

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 5169 OF 2025

Shri. Vijay Devaji Wakode
Age – 56, Occu – Service,
B/606, Tulshi Maitri Vatika CHS Ltd.
old Mumbai Pune Road, Parsik Nagar,
Kalwa, Dist. Thane.

... Petitioner

Versus

- 1) The State of Maharashtra
Through the Secretary for
Revenue and Forest Department,
Mantralaya, Mumbai.
- 2) The Secretary,
General Administrative Department,
Mantralaya, Mumbai.
- 3) The Divisional Commissioner,
Konkan Division, Konkan Bhavan,
1st Floor, New Mumbai.
- 4) The Additional Collector,
(Mumbai Suburban) Mumbai.
Having Office at 7th Floor, in
Administrative Building, Bandra (E),
Mumbai – 400 051.

... Respondents

Mr. Ravi Shetty, Sr. Advocate a/w. Mr. Dinesh Bhosale, Mr. Ashish S. Gaikwad, Mr. Anirudh R. Rote and Mr. Sagar G. Bhoir for the Petitioner.

Smt. Reena A. Salunkhe, AGP for the Respondent Nos.1 to 4 – State.

CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.

RESERVED ON : 06th APRIL, 2026

PRONOUNCED ON : 29th APRIL, 2026

JUDGMENT : (PER : SHYAM C. CHANDAK, J.)

1. Present Petition has mounted a challenge to the Order dated 19.03.2025, passed by the learned Member, the Maharashtra Administrative Tribunal, at Mumbai, whereby the Original Application No.918/2022 seeking correction in the date of birth of Petitioner in his service record came to be dismissed.

1.1 Respondent No.1 filed the Affidavit-in-Reply and opposed the Petition.

2. Heard Mr. Shetty, the learned Senior Advocate appearing for the Petitioner and Smt. Salunkhe, learned AGP appearing for Respondent Nos.1 to 4 – State. Perused the record.

3. Rule. Rule made returnable forthwith. With consent of parties, heard finally.

4. The Petitioner's case is that, he joined in the post of 'Naib Tahsildar' on 27.11.2002. In the Service Book, his date of birth was entered as 26.06.1968. His correct date of birth is 27.05.1969. Therefore, on 30.06.2005, the Petitioner addressed an application to the Principle Secretary, Revenue and Forest Department,

Mumbai with a request to change his date of birth from 26.06.1968 to 27.05.1969. Said request-cum-claim was supported by enclosing the Petitioner's Certificate of Birth issued by Bhusawal Municipal Council mentioning his date of birth as 27.05.1969 and the Government Gazette dated 30.09.2004 whereby, the Petitioner adopted his date of birth as 27.05.1969. This application was followed by official correspondence. In the end, the application seeking correction in the date of birth came to be rejected by Respondent No.1 on the ground that the Petitioner's case was not covered by said Rule 38(2)(f) of Maharashtra Civil Services (General Conditions of Services) Rules, 1981(hereinafter 'the Rules,1981) which permits making necessary change in the date of birth. Aggrieved, the Petitioner preferred the Original Application No.918/2022.

5. The Respondent No.1 opposed the application by filing reply, maintaining that the Petitioner's case was not covered by said Rule 38(2)(f) of the Rules, 1981.

6. After hearing the parties and upon considering the record, the learned MAT upheld the Order dated 21.06.2022 and dismissed the O.A. Hence, this Writ Petition.

7. Mr. Shetty, the learned counsel for the Petitioner has submitted that immediately after getting the Certificate of Birth, the Petitioner had submitted the application seeking change in his date of birth. Said application was filed within the stipulated period of five years from the date of joining the service. The application was supported with the requisite documents including

the Certificate of Birth. A Certificate of Birth is a conclusive proof in such matters. Additionally, the Petitioner had provided the relevant information about the date of birth of his siblings. Thereafter, whatever queries were raised, the same were satisfied by the Petitioner from time to time. The Divisional Commissioner, Konkan Division had submitted a detailed report after verifying the documents furnished by the Petitioner. Yet, no weightage was given to the said documents. He submits that the Rule 38 (2) (f) of the Rules, 1981 is not interpreted as required under the law. This ultimately has lead to an erroneous rejection of the application. Therefore, the impugned Order dated 21.06.2022 passed by Respondent No.1 and the Order dated 19.03.2025 passed by the learned Member, the Maharashtra Administrative Tribunal, Mumbai, are not sustainable in law and the same are liable to be quashed and set-aside.

8. Smt. Salunkhe, the learned AGP appearing for Respondent Nos.1 to 4, on the other hand, has submitted that the Petitioner himself had provided the documents based on which his date of birth was entered in his service book. In his original application seeking change in the date of birth, the Petitioner has not pleaded the case as required by said Rule 38(2)(f) of the Rules, 1981. The application was not supported by the required documentary evidence. As such, there is no substance in the Petition.

