
(2019) 12 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 15 Of 2019

Sau. Aruna Madhavrao Wankhede

APPELLANT

Vs

Divisional Commissioner Amravati And Ors

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Maharashtra Zilla Parishad And Panchyat Samitis Act, 1961 — Section 274
Maharashtra Zilla Parishad Services (Discipline And Appeal) Rules, 1964 — Rule 13, 14, 38(f)
Constitution Of India, 1950 — Article 311(2)

Citation : (2019) 12 BOM CK 0013

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : A.H. Mishra, T.H. Khan

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith.

2. By the present petition, the Petitioner has challenged the order dated 21.08.2018 passed by the Respondent no. -1-Divisional Commissioner, Amravati in appeal proceedings under Rule 14 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964. By the said order, the appeal filed by the Petitioner seeking correction of her Date of Birth (in short 'DoB') in her service record on the eve of superannuation came to be dismissed after according opportunity to the Petitioner to present her case and after hearing and following due process of law.

3. The brief facts for appreciating the present case are as follows :-

The Petitioner claimed her DoB to be 19.03.1961. The Petitioner was admitted in 1st standard in N. R. Deshpande School, Tapadiya Nagar, Akola. The Petitioner completed her education upto 4th standard in the said school and was admitted in 5th standard in another school viz. Bharat Vidhayala School, Tapadiya Nagpur,

Akola and thereafter the Petitioner switched from this school to another school viz. Zilla Parishad Central School, Ugawa, Tah. & Dist. Akola and completed her education up to 7th standard.

4. The Petitioner thereafter sought admission in Jankibai Dandale School, Ugawa, Tah. & Dist. Akola in 8th standard in the year 1974. The Petitioner passed 10th standard from the said school and was issued a duplicate SLC bearing no. 141, dated 13.11.2003 which recorded her DoB as 07.04.1960.

5. The Petitioner completed her studies and joined service on 19.01.1982 on the post of Assistant Teacher at Zilla Parishad Primary School in Ugawa and during the course of her service completed her higher education up to M.A., M.Ed. and was promoted to the post of Kendra Pramukh. At the time of her entry into service in 1982, the DoB of the petitioner was recorded as 07.04.1960 in her service. In the year 2014, the Petitioner obtained School Leaving Certificate (in short 'SLC') from the Zilla Parishad school which recorded DoB of the Petitioner as 19.03.1961.

6. The Petitioner retired as Kendra Pramukh on 31.04.2018 on the basis of DoB recorded in her service record as 07.04.1960.

7. However, immediately before her retirement, by representation dated 27.02.2017, addressed to the Chief Executive Officer, Zilla Parishad, Akola the Petitioner sought correction of her DoB which was wrongly recorded as 07.04.1960 instead of 19.03.1961. The Petitioner contended that due to wrong recording of her DoB by Jankibai Dandale School, Ugawa in SLC pertaining to the Petitioner and subsequent letter dated 27.02.2017 issued by the said school, the actual DoB of the Petitioner ought to have been recorded as 19.03.1961 and not 07.04.1960. The Petitioner placed on record letter obtained from Jankibai Dandale School, Ugawa and obtained a handwritten certificate dated 27.02.2017 which reads as under :-

"This is to certify that Ku. Aruna Waman Deshmukh was student of this School. In 1974 she was studying in Std. VIII and according to general register of this school her date of birth is 19.3.1961 (Nineteenth of March N. H. Sixtyone)."

8. By order dated 27.04.2018, Respondent no. 3-Block Development Officer, Akola issued retirement order of the Petitioner on the basis of her completion of 58 years w.e.f. 30.04.2018. The Petitioner, preferred appeal before Respondent no 1-Divisional Commissioner, Akola under Rule 13 & 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 read with Section 274 of the Maharashtra Zilla Parishad and Panchyat Samitis Act, 1961 and challenged the order dated 27.04.2018.

