
(2022) 09 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 1015 Of 2018

Mayaram

APPELLANT

Vs

Collector, Washim And Others

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 300A
Maharashtra Civil Services (General Conditions Of Service) Rules, 1981 — Rule 38, 38(2)(f)
Maharashtra Municipal Councils, Nagar Panchayats And Industrial Township Act, 1965 — Section 308, 318
Indian Penal Code, 1860 — Section 420, 468

Citation : (2022) 09 BOM CK 0068

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : P. P. Deshmukh

Final Decision : Dismissed

Judgement

Manish Pitale, J

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for rival parties.
2. The petitioner-in-person in the present petition has challenged concurrent orders passed by the respondent No.1 – Collector and the respondent No.4 – Divisional Commissioner, whereby an order passed by the respondent No.2 – Chief Officer, treating the date of birth of the petitioner as 14/07/1948, has been set aside and it has been held that the date of birth of the petitioner was 14/07/1946, thereby, holding that he stood correctly retired w.e.f. 31/07/2004. The principal contention raised by the petitioner is that his date of birth could not have been changed to his detriment at the fag end of his service career and that the rule applying to the employee to seek change in date of birth within five years of joining service, equally applied to the employer.

3. The petitioner was appointed as Octroi Inspector with the respondent No.3 – Municipal Council, Karanja (Lad), District Washim. In the service book, his date of birth was recorded as 14/07/1948. On the basis of the said date of birth, he was supposed to retire from service on 31/07/2006. The Chief Officer of the Municipal Council issued communications dated 26/05/2005, 07/06/2005 and 17/06/2005, to the petitioner to submit cogent proof about his date of birth being 14/07/1948, as doubts arose about the genuineness of the said claim.

4. According to the Municipal Council, when it was found that other than one document, issued by K. N. College, Karanja(Lad), all other documents obtained from the school and institutions attended by the petitioner showed his date of birth as 14/07/1946, the Chief Officer of the Municipal Council issued a letter dated 27/06/2005 to the petitioner stating that he stood retired retrospectively from 31/07/2004 and a direction was also issued for recovery of excess amount paid to the petitioner, beyond the aforesaid date i.e. 31/07/2004.

5. Aggrieved by the aforesaid action of the Municipal Council, the petitioner approached the respondent Commissioner by filing revision under Section 318 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. The said revision application was allowed by the Additional Commissioner by order dated 07/12/2011, thereby setting aside the aforesaid communication dated 27/06/2005. It was directed that the petitioner shall be deemed to have retired on 31/07/2006, with all benefits including commutation of pension along with 50% back-wages from 01/07/2005 to 31/07/2006 and the order passed by the Municipal Council ordering recovery of amount from the petitioner was also set aside.

6. Aggrieved by the same, the Municipal Council filed Writ Petition No. 2264 of 2012 before this Court. By judgment and order dated 14/10/2013, this Court set aside the order of the Chief Officer of the Municipal Council, as also the order of the Additional Commissioner and remanded the case back to the Chief Officer to pass a fresh order, after giving an opportunity of hearing to the petitioner on the issue of alteration of date of birth. On the question of recovery directed by the Chief Officer of the Municipal Council, it was held that there was no question of recovery of amount from the petitioner, as a consequence of which only the question of alteration of date of birth of the petitioner stood remanded to the Chief Officer.

7. Thereafter, the petitioner submitted a detailed representation before the Chief Officer along with documents. By order dated 29/04/2014, the Chief Officer of Municipal Council held in favour of the petitioner, directing that since there cannot be any alteration of date of birth of an employee as per the relevant Circular and under the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, after five years of entry in service, the date of birth of the petitioner recorded as 14/07/1948 in the service book was confirmed.

8. It appears that thereafter the subsequent Chief Officer of the Municipal Council

moved an application under Section 308 of the aforesaid Act before the Collector for setting aside of the order dated 29/04/2014. The petitioner filed his reply opposing the said application.

9. On 31/10/2015, the respondent Collector passed order allowing the said application, thereby, setting aside the order dated 29/04/2014. The respondent Collector found that the documents available on record clearly demonstrated that the date of birth of the petitioner was 14/07/1946 and that there was over writing in the service book. The contentions raised on behalf of the petitioner were rejected and it was held that the date of birth of the petitioner had to be treated as 14/07/1946.

