ANANT KRISHNA NAIK
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6847 OF 2024

Shri Dnyaneshwar Baban Katkar)
Aged 55 Yrs., Working as Police Inspector)
in the office of the Commissioner of Police,)
Pimpri-Chinchwad Police Commissionerate,)
R/o. Rushabh Apartment, Sector – 4,)
Spine Road, Sant Nagar, Moshi, Dist. Pune) .. Petitioner

Versus

1. The Director General and Inspector)
General of Police [M.S.], Mumbai)
Having Office at Old Council Hall,)
Shahid Bhagatsinh Marg,)
Mumbai – 400 039)

2. The State of Maharashtra)
Through Additional Chief Secretary,)
Home Department, Having Office at)
Madam Cama Road, Opp. Mantralaya,)
Mumbai - 400032.) .. Respondents

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Mr. A. Y. Sakhare, Senior Advocate a/w. Mr. Gaurav Bandiwadekar, Advocate for the Petitioner.
Mr. N. K. Rajpurohit, Assistant Government Pleader for the Respondent-State of Maharashtra.

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CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.

DATED : 22nd JANUARY 2025

JUDGMENT (Per M. M. SATHAYE, J) :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Counsel for the parties.

2. This Petition is filed challenging the judgment and order dated 02/05/2024 passed by the Member, Maharashtra Administrative Tribunal in Original Application No. 30 of 2024. By the said impugned order, the prayer for change in the date of birth of the Petitioner in his service book, from 01/06/1966 to 24/12/1968 and prayer for grant of consequential service benefits, has been denied.

3. Few facts shorn of unnecessary details, are as under. The Petitioner was selected as Police Sub-Inspector and joined his service on 15/09/1993. On successful completion of training, a regular appointment order was issued and the Petitioner's Service Book was opened, wherein his date of birth was recorded as 01/06/1966. This matches with Petitioner's school leaving certificate (page 74 or 79 of petition). The Petitioner's father sworn an Affidavit on 23/05/1995, stating that the Petitioner's correct date of birth is 24/12/1968. The Petitioner made an application to the concerned Additional Commissioner of Police on 29/05/1995, requesting change of date of birth in service record. The Petitioner sent reminders on 08/01/1996 and 19/11/1996. The Petitioner thereafter secured an order from the Judicial Magistrate, First Class, Ghodnadi on 19/01/2022, whereby the Gram Panchayat of said village was directed to effect an entry of Petitioner's date of birth as 24/12/1968 in the birth and death Register. A birth certificate was issued to the Petitioner on 08/02/2022 mentioning the Petitioner's date of birth as 24/12/1968. This was followed by publication in

the Government Gazette about the said change on 27/07/2023. Thereafter, the Petitioner filed the aforesaid Original Application in January 2024 seeking directions to the Respondents to give effect to the order of the Judicial Magistrate, First Class thereby recording the Petitioner's date of birth in the service book as 24/12/1968 and to change the entire service record of the Petitioner and for consequential service benefits.

4. The Respondent-State filed its Affidavit-in-Reply opposing the said request, contending *inter alia* that as per Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions) Rules, 1981 (for short **"the MCS Rules of 1981"**), change of date of birth is possible only when there is a clerical error on the part of the Government Department and the Application made within a period of 5 years from the date of entry of the government employee into the service. It is contented that the concerned office of the Respondent had requested the State Government to take a decision on the request of the Petitioner about the change of date of birth, vide the proposals dated 08/05/2023 and 17/11/2023. However, the State Government has rejected the request vide its letter dated 08/01/2024.

5. The Petitioner filed an Affidavit-in-Rejoinder, contending *inter alia* that he has filed an Application requesting for the change in date of birth, which is within the period of 5 years of joining the service. That thereafter it was obligatory on the concerned authority to decide the said Application, which is not done for last many years, which has resulted in filing of the Application before the Tribunal. He contended that he is due to retire on 31/05/2024 on attaining the age of superannuation. He contented that neither the proposal nor the decision taken thereon has been annexed to the reply or served upon him.