9. The Divisional Commissioner, Akola accorded opportunity to the Petitioner and Respondent concerned and passed order dated 21.08.2018, inter alia, dismissing the appeal filed by the Petitioner by passing a reasoned and speaking order. The above order is impugned in the present Petition. The present Petition came to be

filed on 12.09.2018.

10. On 04.01.2019, notices were issued to the Respondents as direction was issued for listing the Petition for further consideration on 12.02.2019. On 12.02.2019, the learned counsel appearing on behalf of the Petitioner sought adjournment and thereafter the Petition came to be listed on 19.03.2019, 23.04.2019, 18.06.2019 and 28.08.2019, on which dates none appeared for the Petitioner and the Petition came to be adjourned by marking presence of the Government Pleader appearing on behalf of the Respondents. The matter was again listed today i.e. on 04.12.2019 and was called out at 3.40 p.m. and once again none appeared for the Petitioner. After going through the impugned order with the aid of learned A.G.P. appearing on behalf of the Respondent no. 1, the matter was kept back for sometime to enable the Petitioner to appear and was again taken up for hearing at 4.25 p.m. None appeared for the Petitioner.

11. I have perused the grounds mentioned by the Petitioner along with the reasons and justification given in the order that is impugned in this Petition as also the ratio of the judgment passed by the Apex Court in the case of Union of India Vs. Harnam Singh, reported in 1993 AIR 1367. With the aid and assistance of learned A.G.P., the Petition was heard on the basis of the record available as the case is fully covered by the decision in the case of Union of India Vs. Harnam Singh (supra).

12. One of the principal reasons for deciding the present Petition was that, prima facie, the Petition has been rendered infructuous in as much as the Petitioner should have filed the Petition well before her retirement and should have got it adjudicated from the Court to enable the benefit of further extension of 11 months in service, if at all the Petitioner was entitled to the same in law. Having not got the Petition adjudicated before her retirement date i.e. 30.04.2018, the entire cause of action in the present Petition has now been rendered infructuous and academic in nature and as such, in the facts and circumstances of the present case, the Petition has been decided by considering the grounds mentioned in the Petition.

13. The Petitioner has primarily stated that if her actual DoB is taken as 19.03.1961 instead and in place of 07.04.1960, then the Petitioner would get an advantage of atleast 11 months more in her tenure of service. The Petitioner has based her entire case on the basis of SLC bearing no. 297, dated 30.01.2014 issued by the Zilla Parisad Primary Central School, Ugawa (Girls) wherein her DoB was recorded as 19.03.1961 and the second SLC issued by Jankibai Dandale School, Ugawa bearing no. 541, dated 13.11.2003 wherein her DoB was recorded as 07.04.1960. It is the case of the Petitioner that out of these two SLCs, the one issued by Jankibai Dandale School, Ugawa has wrongly recorded her DoB as 07.04.1960 and therefore the Petitioner has also obtained a handwritten certificate issued by the Principal of the said school dated 27.02.2017, inter alia, certifying and stating that DoB of the Petitioner recorded in the general register of school was 19.03.1961. Based on these three

documents, the Petitioner approached the Competent Authority for consideration of her case, in accordance with law. The Competent Authority viz. the Divisional Commissioner, Akola, in exercise of quasi judicial power, considered the case of the Petitioner and passed a detailed speaking order dated 21.08.2018, which is impugned by the Petitioner.

14. Ms. T. H. Khan, learned A.G.P. appearing on behalf of Respondent no. 1 rendered her assistance to the Court by making following submissions.

(i) She submitted that the Petitioner has approached the Competent Authority too late in the day for consideration of her case and such an approach of the Petitioner, which is hit by gross delay and laches, goes against the Petitioner. Before advertng to the three documents which are annexed to the Petition and referred to and relied upon by the Petitioner in support of her case, she submitted that it was pertinent to note that under the provisions of the Maharashtra Civil Services (General Condition of Service) Rules, 1981 there is specific provision in Chapter-IV, Rule 38 (f) which is quoted as under :-

"38. Procedure for writing the events and recording the date of birth in the service book.