10. The petitioner moved revision application under Section 318 of the aforesaid Act before the respondent Commissioner. The application was finally heard and on 31/01/2018, the respondent Commissioner dismissed the revision application, confirming the order passed by the Collector.

11. Aggrieved by the same, the petitioner filed the present writ petition in which notice was issued on 22/02/2018. Thereafter, the petitioner placed on record certain additional documents in support of the writ petition. On 19/07/2019, this Court granted Rule in the petition and since the petitioner is a senior citizen the petition was taken up for final hearing expeditiously. The petitioner appearing in person submitted that in the present case, the orders passed by the respondents-Collector and Commissioner, both deserved to be set aside as being wholly unsustainable. It was submitted that the date of birth of the petitioner was changed in the record of the Municipal Council at the fag end of his service career. It was submitted that the petitioner joined service in the year 1971 and till the year 2005, at various stages, the Municipal Council had made inquiries with the petitioner about his date of birth, to which the petitioner had responded and this was evident from note sheets of the office of the Municipal Council itself. It was submitted that the explanations given by the petitioner at various points in time can be found from the record of the Municipal Council. It was evident that the Municipal Council had accepted the said explanation, because no further communication was addressed to the petitioner in that regard and no adverse action was taken by the Municipal council. Yet, at the fag end of the service career of the petitioner, when he was to retire on 31/07/2006, by the aforesaid communication dated 27/06/2005, the Municipal Council wrongly treated the date of birth of the petitioner as 14/07/1946, thereby wrongly treating him as retired retrospectively from 31/07/2004.

12. The petitioner emphasized that the Rule stipulating that an employee could approach the Municipal Council for change of date of birth only within five years of joining service, equally applied to the employer i.e. Municipal Council and that on this ground itself, the writ petition ought to be allowed. The petitioner further submitted that he was born on 14/07/1948 and at the time of joining service he had produced relevant documents from the educational institution he had attended. Even when the proceeding stood initiated upon remand to the Chief

Officer, Municipal Council, the petitioner had produced sufficient material including Panchang of the relevant year in support of his assertion. It was submitted that having accepted the explanations given by the petitioner from time to time during his service career, the Municipal Council could not have turned around to take the drastic action of treating his date of birth as 14/07/1946, at the fag end of his service career. The petitioner relied upon judgment of the Hon'ble Supreme Court in the case of Union of India vs. Harnam Singh 1993(2) SCC 162 and recent judgment dated 20/04/2022 passed in Civil Appeal No. 2808 of 2022 (Shankar Lal vs. Hindustan Copper Ltd. and others).

13. The petitioner further submitted that after this Court had remanded the matter, only on the aspect of alteration of date of birth of the petitioner, to the Chief Officer of the Municipal council, order dated 29/04/2014, was passed by the Chief Officer clearly holding in favour of the petitioner. In the said order, specific reliance was placed on relevant rules of the Maharashtra Civil Services (Conditions of Service) Rules, 1981 and Government Circular, which stipulated that there can be no alteration in date of birth of an employee after five years of entry into service. The petitioner submitted that the said order passed by the Chief Officer was surprisingly challenged by a subsequent incumbent in the said position of Chief Officer, by filing application before the respondent Collector under Section 308 of the aforesaid Act. It was submitted that such an action was unheard of and it was clearly illegal and unsustainable. The respondent Collector failed to appreciate this aspect of the mater and erroneously entertained the application filed by the Chief Officer against the order passed by his own predecessor. The Collector wrongly went into the appreciation of documents and on the basis of erroneous appreciation of the same, rendered findings against the petitioner. It was submitted that the respondent Commissioner further erred in dismissing the revision application filed by the petitioner, thereby holding that the date of birth of the petitioner was 14/07/1946 and not 14/07/1948.

14. It was further submitted by the petitioner that the Municipal Council had also caused a First Information Report (FIR) to be registered against him for allegedly having cheated the Municipal Council and for having indulged in forgery. It was brought to the notice of this Court that the petitioner had applied for discharge before the concerned Court in the said criminal proceeding, but the application was dismissed. Later, this Court allowed the revision application bearing Criminal Application (APL) No. 679 of 2013, whereby the order of the competent Court was set aside and the prayer of the applicant for his discharge was allowed. The petitioner sought to emphasize on the contents of the said order dated 22/11/2018, passed by the learned Single Judge of this Court, to contend that there was no substance in the allegations levelled against him regarding cheating and forgery in the context of the date of birth. On this basis, it was submitted that the present writ petition ought to be allowed and the impugned order deserves to be set aside, so as to restore order dated 29/04/2014, passed by the Chief Officer, Municipal Council.

