
(2014) 06 BOM CK 0143
In the Bombay High Court
Case No : Writ Petition No. 5345 of 2011

Maruti Daulu Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:

Citation : (2015) 3 ALLMR 654 : (2014) 5 BomCR 188

Hon'ble Judges : R.V. Ghuge, J;N.H. Patil, J

Bench : Division Bench

Advocate : N.V. Bandiwadekar, Advocate for the Appellant; M.S. Bane, "B" Panel, AGP for State, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard learned advocates for the respective sides.

2. Rule. Rule made returnable forthwith. By consent of the parties taken up for hearing and heard finally.

3. By this petition, the petitioner has challenged the dismissal of his Original Application No. 649 of 2008 by the Maharashtra Administrative Tribunal, Mumbai, ("MAT" for short), vide order dated 30th April, 2010 and correction of his date of birth.

4. The petitioner was a police constable attached to Kurla Police Station. He claims that his actual date of birth is 19th October, 1952. His birth entry was made in the birth register maintained by the concerned authorities at village Teginhal, Taluka Gadhinglaj, District Kolhapur. He was admitted in the primary school when his father wrongly entered his date of birth as 1st November 1950. The said entry was carried throughout in his school register, school leaving certificate and S.S.C. Certificate.

5. On 25th May, 1977, the petitioner came to be appointed as a police constable. He claims to have produced his birth extract showing his date of birth as 19th

October, 1952. He also produced his school leaving certificate which indicated his date of birth as 1st November, 1950. It is contended that the concerned officer preferred to accept his school leaving certificate and, therefore, the entry in his service book indicates his date of birth as 1st November, 1950.

6. The petitioner claims to have made a representation dated 27th September, 1980 to the 2nd respondent-Commissioner of Police Brihan Mumbai, seeking change of date of birth. Since a query was raised as to whether the petitioner had any siblings, the petitioner produced the birth extract of his brother and two sisters, which are submitted to the 2nd respondent. Yet his application was not dealt with. He made further representations on 27th February, 1983, 25th May, 1983, 4th June, 1992, 26th June, 1992 and 11th April 2006. It is the case of the petitioner that none of his representations were dealt with.

7. Respondent No. 2 published a notice in the police gazette on 19th September, 2007, declaring the date of the petitioner's retirement from service as "31st October, 2008". This date was arrived at on the basis of his birth date 1st November, 1950 entered in his service book.

8. The petitioner claims to have made an application dated 27th October, 2007 to the office of respondent No. 1-Addl. Chief Secretary, Home Department, Mantralaya, Mumbai, under the Right to Information Act. He sought for information as to whether any order was passed on his earlier representations. By reply dated 20th November, 2007, the petitioner was informed that none of the documents sought by him are available with the respondents and, therefore, no information can be supplied to him.

9. The petitioner states that it was in the above circumstances that he had preferred an Original Application No. 649 of 2008 before the MAT at Mumbai, in September, 2008.

10. By its order dated 30th April, 2010 the MAT dismissed the Original Application No. 649 of 2008, filed by the petitioner, which is impugned in this petition.

11. The petitioner submits that after joining duties on 25th May, 1977, the 1st representation put forth by him for correction of date of birth was 27th September, 1980, which was followed by several other representations. It was the respondents who have kept his representations pending. Neither delay nor laches can be attributed to the conduct of the petitioner. He had been diligent in making representations seeking correction of the date of birth at the earliest. The respondents have kept his representations pending.

12. It is further contended that the defence of the respondents that the application for correction of date of birth should have been made within five years, is unsustainable as the petitioner has made his first application on 27th September, 1980 and, thereafter on 27th February, 1983. The petitioner is not at fault and could not suffer on account of the laxity on the part of the respondents.

It is, therefore, prayed that the petition be allowed and petitioner be given monetary benefits from 1/11/2008 till 31st October, 2010 since the respondents have superannuated the petitioner after 31st October, 2010 based on his incorrect birth date 1st November, 1950.

13. Ms. Bane, learned AGP on behalf of the State has supported the impugned order of the Maharashtra Administrative Tribunal. It is submitted that though the petitioner claims to have made representations as early as on 27th September, 1980, such representations are not available with the respondents and could not be traced out. By its letter dated 31st July, 2008 respondents have rejected the request of the applicant seeking change in date of birth.