6. It is in this backdrop that the impugned order is passed.

SUBMISSIONS

7. Mr. Sakhare, learned Senior Advocate for the Petitioner submitted that the necessary Application for correction of date of birth has been filed within 5 years of joining the service and therefore, its pendency will not have any adverse effect. He submitted that reminder letters were sent, however, no decision was taken thereon by the concerned department. He submitted that the Registration of Births and Deaths Act, 1969 (for short **"the Act of 1969"**) is a Central Act and there are Rules framed thereunder of the year 2000, which regulate the proceedings seeking change in the date of birth, for which the Competent Authority is notified. He submitted that the Petitioner has approached the said Competent Authority being the Judicial Magistrate, First Class, who has passed an order dated 19/01/2022 in Criminal Miscellaneous Application No. 347 of 2021. It is submitted that the concerned Gram Panchayat is directed under the said order to take the entry of the Petitioner's date of birth as 24/12/1968 in the birth register of the office of the Gram Panchayat Kavathe Yamai, Taluka – Shirur, District – Pune. He submitted that the effect of this order has not been properly considered by the Tribunal. He submitted that the Act of 1969 and Rules made thereunder, being Central Legislation will prevail over Rule 38(2)(f) of the MCS Rules of 1981. He has relied upon the following Judgments:

(a) Syed Askari Hadi Ali Augustine Imam & Another Versus State (Delhi Administration) and Another[1]
(b) Bharat Coking Coal Limited and Others Versus Chhota Birsa Uranw[2]
(c) Shri Ashok Shankar Kale Vs The State Of Maharashtra & Anr.[3]

1 (2009) 5 SCC 528
2 (2014) 12 SCC 570
3 Bombay High Court in WP/13535/2018 Ord. dt. 18/02/2019

(d) Iswarlal Mohanlal Thakkar vs. Paschim Gujarat VIJ Company Limited And Another[4]
(e) Gendalal vs Union of India and Others[5]
(f) Kunal Singh vs Union of India and Another[6]
(g) R. K. Jangra vs. State of Punjab and Others[7]

8. *Per contra*, Mr. Rajpurohit, learned Assistant Government Pleader for the Respondent-State has supported the impugned order. He submitted that the argument about the Act of 1969 prevailing over the MCS Rules of 1981 is not argued before the Tribunal and is being advanced for the first time in this Court. He submitted that the Central Legislation or Rules made therein can have overriding effect over the State Legislation, only if the subject being governed is same. He submitted that the MCS Rules of 1981 are governing the subject of 'general conditions of service' for government employees of the State of Maharashtra and this is not the subject being governed by the Act of 1969. He submitted that the very purpose of Rule 38(2)(f) of the MCS Rules, 1981 will be frustrated if the argument of the Petitioner is accepted. He submitted that the Application for change of date of birth was not followed up or pursued by the Petitioner within 5 years from joining service and as such, the bar under Rule 38(2)(f) of the MCS Rules of 1981 would squarely apply. He urged that in the facts and circumstances of the present case, the impugned order does not require any interference. Learned AGP has relied upon the following judgments in support of his case:

(a) Janabai d/o. Himmantrao Thakur Vs. State of Maharashtra & Ors.[8]
(b) Punjab & Haryana High Court at Chandigarh v/s Megh Raj Garg

4 (2014) 6 SCC 434
5 (2007) 15 SCC 553
6 (2003) 4 SCC 524
7 (2009) 2 SCC (L&S) 117
8 2020(1) ALL MR 360 (F.B.)

And Another[9]

(c) State of Maharashtra And Another v/s Gorakhnath Sitaram Kamble and Others[10]

(d) U. P. Madhyamik Shiksha Parishad And Others V/s Raj Kumar Agnihotri[11]

(e) Union of India and Others V/s Saroj Bala (Mrs.)[12]

(f) G. M. Bharat Coking Coal Ltd, West Bengal V/s Shib Kumar Dushad And Others[13]

(g) State of Maharashtra & Ors. V/s Sudhir B Kalekar[14]

REASONS AND CONCLUSIONS

9. We have considered the rival submissions and perused the record.

10. Before we proceed to deal with the rival submissions, it would be appropriate to consider the relevant provisions involved.