15. On the other hand, Mr. P. P. Deshmukh, learned counsel appearing for the contesting respondent No.2 Municipal Council submitted that there was no substance in the contentions raised on behalf of the petitioner, for the reason that he had indulged in fraud and forgery while claiming his date of birth as 14/07/1948. It was submitted that when a case of fraud was raised by the Municipal Council, the aforesaid stipulation of five years for alteration in date of birth would not apply, because fraud goes to the root of the matter and vitiates everything. According to the respondent Municipal Council, when documents came to the fore, demonstrating that the date of birth of the petitioner was 14/07/1946 and not 14/07/1948, communications were addressed in the year 2005 to the petitioner to submit explanation. It was found that the explanation was inadequate. In fact, it was found that the petitioner had indulged in interpolation in documents and other than one single document pertaining to the K. N. College, Karanja (Lad), all other documents indicated that the date of birth of the petitioner was 14/07/1946. In such a situation, according to the learned counsel appearing for the respondent Municipal Council, there was enough material on record to sustain the impugned orders passed by the respondents-Collector and Commissioner.

16. The learned counsel further submitted that even before this Court, the petitioner had indulged in fabrications and on this ground alone the writ petition ought to be dismissed. It was submitted that the petitioner had placed on record certain documents with the writ petition and later certain more documents as additional documents claiming that they were note sheets from the record of the Municipal Council. These note sheets allegedly recorded the explanation given by the petitioner in his own hand on 30/12/1971 and 21/09/1989, on the aforesaid question of correct date of birth. The respondent Municipal Council denied existence of any such note sheets wherein the petitioner had recorded his explanation in his own hand. According to the learned counsel for the respondent Municipal Council this was evident from the fact that reference to and production of the said alleged note sheets was made for the first time by the petitioner before this Court. If such note sheets had indeed existed from December, 1971 onwards, the petitioner ought to have referred to them from the very beginning of the dispute pertaining to his date of birth. At no stage did the petitioner either refer to or produce the said note sheets till filing of the present writ petition, thereby demonstrating that he had indulged in fabrication even before this Court. It was strenuously urged that such a petitioner who had come before this Court with unclean hands ought not to be granted any relief.

17. Thereafter, the learned counsel for the respondent referred to copies of documents filed along with reply, to emphasize that all documents pertaining to educational qualification of the petitioner recorded his date of birth as 14/07/1946, except one document pertaining to K. N. College, Karanja (Lad). It was submitted that in the face of such documents, the petitioner ought not to be granted any relief. It was emphasized that even in the document purportedly issued by K. N. College, Karanja (Lad), it could be seen that the figure "6" was

manipulated as "8". This was further evident from document issued on 25/06/2005 by the Principal of the very same college, specifically stating that as per record of the said college, the date of birth of the petitioner was 14/07/1946. On this basis, the learned counsel for the Municipal Council submitted that the writ petition deserved to be dismissed.

18. Having heard the petitioner in person and the learned counsel appearing for the contesting respondent Nos.2 and 3, it would be appropriate to refer to the documents and other material on record, before adverting to the position of law upon which reliance is placed on behalf of the rival parties.

19. The controversy in the present case is about the date of birth of the petitioner. The question is whether his date of birth could have been altered from 14/07/1948 to 14/07/1946, by the respondent – Municipal Council, virtually at the end of his service career. The appointment of the petitioner with the Municipal Council and progression of his career is already noted above. The Municipal Council by its order dated 27/06/2005, held that the petitioner stood retired retrospectively from 31/07/2004, on the basis that entry of date of birth in his service record was wrongly taken as 14/07/1948, instead of 14/07/1946. The petitioner has seriously questioned the authority of the Municipal Council to make such an alteration to his detriment at the end of his service career, claiming that the action is arbitrary and unsustainable. As noted above, this is the second round of litigation on the aforesaid controversy before this Court. In the first round, by judgment and order dated 14/10/2013, a learned Single Judge of this Court partly allowed Writ Petition No.2264 of 2012, filed by the respondent – Municipal Council, thereby remanding the matter back to the Chief Officer of the Municipal Council for fresh consideration, having reached the conclusion that principles of natural justice were violated while passing the aforesaid order dated 27/06/2005, against the petitioner.