14. It is further submitted that the entry in the service book pertaining to his date of birth 1st November, 1950 and his caste Hindu-Gavit, was made at the instance of the petitioner. He was aware of the entries made in his service book. He has signed the 1st page of his service book at the time of his recruitment in the year 1977 when his date of birth 1st November, 1950 was entered in his presence. It is only after the respondent published a notice in the police gazette on 19th September, 2007, declaring the date of superannuation of the petitioner on 31st October, 2008, that the petitioner moved the respondent-department seeking correction in his date of birth.

15. It is pointed out that as per Rule 38 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981, an application for correction in the date of birth cannot be entertained after five years. The petitioner appears to have made his application belatedly. Thereafter he filed an application in 2008 and the same was rejected on 31st July, 2008. It was, therefore, prayed that the petition be dismissed.

16. Having heard the learned advocates for the respective sides, we have perused the petition paper book with their assistance.

17. The petitioner has placed reliance upon a judgment of the Hon''ble Supreme Court in the case of Gendalal v. Union of India and others reported in (2007) 15 SCC 553. In the said judgment the Hon''ble Supreme Court has noted that the 1st representation for change of date of birth based on the school certificate was made by Gendalal within six years of his joining service in 1964. Two years later he made a representation and sent reminders. About 21 years thereafter, instead of rejecting the representation, certain more documents were asked for and which were supplied by Gendalal. In 2001, by a cryptic order the representation of Gendalal was rejected on the ground that he had made a request for change of date of birth after 32 years and 6 months, prior to his retirement. The Central Administrative Tribunal had dismissed Gendalal's application.

18. The Hon''ble Supreme Court concluded that Gendalal had consistently made representations and in order to avoid litigation, he had sought relief from his employer department by making several applications. Gendalal was driven into litigation for years for no fault on his part. Since he had attained the age of

superannuation, the Apex Court granted him consequential benefits including arrears of salary. On facts, we find that the ratio laid down by the Hon''ble Supreme Court in Gendalal's case (supra) is not applicable to the case of the petitioner.

19. We find from the petition paper book that the petitioner himself has placed on record a typed copy of a representation bearing no date at page 28. He has stated in the said representation that he had joined employment on 25th May, 1977. Since he was under age as per his birth certificate for enlistment in the police force, the authorities accepted the date of birth as per the school leaving certificate. He further stated that in 1992 when he appeared for police sub-inspector selection course, he came to know that his date of birth was wrongly entered in his service book.

20. He has also produced a copy of a representation dated 25th May, 1983 at page No. 29 of the petition paper book claiming therein that he had also tried to get his date of birth corrected through the Secondary School Board, Pune, which showed its inability to correct the same. It took him 4 to 5 years in the said process. He has also produced copies of the representations addressed to 1st respondent dated 4th June, 1992, 26th June, 1992 and 11th April, 2006. He made detailed representations dated 27/3/2008, 4/8/2008 and 6/8/2008 to the 1st respondent seeking correction of date of birth. His request on the basis of his representation dated 27/3/2008 was rejected on 31st July, 2008.

21. We find from the record that though the petitioner claims to have made representations from 1980 onwards, the respondents do not have any record pertaining to the same. When he made a representation dated 27/3/2008 against the publication of his retirement date 31/10/2008 in the police gazette, the respondents have rejected the same by order dated 31st July, 2008.

22. There seems to be no record with the respondents pertaining to the representations claimed to have been made by the petitioner from 1980 onwards. So also, it appears from the undated letter produced by the petitioner that his date of birth 1/11/1950 was recorded at the time of his appointment since he would have been rendered underage for recruitment going by his date of birth 19th October, 1952. It is revealed from this document that the petitioner found it convenient to secure his employment as a police constable on the basis of his birth certificate 1/11/1950 which rendered him eligible for recruitment.

23. In the absence of any record with the police department and his application dated 27th March, 2008 seeking correction of date of birth having been rejected by an order dated 31st July, 2008 passed by the respondents, that we do not find it fit to exercise our extraordinary jurisdiction in this case.

24. In the light of the above, we are of the view that the petitioner has failed to make out a case. He has failed to point out any perversity or error in the impugned order of the MAT dated 30th April, 2010. The petition is devoid of merit and the same is, therefore, dismissed. Rule is discharged. No order as to

costs.