11. The Act of 1969 is made to provide for registration of births and deaths and for matters connected therewith. It provides for the Registration Establishments in Chapter II, Registration of Births and Deaths under Chapter III, Maintenance of Records and Statistics under Chapter IV and certain Miscellaneous provisions under Chapter V. Under Section 8, 9 and 10 of the Act of 1969, a duty is cast upon certain persons to report the births and deaths at various places to which such persons are connected. Under Section 11, the informant is supposed to sign the register. Issuance of certificate of registration is provided under Section 12 and in Section 13, delayed registration of births and deaths are provided on payment of late fee. Under Section 13(3), it is provided that any birth or death reported beyond one year shall be registered only on an order made by the Magistrate

9 (2010) 6 SCC 482
10 (2010) 14 SCC 423
11 (2005) 11 SCC 465
12 (1996) 2 SCC 81
13 (2000) 8 SCC 696
14 Bombay High Court in WP/6976/2023 dt. 23/06/2023

having jurisdiction over the area where the birth or death has taken place. Verification of correctness of birth and death, on payment of fees is also provided. Special provision for registration of births and deaths of citizens outside India is provided in Section 20. Penalties are provided for failure to report birth and death under Section 23. The power to compound offences and sanction for prosecution is provided under Sections 24 and 25. Appeals are provided under Section 25A.

12. Considering the aforesaid scheme of the Act of 1969, it is clear that it has no direct or indirect effect on the 'general conditions of service' of the employees of State Government. As against this, the MCS Rules of 1981 are specifically made for governing general conditions of service of the State Government employees. Clearly the subject being governed is totally different. Therefore there is no merit in submission that the Act of 1969 or Rules made thereunder will prevail over the MCS Rules of 1981.

13. It is undisputed that the Petitioner was working with the state police force and is governed by the MCS Rules of 1981. Rule 38(2)(f) thereof reads thus:

> "38. Procedure for writing the events and recording the date of birth in the service book:
> x
> x
> (2) While recording the date of birth, the following procedure should be followed :-
> x
> x
> (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 the 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.
> xxx ”

14. It is therefore clear that an alteration in the entry of age or date of birth made in the service book is not permitted 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. In the present case, the Petitioner’s date of birth (01/06/1966) is recorded in the service book on his own Application and based on the information submitted by the Petitioner himself and therefore, this is not a case where the wrong entry is made due to want of care of person other than the Petitioner. It is also not a case of obvious clerical error.

15. The case of the Petitioner, as can be seen from his Application, is that during an informal discussion at their native place, the Petitioner’s father informed that the Petitioner’s real date of birth is 24/12/1968. Based on such case, the Petitioner’s father has sworn an affidavit. Admittedly, there is nothing on record to show that after November, 1996, the Petitioner has pursued his Application with the concerned department. It is directly in January 2022 that the Petitioner secured an order from the Magistrate. Admittedly, thereafter, the birth certificate relied upon by the Petitioner dated 08/02/2022 has been issued. Admittedly, thereafter, the publication in the Government Gazette has been effected on 27/07/2023. It is therefore clear that both, the birth certificate and the Government Gazette is after the order of the Magistrate under the Act of 1969.

16. Under Instruction (1) to Rule 38(2)(f), such application is not be entertained after 5 years from date of entry in government service. The

Petitioner was due to retire on 31/05/2024 and at the fag end of the service, he has applied to the Tribunal in January 2024. In a recent judgment by the Co-ordinate Bench of this Court in the case of **State of Maharashtra Vs. Sudhir B. Kalekar (supra),** by making reference to the judgments of **General Manager, Southestern Coal Fields Ltd. vs. Avinash Kumar Tiwari**[15] and **Bharat Coking Coal Ltd & Ors Vs. Sham Kishore Singh**[16] it is re-iterated that the Hon'ble Supreme Court has time and again held that applications for change of date of birth at the fag end of service cannot be entertained.