20. The observations made in the said judgment and order while disposing of Writ Petition No.2264 of 2012, are significant and they pertain to the operation of the relevant Rule i.e. Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. In the said judgment, it was found that under Rule 38(2)(f) of the said Rules, the Municipal Council as an employer could certainly undertake the exercise of altering date of birth in the service record of the petitioner i.e. the employee and that the period of limitation of five years fixed as per the said Rules read with the relevant Government Resolutions and Circulars, could not apply to the Municipal Council, as the employer. Therefore, the power of the respondent – Municipal Council to examine the question of correct date of birth of the petitioner and making alteration therein, even towards the end of the service career of the petitioner, was recognized. But, the action of the Municipal Council stood set aside due to the finding that there was violation of the principles of natural justice and that the petitioner deserved to be granted proper opportunity before such action of alteration of date of birth and consequential orders could be passed.

21. Upon the matter being remanded to the Chief Officer of the Municipal Council, by order dated 29/04/2014, the Chief Officer held in favour of the petitioner only on the ground that as per Rule 38 of the aforesaid Rules and relevant Government Circulars, there was no provision for alteration of date of birth of an employee of the Municipal Council after five years of having joined service. A perusal of the proceeding initiated by the subsequent incumbent in the post of Chief Officer of the Municipal Council under Section 308 of the Act of 1965, would show that the said order dated 29/04/2014, was itself sought to be set aside, inter-alia, on the ground that the period of five years from joining service for alteration of date of birth would apply to an employee and it would not apply to the employer. The Collector took into consideration the entire material available on record and gave a finding that documents, which became available to the Municipal Council indicated that most of them recorded the date of birth of the petitioner as 14/07/1946 and that even in the service book there appeared to be overwriting. On this basis, the Collector allowed the application filed under Section 308 of the Act of 1965 and set aside the order dated 29/04/2014, passed by the Chief Officer.

22. The Revision Application preferred by the petitioner under Section 318 of the Act of 1965, was dismissed by the Divisional Commissioner. It was specifically observed that in all documents, including school leaving certificate and such other documents, the date of birth of the petitioner was recorded as 14/07/1946 and that his date of birth was recorded as 14/07/1948, only in a leaving certificate issued by K.N. College, Karanja (Lad). On this basis, it was found that the findings rendered by the Collector could not be interfered with.

23. In this context, the rival parties before this Court have relied upon documents which they perceive to be in favour of their respective stands. This Court has perused all the documents placed on record by the rival parties. Insofar as the petitioner is concerned, reliance is placed on a college leaving certificate or transfer certificate dated 16/02/1970, issued by the K.N. College of Arts and Commerce, Karanja (Lad). In the said document, the date of birth of petitioner is recorded as 14/07/1948. The petitioner has further relied upon certificate of date of birth issued by the University College of Law, stating that his date of birth was 14/07/1948. The petitioner also relied upon a judgment and order dated 22/11/2018, passed by a learned Single Judge of this Court in Criminal Application (APL) No.679 of 2013, whereby an application for discharge filed by the petitioner in the context of a criminal case initiated against him was allowed. The criminal case was initiated for offences under Sections 420 and 468 of the Indian Penal Code, for allegedly having interpolated and forged the entry of date of birth in the college leaving or transfer certificate issued by K.N. College of Arts and Commerce, Karanja (Lad). It was found that the allegation was not sustainable and the petitioner stood discharged. Much reliance was placed on the said judgment and order on behalf of the petitioner.

24. The petitioner further placed reliance on copy of a panchang and an affidavit

of Astrologer in the context of the said panchang, claiming that the date of birth of the petitioner was 14/07/1948. But, it is significant that the petitioner, for the first time along with the Writ Petition, placed on record a copy of a purported entry dated 21/09/1989, in note-sheets maintained by the respondent – Municipal Council. The petitioner also placed reliance on such note-sheets dated 30/12/1971, claiming that in the note-sheets the petitioner in his own handwriting had placed on record detailed explanation about his correct date of birth being 14/07/1948. These documents were admittedly never referred to or placed before any of the authorities below and they were sought to be relied before this Court for the first time in the writ petition. The respondent – Municipal Council stoutly denied the very existence of the said documents i.e. note sheets pertaining to years 1971 and 1989.

