was also filed, subsequent to which an application on 23/02/1993 also came to be filed by the petitioner to the Block Education Officer, Samudrapur for forwarding the same to the Zilla Parishad and Education Officer and the rejection was communicated on 14/07/2022 in pursuance to which the date of birth of the petitioner, was directed to be corrected, it is material to note, the same does not advert to the language of Rule 38 (2) (f) of the MCS (GCS) Rules, 1981 and specifically the expression “that the entry was due to want of care on part of some other person other than the individual in question”, which would relate to the entry itself made in the service book, which was at the behest of the petitioner, on account of the entry made in his SSC certificate and therefore, was an act attributable to the petitioner and not to any other person.

13. In the instant case, the entry in the service book, admittedly has been made at the behest of the petitioner, on the basis of the entry made in the SSC certificate, which was produced

by the petitioner himself and therefore, the requirement in this regard, as contained in Rule 38 (2) (f) of the MCS (GCS) Rules, 1981, in our considered opinion, has clearly not been satisfied. Moreover, there is no explanation whatsoever, as to the delay and latches of more than 29 years, which are directly attributable to the petitioner for getting his date of birth to be decided, as the cause of action for filing the present petition is stated to the judgment passed by this Court in ***Shankar s/o Arun Nimsarkar*** (supra). We, therefore, do not think this a fit case, to interfere in our extraordinary jurisdiction under Article 226 of the Constitution. The writ petition is, therefore, dismissed. Considering the circumstances, there shall be no order as to costs.

(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)