17. In such cases, where a government employee seeks to change his/her date of birth in the service record after spending considerable time of service or close to his retirement, where postponement of the date of birth is asked, it is obvious that it has far reaching effect, if permitted. If a government employee seeks change of date of birth to mean that he was born on a later date, compared to the date of birth recorded in his service book, it means that on the date of his appointment he was not of a particular age and was younger than what he claimed at the time of entry in service. In a given case, this can have bearing on the issue of eligibility itself. Also, when a government employee claims that he was born on a later date, it obviously has an effect on seniority at the time of appointment. In a given case, where a batch of employees is appointed on the same date, the seniority may change and such change in service book can adversely affect seniority of other co-employees. Also, the aspect of the concerned government having to pay him salary for longer period than what was expected at the time of entry in service, also needs serious consideration. If a government employee was younger during his tenure, he might not be considered for certain benefits, which, in a given case, might have been already availed and enjoyed. These

15 (2023) Live Law (SC) 124 – Sp. Leave to Appeal (C) No. 14238/2022; 17-02-2023
16 AIR 2020 SC 940

are some of the situations and effects that are relevant in our opinion, when a government employee says that he was born later than the date of birth recorded in his service book. Needless to mention that this is not an exhaustive list of possible situations. In our opinion, such situations must be avoided and therefore requests for change in date of birth beyond reasonable time should not be permitted. In the present case, it is 5 years under the applicable rule.

18. We are fortified in our view by the judgment of the Hon'ble Supreme Court in case of **Home Department vs R. Kirubakaran**[17]**,** which is considered in **Bharat Coking Coal Ltd. Vs. Chhota Bisra Uranw (supra)** relied upon by the Petitioner. The relevant paragraph from the case of **Home Department vs R. Kirubakaran** is as under :

> "7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and

17 . 1994 Supp (1) SCC 155

> within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."
>
> [Emphasis supplied]

19. Way back in the year 1993, in **Union of India v. Harnam Singh**[18], the Hon'ble Supreme Court has held in paragraph 7 as under :

> "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 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

18 . (1993) 2 SCC 162

> 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. xxx "
>
> [Emphasis supplied]

20. The judgment of ***Bharat Coking Coal Limited and Others Versus Chhota Birsa Uranw (supra)*** is relied upon in support of the contention that the Petitioner had applied in time and change is not sought at the fag end of the service. In the present case, the Petitioner at the time of joining service has already submitted the date mentioned in the school leaving certificate, which is sought to be changed on the basis of birth certificate issued as late as in February, 2022, which is based on the order passed by the Magistrate in January, 2022, which in turn is based on a public notice issued in newspaper on dated 06/10/2021, to which no objections were raised. This clearly shows that the documents relied upon by the Petitioner for change of date of birth are recent documents close to his retirement.

21. In this respect, it is important to consider the judgment of **G. M. Bharat Coking Coal Ltd, West Bengal Vs. Shib Kumar (supra)**. In the said judgment the Hon'ble Supreme Court has indicated that when the certificate produced by the employee shows different date of birth from that entered in the service record, the High Court in exercise of jurisdiction under Article 226 of the Constitution of India, should not undertake an inquiry into such disputed question of fact. In the present matter also there is disputed

question about two birth dates and therefore we deem it appropriate not to enter into the inquiry of such disputed fact. Again, the judgment relied upon by the Petitioner in ***Bharat Coking Coal Limited and Others Versus Chhota Birsa Uranw (supra)*** shows that the Hon'ble Supreme Court has also observed as under :

> "9. Another practice followed by the courts regarding such disputes is that date of birth of an employee is determined as per the prescribed applicable rules or framework existing in the organisation. Even this Court in spite of the extraordinary powers conferred under Article 136 has decided date of birth disputes in accordance with the applicable rules and seldom has the Court determined the date of birth as it is a question of fact fit to be determined by the appropriate forum "
>
> [Emphasis supplied]

22. In the case of **Shri Ashok Shankar Kale (supra)** relied upon by the Petitioner, the Respondent-Employer therein had taken cognizance of the Petitioner's application and a report was called for, which indicated that the date of birth asserted by the Petitioner was correct. In that context, the relief was granted to the Petitioner therein. The facts of the present case are completely distinguishable and therefore, the said case will not help the Petitioner.