25. On the other hand, the respondent – Municipal Council referred to the notices issued to the petitioner in June, 2005, when the Municipal Council claimed to have in its custody copies of certain documents, indicating that the actual date of birth of the petitioner was 14/07/1946 and not 14/07/1948. These documents are school leaving certificate issued by the Municipal Council Primary Hindi School recording the date of birth of the petitioner as 14/07/1946; copy of letter sent by Headmaster of J.D. Chawre Vidyamandir, Karanja (Lad) to the Chief Officer of the Municipal Council stating that as per the record of the said school of which the petitioner was student, his date of birth was recorded as 14/07/1946; copy of birth date certificate dated 06/06/2005, issued by the Headmaster of J.C. High School and Junior College, Karanja (Lad), certifying that as per the records, the date of birth of the petitioner was 14/07/1946 and crucially a birth date certificate dated 25/06/2005, issued by K.N. College of Arts and Commerce, Karanja (Lad) stating that the petitioner was student of the said college from 1965 to 1969 and that as per the college records the date of birth of the petitioner was 14/07/1946. This certificate is indeed crucial because it is issued by Principal of the very college i.e. K.N. College of Arts and Commerce in respect of which the petitioner had submitted the aforesaid college leaving and transfer certificate, wherein his date of birth was recorded as 14/07/1948. In other words, the very college stated on the basis of its own record that the date of birth of the petitioner was 14/07/1946, despite the certificate upon which the petitioner placed reliance.

26. These were the set of documents with the Municipal Council in June, 2005, when it sent notices to the petitioner, leading to the order dated 27/06/2005, whereby the petitioner was retrospectively retired from 31/07/2004, by treating his date of birth as 14/07/1946. This Court is of the opinion that the glaring discrepancies certainly merited action in the matter. In the first round of litigation, by partly allowing the Writ Petition No.2264 of 2012, filed by the Municipal Council, this Court found violation of principles of natural justice and, therefore, the matter was remanded to the Chief Officer of the Municipal Council. Thus, when the matter was considered again by the Chief Officer of the Municipal Council, it was expected that these documents would be examined, analyzed and

acted upon for determining whether the date of birth of the petitioner was 14/07/1946 or 14/07/1948.

27. But, a perusal of the order dated 29/04/2014, passed by the Chief Officer of the Municipal Council demonstrates that no such examination was undertaken on merits and a finding was rendered in favour of the petitioner, only on the basis that alteration of date of birth could not be permitted in terms of the aforesaid Rules and relevant Government Circulars after five years of the employee joining service. The aspect of the petitioner having suppressed relevant documents and thereby vitiating the entire process, was not even considered by the Chief Officer of the Municipal Council. The orders passed by the Collector and the Divisional Commissioner examined the documents and found that the date of birth of the petitioner was 14/07/1946. Before proceeding further on the analysis of the documents and more importantly the purported note-sheets of the years 1971 and 1989, it would be appropriate to consider the specific contention raised by the petitioner that the enquiry into the correctness of date of birth and alteration thereof could not have been permitted at the end of the service career of the petitioner and that as a matter of law, the respondent – Municipal Council could not be permitted to even examine the correctness of date of birth.

28. The petitioner heavily relied upon judgments of the Hon'ble Supreme Court in the cases of Union of India Vs. Harnam Singh reported in 1993(2) SCC 162; State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble reported in 2010 (14) SCC 423; CIDCO Vs. Vasudha Gorakhnath Mandevalekar reported in 2009(7) SCC 283 and judgment and order dated 20/04/2022, in the case of the Shankar Lal Vs. Hindustan Copper Ltd. & Ors. passed in Civil Appeal No. 2858 of 2022.

29. On the other hand, the learned counsel appearing for the contesting respondent – Municipal Council relied upon judgment in the case of Union of India Vs. Harnam Singh (supra), judgments of this Court in the cases of The Deputy Director, Social Forestry Division, Amravati Vs. Chandrakala w/o. Gopalrao Ukhalkar reported in 2007(3) ALL MR 752; Shaikh Abdul Hasib Abdul Mannan (Dr.) Vs. Union of India and others reported in 2006(5) Mh.L.J. 310 and Yashwant G. Tambe VS. Union of India and Anr. reported in 2010 (3) Mh. L.J. 753.