(1)

(2)

(a)

(b)

(c)

(d)

(e)

(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;

(1) Normally, no application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant should be entertained after a period of five years commencing from the date of his entry in Government service.

(2) Subject to (1) above, the correct date of birth of a Government servant may be determined, if he furnishes a proof of age in any of the following forms :-

(a) His own statement or that a parent, guardian, friend or relative;

(b) School Leaving Certificate, Secondary School Certificate Examination/ Matriculation Certificate or University Certificates;

- (c) Extract from a birth or baptismal register;
- (d) Horoscope;
- (e) Entry in family records or accounts books.

The proof at (a) above should not be accepted as sole proof of Government servant's age; also (b), (d) and (e) separately cannot always be depended on as reliable proof of age, while (c) cannot also furnish absolute proof unless the name of the child is registered.

(i) To ensure, as far as possible, that convincing and conclusive proof of age forthcoming, a Government servant should be asked to produce both an extract from a birth or baptismal register and a School Leaving Certificate or Secondary School Certificate Examination/Matriculation Certificate or University Certificate giving the date of birth. An extract or certificate of birth (such as a baptismal certificate) where his name has been entered in the original birth register at the time of birth, should, however, be accepted as a sufficient proof.

(ii) If a Government servant is unable to produce any of the documents referred to in (I) above, a full explanation should be obtained from him and unless he can adduce satisfactory reason for not producing them, other evidence such as horoscope, family records, accounts books, etc., should not be admitted.

(iii) Oral or written statements or affidavits of a Government servant or his relatives should not be accepted without the production of supporting evidence save in exceptional cases where the certifying authority is satisfied that for some good reason as direct evidence is available and that the person concerned is trustworthy and there is no reason to disbelieve him.

(iv) All cases relating to alterations of date of birth of Gazetted Government servants and such of the requests of Non-gazetted Government servants as are proposed to be entertained on merits in relaxation of instruction No. (1) above, should invariably be referred to the General Administration Department and the Finance Department through the Administrative Department concerned.

(3) Officers of a rank not lower than the Principal District Officer in the Department concerned may correct errors in the service book which are obviously clerical. Cases in which the correctness of the original entry is questioned on other grounds should be referred to a competent authority.

(4) Finger-prints of a Government servant who is not literate enough to sign his name in English, Hindi or Marathi should be recorded in the column headed "Personal marks of identification" in the service book itself. The impressions should not be taken on separate slips of paper and pasted to the service book."

(ii) She has placed reliance on the case of Union of India Vs. Harnam Singh (cited supra) and submitted that the facts of the said case are identical to the facts of the case in hand and as such the ratio of the said case squarely applies to the present case. She has placed reliance on paragraph nos. 6 to 8 and 14 of

the said case which reads thus :-

"6. 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 dispersed 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 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 the 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 refusing relief on grounds of laches or stale claims, is generally applied to 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. Unless altered, his date of birth as recorded would determine his date of superannuation even if it amounts to abridging his right to continue in service on the basis of his actual age. Indeed, as held by this Court in *State of Assam & Anr. v. Daksha Prasad Deka & Ors.*, [1971] 2 SCR 687 a public servant may dispute the date of birth as entered in the service record and apply for its correction but till the record is corrected he can not claim to continue in service on the basis of the date of birth claimed by him. This court said:

"The date of compulsory retirement under F.R. 56(a) must in our judgment, be determined on the basis of the service record, and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistent with the appropriate procedure. A public servant may dispute the date of birth as entered in the service record, and may apply for correction of the record. But until the record is corrected, he cannot claim that he has been deprived of the guarantee under Article 311 (2) of the Constitution by being compulsorily retired on attaining the age of superannuation on the footing of the date of birth entered in the service record."