9. We have considered the rival submissions in the light of the material on record and the applicable law. It is the admitted fact that, the application of the Petitioner, seeking change in his date of birth was filed within 5 years of his joining the public service. To

that extent, the request for correction of date of birth in the service record was made within the prescribed time. The question is whether the other conditions of Rule 38(2)(f) of the Rules, 1981 has been fulfilled in this case so as to grant his prayer.

10. Said Rule 38 (2) of the Rules, 1981 provides for the procedure to be followed for recording the date of birth in the service record. As applicable then, Clause (f) of sub-Rule (2) of Rule 38 provided that “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;”.

11. By letter/Order dated 21.06.2022, Respondent No.1 rejected the said application on the ground that, at the time of joining, the Petitioner’s date of birth was recorded as 26.06.1968 in the service book. The said entry was made on the basis of the SSC Certificate and other school records furnished by the Petitioner himself. The entry was attested by the Petitioner by signing below it. Hence, it is held that the Petitioner did not fulfil the requirement of clause (f) of sub-Rule (2) of Rule 38 of the Rules, 1981 permitting correction of his date of birth.

12. The Petitioner has averred that, after his selection, his employer obtained his birth extract (Certificate of Birth Exh.-‘C’) which revealed that his date of birth is 27.05.1969. However, we have noticed that the Petitioner himself had applied for that Certificate of Birth (Exh.-‘C’) which was issued to him on

29.01.2002. The Petitioner did not produce the same at the time of entering his date of birth in the service book. The birth extract allegedly obtained by the employer department is also not produced. The Certificate of Birth (Exh.-'C') was already in the possession of the Petitioner at least 10 months prior to his joining the service on 27.11.2002. The Petitioner has not explained as to why he did not produce that Certificate when his date of birth 26.06.1968 was entered in the service book and it was attested with his signature. Therefore, negligence on the part of the Petitioner, on said count is evident on the face of the record.

13. During official correspondence, the Deputy Commissioner (Revenue) Konkan Division had submitted his scrutiny report as required by Circular No.जन्मदि-1095/प्र.क्र.27/95/13 अ dated 03.03.1998. Therein, it has been specifically stated that the Petitioner's application seeking change in the date of birth was not supported with an attested copy or an extract of the page in the the birth register on which the Petitioner's birth date entry was made. The name of the Petitioner is not mentioned in the said Certificate of Birth. It is a matter of record that in his application seeking change in the date of birth, the Petitioner had not stated that after his selection, his employer had obtained his Certificate of Birth (Exh.-'C') which revealed that his date of birth is 27.05.1969. The petitioner did not argue that the incorrect birth date in his school records happened due to someone else's carelessness nor did he claim it was a simple clerical or obvious error.

14. To support the case of the Petitioner, Mr.Shetty, the learned Senior counsel has cited the decision of Division Bench of this

Court in *Vasudha Gorakhnath Mandevlekar vs. CIDCO* reported in *2008 SCC OnLine Bom 400*. In that decision, the Division Bench in paragraphs 13, 14 and 15 has observed and held that,

“13. It is common knowledge that to secure admission in the school earlier than at the age which the law permits, an incorrect date of birth may be shown. Unless verified from public records such date may remain in the record of the school. This cannot be verified except by production of public records. They, therefore, cannot be authentic dates as would make those documents admissible as evidence with probative value in law.

14. Consequently whenever there is a variance between an unproved private document or its copy and a certified extract of a public record, the latter must prevail as it has more probative value, carrying the presumption as it does under Section 79 of the Evidence Act. This presumption would continue to hold until it is rebutted. It can be rebutted only by production of the original public record from which the extract is made out and certified to be true by the relevant authority. Only if it is so rebutted, such certified copy issued by a public authority would stand nullified.

15. ... The proof of the contents of public documents can be by production of their certified copies under Section 77 in Chapter VI of the Evidence Act. Since the certified copies carry a presumption as to their genuineness under Section 79 of the Evidence Act, they need not be proved in evidence. ”

14.1 Subsequently, the Division Bench's decision was upheld by the Hon'ble Supreme Court. However, having regard to the facts of the case in hand, the said decision cannot be applied here. Because, in that case the Petitioner *Vasudha* had joined the service in the year 1971. She had not only relied upon the birth certificate but also the birth record register in form specimen No.14 given by Panvel Nagar Parishad showing the record of her birth as well as birth of 2 other siblings. Secondly, there is no reference to the said Rule 38 (2) (f) of the Rules, 1981 and its effect in such cases.

15. In view of above discussion, the impugned Order dated 21.06.2022 passed by Respondent No.1 and the subsequent Order dated 19.03.2025 passed by the learned Member, the Maharashtra Administrative Tribunal, Mumbai thereby declining the change in date of birth in the light of Rule 38(2)(f) of the Rules, 1981 cannot be termed as erroneous or illegal. Therefore, said Orders do not call for an interference by this Court.

16. As a result, the Petition is liable to be dismissed and is dismissed, accordingly.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)

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