30. The judgments of the Hon'ble Supreme Court in the cases of Union of India Vs. Harnam Singh (supra), State of Maharashtra and another Vs. Gorakhnath Sitaram Kamble (supra) and CIDCO Vs. Vasudha Gorakhnath Mandevalekar (supra), all pertained to the question as to whether the request of employee for change of date of birth at the fag end of the career can be entertained or not. It has been categorically held that such request cannot be entertained at the behest of the employee. In this regard, it is an admitted position that as per Rule 38 of the aforesaid Rules read with relevant Government Resolutions and Circulars, request for change of date of birth after five years of having joined service cannot be entertained at the behest of the employee. But, the crucial question is, as to whether such action of alteration of date of birth cannot be

undertaken by the employer after the period of five years of joining of the employee and towards end of service career of the employee. As noted above, in the judgment and order dated 14/10/2013, passed by this Court in Writ Petition No.2264 of 2012, in the first round of litigation between the parties, after referring to Rule 38 of the said Rules, it was held that under Rule 38(2)(f), although alteration of the entry of date of birth once made in the service book is not to be allowed, but, it is also provided that such alteration may take place in specific circumstance. It is for this reason that in the said judgment and order, while remanding the matter to the Chief Officer respondent – Municipal Council, it was categorically held that no fault can be found with the Municipal Council in the facts and circumstances of the present case in initiating the process of alteration of date of birth of petitioner, virtually towards the end of his career.

31. The petitioner has heavily relied upon the aforesaid recent judgment of the Hon'ble Supreme Court in the case of Shankar Lal Vs. Hindustan Copper Ltd. (supra), particularly paragraph No.21 thereof to contend that since an employee is not permitted to seek correction / alteration of date of birth towards fag end of his service career, the same embargo applies to the employer also. In this context, it becomes necessary to consider the factual background in which the Hon'ble Supreme Court has made the said observation. It is found that in the said case of Shankar Lal Vs. Hindustan Copper Ltd. (supra), the date of birth of the concerned employee was sought to be altered after he had opted for Voluntary Retirement Scheme (VRS) and such alteration was to have a significant detrimental effect to the financial benefits payable to the employee.

32. In the said case, it was found on facts that there were large number of documents showing the date of birth as claimed by the employee and as recorded in his service record for number of years. It was also found as a matter of fact that the employer therein, relied upon an entry made in one Form "B", showing the date of birth of the employee of the year 1945, instead of the year 1949, as recorded in the service record. It was found that the relevant clause of the standing order, upon which the employer had placed reliance, did not treat the entry in the said Form "B" recording date of birth of the employee to be conclusive proof of his or her age. It is in the context of such facts where there were indeed documents showing the date of birth as claimed by the employee and that only the entry in the particular form appeared to be different that the Hon'ble Supreme Court held that unilateral decision of the employer to treat the entries repeatedly made in the service record as erroneous and seeking alteration thereof, could not be permitted at the fag end of the service career of the employee.

33. It is in the backdrop of such facts that the Hon'ble Supreme Court found that the stand taken by the employer that date of birth of the employee recorded in the service book was an act by mistake, was a weak argument, which could not be accepted. In such facts, the Hon'ble Supreme Court made the following observation in the aforesaid judgment.

"21. We do not think the appellant's complaint over the dispute was belated so as to non-suit him on this count alone. VRS benefit is an entitlement and assumes the character of property to the employee concerned once his application for VRS is accepted. It is the right of a person under Article 300A of the Constitution of India to have the VRS benefit to be given on accurate assessment thereof, the employer here being a public sector unit. If at the time of quantifying the VRS benefit after accepting an employee's application for voluntary retirement, the employer take any step that would reduce such benefit in monetary terms, such step shall have to be taken under the authority of law. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book recordal was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e., 21st September 1949 was the birthdate of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal. The very reasoning on which an employee is not permitted to raise age-correction plea at the fag end of his service to extend his tenure should also apply to the employer as well. It is the employer here who had proceeded on the basis of age of the appellant reflected in his service book during the latter's service tenure and they ought not to be permitted to fall back on the Form "B" which would curtail the VRS benefit of the appellant."

34. This Court is of the opinion that the Hon'ble Supreme Court made the aforesaid observation in the backdrop of the employer therein having proceeded on the basis of the age of the employee as reflected in the service book during his service tenure and that the employer could not be permitted to fall back on Form "B" to curtail the VRS benefits of the employee. The facts in the present case are different, for the reason that the documents which came to the fore indicated that, right from the school records to other relevant documents, the date of birth of the petitioner was 14/07/1946 and not 14/07/1948, as claimed by him. This Court finds that in the present case, the petitioner as the employee had indulged in suppression of vital documents and that reliance was sought to be placed on a set of documents i.e. purported note-sheets of the years 1971 and 1989, which to this Court appear to be documents that ought to have been

relied upon by the petitioner at the very outset when the controversy erupted.