7. Note (5) to Fundamental Rule 56 governing correction of date of birth in the

service record, substituted by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms Notification No. 19017/79/Estt-A dated 30th November, 1979 published as SO 3997 in the Government of India Gazette dated 15th of December 1979 limits the exercise of the right by the government servant to seek alteration of his date of birth only within the specified period. The provision reads as under:

"Note 5 The date on which a Government servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth declared by the Government servant at the time of appointment and accepted by the appropriate authority on production, as far as possible, of confirmatory documentary evidence such as High School or Higher Secondary or Secondary School Certificate or extracts from Birth Register. The date of birth so declared by the Government servant and accepted by the appropriate authority shall not be subject to any alteration except as specified in this note. An alteration of date of birth of a Government servant can be made, with the sanction of a Ministry or Department of the Central Government or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an administrator of a Union Territory under which the Government servant is serving if

(a) a request in this regard is made within five years of his entry into Government service;

(b) it is clearly established that a genuine bonafide mistake has occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service."

8. According to the above amendment, it is obvious that the request for correction of date of birth is required to be made by the Government servant within five years of his entry into Government service and his date of birth may be corrected if it is established that, a genuine bona fide mistake had occurred while recording his date of birth at the time of his entry into Government service. The CAT in the instant case was of the opinion that the bar of five years could only apply to such Government servants who joined service after 1979, when the amendment came into force and that the said period of limitation would not apply to Government servants who were in service for more than five years prior to 1979.

* * * *

14. In the instant case, the date of birth recorded at the time of entry of the respondent into service as 20th May 1934 had continued to exist, unchallenged between 1956 and September 1991, for almost three and a half decades. The

respondent had the occasion to see his service book on numerous occasions. He signed the service book at different places at different points of time. Never did he object to the recorded entry. The same date of birth was also reflected in the seniority lists of LDC and UDC, which the respondent had admittedly seen, as there is nothing on the record to show that he had no occasion to see the same. He remained silent and did not seek the alteration of the date of birth till September 1991, just a few months prior to the date of his superannuation. Inordinate and unexplained delay or laches on the part of the respondent to seek the necessary correction would in any case have justified the refusal of relief to him. Even if the respondent had sought correction of the date of birth within five years after 1979, the earlier delay would not have non-suited him but he did not seek correction of the date of birth during the period of five years after the incorporation of note 5 to FR 56 in 1979 either. His inaction for all this period of about thirty five years from the date of joining service, therefore precludes him from showing that the entry of his date of birth in service record was not correct."

(iii) She submitted that in the present case, the Petitioner has rendered service for 35 years and during her entire tenure, the DoB recorded at the time of entry of the Petitioner into service as "07.04.1960" had continued to exist unchallenged between 1982 to 2017. She submitted that the Petitioner had several occasions to see and sign her service book but never objected to the entry of DoB in the service book. She submitted that objection of the Petitioner was taken for the first time in the year 2017 i.e. just a few months prior to the date of her superannuation. She submitted that inaction on the part of the Petitioner for the aforesaid period of 35 years from the date of joining of service precluded the Petitioner from showing that the entry of her DoB in the service record was not correct.

(iv) Apart from these grounds, she also submitted that the Petitioner has based her case only upon three documents and these three documents in question viz. two SLCs and a handwritten certificate issued by Jankibai Dandale Vidayala, Ugawa also cannot come to the aid of the Petitioner because, as the same were issued recently and not at the relevant point of time. This leads credence to the fact that the Petitioner's case of attempting to challenge the entry of DoB in her service record at the time of entry into service after 35 years was merely speculative in order to gain advantage and benefit of a further extension of 11 months in service. She submitted that Government Resolution dated 28.02.2008 and ratio of the judgment in the case of Union of India Vs. Harnam Singh (cited supra) precluded the Petitioner from exercising such right and therefore order dated 27.04.2018 has been correctly passed by the Divisional Commissioner, Akola and the same deserved to be upheld.