23. In the case of **Kunal Singh vs Union of India (supra)**, relied upon by the Petitioner, the Petitioner was a disabled person with one leg amputated and the matter was considered in light of provisions of the Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995. These facts being completely distinguishable, the said case will also not help the Petitioner.

24. In case of **Iswarlal Mohanlal Thakkar (supra)** relied upon by the Petitioner, the question was about proof of date of birth between the birth

certificate issued by the Municipal Corporation and school leaving certificate on the other hand. The said case was arising out of Labour Law and the High Court therein had re-appreciated the evidence to form its own view and findings were recorded on contentious issue, which was interfered with by the Hon'ble Supreme Court.

25. Assuming that the Petitioner made Application in time but not considered by Authority and kept pending, he has failed to pursue his remedy in respect of the grievance within the reasonable time and has slept over the matter for more than 25 years from 1995-96, when the Application was made till the Petitioner applied to the Magistrate in 2021 and thereafter further applied to the Tribunal in the year 2024. Though the Petitioner has sent two reminders in the year 1996, there is a complete in-action on his part till the Application before the Magistrate and ultimately to the Tribunal. The Petitioner was to retire on 31/05/2024 and he has applied to the Tribunal in January, 2024. In **State of Maharashtra And Another v/s Gorakhnath Sitaram Kamble and Others (Supra)**, the Hon'ble Supreme Court while dealing with the very same MCS Rules of 1981, has held that no application for alteration of the date of birth should be entertained beyond 5 years.

26. In **Gendalal Vs. Union of India (supra)** relied upon by the Petitioner, it was a railway employee case. After a gap of 21 years from the employee applying for change in date of birth in service records, the employer had asked for some more documents, indicating that the employer was considering the case of the petitioner therein. Present case is not comparable with such situation. Also, in **R.K.Jangra Vs. State of Punjab (supra)** relied upon by the Petitioner, the High Court had asked the Petitioner to approach

civil court for change of date of birth in service records. Facts of the present case are totally different.

27. Finally, in case of **Syed Askari Hadi Ali Augustine Imam (supra)** relied upon by the Petitioner, the Hon'ble Supreme Court was considering the primacy of criminal proceedings over the civil proceedings and it involved a judgment rendered by the Probate Court. Paragraph 32 of the said judgment is relied upon by the Petitioner in support of the argument that the judgment rendered by the Magistrate about Petitioner's birth date would operate as a '*judgment in rem'* being binding on all Courts and authorities. Assuming that the order relied upon by the Petitioner of the Magistrate is '*in rem',* material consideration is its effect on the service record of the Petitioner, within the framework of the applicable MCS Rules of 1981. It is an order directing the local Gram Panchayat to take the entry of Petitioner's birth date in the birth register. Therefore, the Petitioner having found slept over his case for about 25 years and framework under the Rules found fully applicable, the order of Magistrate cannot be held as binding upon the Respondents for change in birth date in the service book.

28. In the light of what is observed hereinabove, when the impugned order is perused, it is seen that the evidentiary value of affidavit of the Petitioner's father, the effect of order of the Magistrate and also the effect of Rule 38(2)(f) of MCS Rules of 1981 is considered by the Tribunal. The Tribunal has also considered the belated request made by the Petitioner seeking order from the Tribunal almost at the end of service tenure and the request is denied. The Tribunal has also considered the case of the Petitioner regarding the circumstances in which his father allegedly revealed the correct date of birth in the informal discussion at native place and the

evidentiary value of case and affidavit based on it. The reasons given by the Tribunal as well as the conclusions drawn, are based on material on record. The view taken is a probable view. There is no perversity or jurisdictional transgression or error apparent on the face of the record.

29. In the aforesaid facts and circumstances, we are not inclined to interfere in the impugned order in the exercise of our extra-ordinary writ jurisdiction. This Petition is devoid of merits and it is accordingly dismissed. Rule is discharged. No order as to Costs.

30. All concerned to act on duly authenticated or digitally signed copy of this Judgment.

(M. M. SATHAYE, J.) (A. S. CHANDURKAR, J)