35. This Court finds that when the date of birth of the petitioner was recorded in the service book, it was based only on two documents, one pertaining to K.N. College of Arts and Commerce, Karanja (Lad) and certificate issued by the University College of Law. The veracity of the college leaving certificate or transfer certificate issued by K.N. College of Arts and Commerce dated 16/02/1971, was rendered seriously doubtful when the Principal of the very same college issued a birth date certificate on 25/06/2005, based on the records of the college, stating that the date of birth of the petitioner was 14/07/1946 and not 14/07/1948, as noted in the certificate dated 16/02/1970, produced by the petitioner. This gives a serious turn to the case because there is major discrepancy between the certificate purportedly issued on 16/02/1970 and the birth date certificate issued by the Principal of the very same college on 25/06/2005, which became the basis for the respondent – Municipal Council to enquire into the matter and to proceed against the petitioner.

36. As regards the certificate issued by the University College of Law, dated 27/03/1971, recording that the date of birth of the petitioner was 14/07/1948, it is found that the same was based on the said purported certificate dated 16/02/1970, issued by the K.N. College of Arts and Commerce, Karanja (Lad), correctness of which is rendered seriously doubtful by the birth date certificate issued by the Principal of the very same college on 25/06/2005, stating the date of birth of the petitioner was 14/07/1946. Thus, the material on record creates a serious doubt about the only document on which the petitioner relied, while entering into service.

37. This is further compounded by the certificates issued by the Municipal Council and Primary Hindi School, Karanja (Lad), J.D. Chawre Vidyamandir, Karanja (Lad) and birth date certificate issued by J.C. High School and Junior College, Karanja (Lad), all stating that the date of birth of the petitioner was 14/07/1946. It is in the face of such documents that the respondent – Municipal Council initiated enquiry and action in the matter.

38. The question is, can the Municipal Council as an employer be prevented from even enquiring and proceeding further in the matter, only because the service career of the petitioner was coming to an end, despite the fact that there was sufficient material to raise suspicion about the claim of the petitioner regarding his date of birth. It is a settled position that suppression of relevant material with the object of misleading, indicating fraud on the part of the employee would vitiate the entire process, as also the service record, warranting appropriate action in the matter. In this context, when Rule 38(2) (f) of the aforesaid Rules is appreciated, it can certainly be said that given the circumstances and material that became available to the respondent – Municipal Council, issuing notices to the petitioner for alteration of his date of birth could not be said to be illegal or unsustainable. The limitation of five years from joining of service for initiating any process of alteration / correction of date of birth is in tune with the law laid

down in that context, but, when an employer is faced with a situation indicating fraud on the part of the employee, it cannot be said that even in such circumstances, the employer cannot proceed to enquire into the matter.

39. This Court is of the opinion that above quoted observations made by the Hon'ble Supreme Court in the case of Shankar Lal Vs. Hindustan Copper Ltd. (supra), are in the facts of the said case where there were number of documents supporting the claim of the employee and entry in one particular form was relied upon by the employer to proceed for alteration of date of birth towards end of service career of the employer. The aspect of fraud and suppression on the part of the employee did not arise for consideration in the context of the right of an employer to take appropriate action even towards the end of service career of the employee. The facts in the present case are, therefore, distinguishable and the petitioner cannot simply rely upon the judgment of the Hon'ble Supreme Court in the case of Shankar Lal Vs. Hindustan Copper Ltd. (supra), to claim that the impugned orders deserves to be set aside.

40. Another aspect of the matter assumes great significance in the facts of the present case. It pertains to the purported note-sheets on which the petitioner has placed much reliance. The petitioner has claimed in the writ petition that he was called upon by the Municipal Council in the year 1989, to give clarification about his date of birth and that he had given such clarification in his own handwriting on 21/09/1989, which was on note-sheets maintained by the Municipal Council. Thereafter, the petitioner filed application for permission to place additional documents on record and filed copy of purported explanation submitted on his behalf on 30/12/1971, in note-sheets maintained by the Municipal Council. It is crucial that in the said purported handwritten explanations of the petitioner recorded in the note-sheets for the years 1971 and 1989, he has given an explanation as far back as on 30/12/1971, about the manner in which his date of birth was wrongly recorded as 14/07/1946, by the Municipal Council Primary Hindi School and it is asserted that date of birth recorded by the K.N. College of Arts and Commerce as 14/07/1948, was correct.