15. Having perused the impugned order dated 27.04.2018, pleadings filed by the Petitioner and after hearing the learned A.G.P. and having perused the copy of judgment passed by the Apex Court in case of Union of India Vs. Harnam Singh (supra), it is seen that the facts of the said case are absolutely identical to the

facts of the present case. The respondent Harnam Singh was appointed as Peon on 22.02.1956 and at the time of his entry in service the DoB recorded in his service book was 20.05.1934. Since, Harnam Singh had failed in matriculation examination, against the column of educational qualification "Matric failed" was recorded. On passing matriculation examination subsequently, Harnam Singh was appointed as Lower Division Clerk in Ministry of Home Affairs on 19.04.1957. Thereafter, in the service book, an entry was made showing his educational qualification as "Matric" underneath the earlier entry "Matric failed". Though the DoB of Harnam Singh as recorded in matriculation certificate was 07.04.1938, while amending the entry in service book, the entry relating to DoB was not altered/corrected and thus it continued to be recorded as 20.05.1934.

16. In the year 1963, Harnam Singh was transferred to the Ministry of Human Resource & Development, Department of Education. Harnam Singh was thereafter notified about his date of superannuation being on 31.05.1992, which was very close to his retirement at that point of time. He realized that he was been retired on the basis of his DoB as originally recorded in the service book as 20.05.1934, ignoring the DoB as reflected in the matriculation certificate. He made his first representation in September-1991 which was eight months prior to his date of retirement. His representation was rejected upon which Harnam Singh made further representation. As against these facts, in the case at hand, the same facts are reflected. The DoB of the Petitioner in the present case at the time of entry in service came to be recorded as 07.04.1960 and the Petitioner persisted with said DoB right until before her retirement. The Petitioner made representation on 27.02.2017 for the first time seeking correction of her DoB in the service book as 19.03.1961, which was 14 months prior to her date of retirement. However, in the present case, the DoB recorded at the time of entry of the Petitioner into service as 07.04.1960 had continued to exist unchallenged between 19.01.1982 to 27.02.2017 i.e. almost for a period of 35 years. The Petitioner did not taken any steps whatsoever during the course of these 35 years to seek amendment of service book in respect of recording of her DoB. In fact, the three documents referred to and relied upon by the Petitioner, in support of seeking to correct her DoB have also been procured by the Petitioner much later in point of time from the date of her entry into service.

17. In this background, the Divisional Commissioner, Akola was justified in giving the following reasons on internal page no. 3 of the order dated 21.08.2018 with which there cannot be any disagreement :-

(i) The service book of the Petitioner recorded her DoB as 07.04.1960 and this recording was done in terms of appointment order of the Petitioner as Assistant Teacher, Zilla Parishad, Akola dated 29.01.1982.

(ii) The Petitioner remained silent from 1982 to 2017 for a period of almost three and half decades and only thereafter, on the eve of her retirement made a representation for seeking change of her DoB.

(iii) The Petitioner was correctly retired on completion of 58 years of age in terms of statutory provisions under the Maharashtra Civil Services (Pension) Rules, 1981.

(iv) The Petitioner ought to have approached the Authority for seeking change/correction in her DoB within the first 5 years of her date of appointment/approval as Assistant Teacher in the service of Zilla Parishad, Akola i.e. within and upto 1987. The Petitioner failed to do so which was the requirement of law and thus the representation of the Petitioner which came to be made after 35 years was correctly rejected.

(v) The Petitioner has herself certified her DoB to be 07.04.1960 in her service book and the Petitioner has appended her signature in column no. 9 of her service book and thus the Petitioner was aware about her DoB been recorded as 07.04.1960.

18. I find much substance in the observations and conclusions recorded by the Divisional Commissioner, Akola in his order dated 21.08.2018 which is in consonance with the facts and circumstances of the case and the ratio of the case decided by the Apex Court in Union of India Vs. Harnam Singh (cited supra). It is also recorded that in terms of Government Resolution dated 28.12.2008 issued under the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, there is specification that any application made for seeking change of DoB by the Government Servant after a lapse of the period of 5 years from the date of entry into service should not be considered. In the instant case, the application/representation of the Petitioner dated 27.02.2017 has been made after a lapse of 35 years by the Petitioner and thus the Petitioner cannot get or seek any benefit out of it.