41. This Court is of the opinion that if the petitioner had indeed given such explanation in his own handwriting in note-sheets of the Municipal Council on 30/12/1971 and 21/09/1989, when the controversy first erupted in June, 2005, the petitioner ought to have referred to the said note-sheets. It is indeed surprising and even disturbing that the petitioner did not refer to such handwritten explanations given in note-sheets of the Municipal Council at any stage from June, 2005, till the matter came up to this Court in the first round and upon being remanded to the Chief Officer of the Municipal Council. No mention was made by the petitioner to the said material before the Chief Officer of the Municipal Council when the matter was remanded and also not before the Collector or the Commissioner. For the first time, in this writ petition filed in the year 2018, the petitioner referred to the purported note-sheet dated 21/09/1989, while purported note-sheet dated 30/12/1971, was referred to

subsequently for the first time in an application for additional documents filed in the pending writ petition.

42. This Court put pointed queries to the petitioner, who appeared in person, as to what prevented him from at least referring to the said documents, at the very outset, because they were obviously crucial to support the claim of the petitioner. There was no answer given by the petitioner. Instead he claimed that he had sought copies of the said note-sheets under the provisions of the Right to Information Act, 2005, but, they were not provided to him.

43. This Court perused the documents on record placed by the petitioner as regards proceedings under the Right to Information Act, 2005. It is found that the Information Officer had specifically responded to the application made by the petitioner pertaining to the aforesaid note-sheets, stating that such information was not available in the record of the Municipal Council. In fact, in the replies filed before this Court, the Municipal Council specifically denied the existence of such note-sheets. The learned counsel appearing for the Municipal Council, on instructions, specifically submitted that such note-sheets were not even maintained by the Municipal Council in the years 1971 and 1989. This raises a serious disputed question of fact and prima facie indicates that the stand of the petitioner pertaining to the aforesaid note-sheets is not only doubtful, but, even suspicious.

44. In this context, the learned counsel appearing for the respondent – Municipal Council is justified in relying upon judgment of this Court in the case of Yashwant G. Tambe VS. Union of India (supra), on the aspect of disputed questions of facts not to be decided in writ jurisdiction and that remedy of Civil Court would be available. Reliance placed on the judgment of this Court in the case of Shaikh Abdul Hasib Abdul Mannan (Dr.) Vs. Union of India (supra) on behalf of respondent – Municipal Council is also justified, wherein it is laid down that any suppression of material fact would be sufficient to reject a writ petition by this Court.

45. The conduct of the petitioner in the above circumstances is found not to be above board. The record shows that specific documents showing the date of birth of the petitioner as 14/07/1946, were suppressed from the employer i.e. the Municipal Council. No proper explanation at any stage was given by the petitioner as regards the questions that arose when such documents surfaced. All along the stand of the petitioner was that the question of date of birth could not be reopened at the fag end of his career, giving an impression that the petitioner throughout the present controversy has adopted a stand of stalling enquiry into the aspect of the correct date of birth, based on the documents, that had come on record.

46. In this context, reliance placed on the judgment of a learned Single Judge of this Court, allowing the application for discharge for offences under Sections 420 and 468 of the Indian Penal Code, can be of no assistance to the petitioner. In

the said case, a learned Single Judge of this Court observed that the controversy appeared to be more a service matter and that criminality could perhaps not be foisted on the petitioner. But, the present petition concerns the question as to whether the petitioner can be permitted to seek setting aside the concurrent orders passed against him on the question of his actual date of birth, only on the basis that the dispute arose towards the end of his service career.

47. In the facts of the present case, this Court is not satisfied that the petitioner has indeed made out a case for interference in the orders passed by the Collector and the Commissioner. On an overall analysis of the material on record, this Court finds that the approach adopted by the authorities below cannot be said to be unsustainable. The finding regarding date of birth of the petitioner being 14/07/1946, is certainly a reasonable finding, in the light of the documents admittedly available on record, showing the date of birth of petitioner as 14/07/1946, including school leaving certificate and other such birth date certificates.

48. The petitioner has failed to make out a case for interference in the concurrent orders passed by the authorities and, therefore, the writ petition deserves to be dismissed. Accordingly, the writ petition is dismissed. Rule is discharged.