19. In another decision passed by Apex Court in the case of State of Madhya Pradesh Vs. Premlal Shriwas, reported in 2011 AIR SC 3418, similar controversy had arisen. In the said case, the Respondent was appointed to the post of Police Constable in the year 1965 and in his service book, prepared at that time of entering into the service, his DoB was recorded as 01.06.1942. This position continued till 1980, when the Respondent therein made a representation for seeking correction of his DoB in the service record. By order dated 08.03.1995, the representation of the Respondent came to be rejected on cogent grounds. The Respondent filed appeal before Madhya Pradesh Administrative Tribunal and the Tribunal also dismissed the application on 18.04.2001. The Respondent filed Writ Petition before the High Court which set aside the order of the Tribunal and allowed the Writ Petition. Being aggrieved by the order of the High Court, the State of Madhya Pradesh and two of its functionaries approached the Apex Court. The Apex Court in paragraph no. 9 and 10 of the said judgment observed thus :-

9. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious

and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he 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. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: Union of India Vs. Harnam Singh²).

10. In Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran³, indicating the factors relevant in disposal of an application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus : "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 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."

20. On the basis of the above ratio, in the matter involving correction of DoB particularly on the eve of superannuation at the fag-end of tenure, it has been observed by the Apex Court that the Court or Tribunal has to be circumspect, cautious and careful while issuing any direction for correction of the DoB, recorded in the service book at the time of entry into service. The Court or Tribunal is required to be fully satisfied on the basis of irrefutable proof relating to DoB and most importantly whether such a claim has been made in accordance with the procedure prescribed as per the consistent procedure adopted by the Department concerned, as the case may be. It is duly recorded by the Apex Court and expressed that if any Government Servant makes a request for correction in the recorded DoB after a lapse of long time after his induction into service, particularly after the time fixed by the employer, he cannot claim, as a matter of right correction of his DoB even if he has good evidence to establish that the recorded DoB was clearly erroneous. The judgment in the case of Union of India Vs. Harnam Singh (*supra*) has been followed by the Apex Court in this case.

21. In the case of State of Madhya Pradesh Vs. Premlal Shriwas (*cited supra*), it was also observed that under Rule 84 of Madhya Pradesh Financial Code, DoB as recorded in the service book at the time of entering into service is conclusive and binding on the Government Servant even though an exception has been carved out in the said Rule permitting the public servant for correcting the age provided that incorrect recording of age on account of clerical error or mistake has occurred. This case also refers to the case of Commissioner of Police Vs. Bhagwan Lahane, reported in 1997 4 SCC 647 wherein it has been held that any employee seeking correction in his DoB as condition precedent must show that incorrect recording of the DoB is due to negligence of the some other person or an obvious clerical error, failing which the office should not grant it.

22. In the present case, applying the ratio of the judgment in the case of State of Madhya Pradesh Vs. Premlal Shriwas (*cited supra*) which follows the ratio laid down in the case of Union of India Vs. Harnam Singh (*cited supra*), it is beyond reasonable doubt that the Petitioner in the present case cannot be given any

benefit of doubt to seek correction in her DoB after a period of 35 years from the date of entry of her DoB in the service book. It is also required to be mentioned that the Petitioner has not appeared in the present matter on the last few dates. This can be attributable to the fact that the Petitioner may have lost complete interest because, in any event the Petitioner was seeking a window/extension of 11 months from 30.04.2018 upto 30.03.2019 on the basis of her alleged DoB to be corrected as 19.03.1961. That period has also come to an end on 30.03.2019 and therefore all that remains in the present petition would be of academic interest to the Petitioner.

23. In view of the above, order dated 21.08.2019 passed by the Divisional Commissioner, Amravati deserves to be upheld.

24. The Writ Petition is dismissed.

25. Rule is discharged. No order as to costs.