
(2010) 12 BOM CK 0150
In the Bombay High Court
Case No : Writ Petition No. 2894 of 2010

The State of Maharashtra

APPELLANT

Vs

Shrikrishna Jagannath Laskhare

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Civil Service (General Conditions of Service) Amendment Rules, 2008 —
Rule 38, 38(2)

Citation : (2011) 1 BomCR 569 : (2011) 129 FLR 264

Hon'ble Judges : U.D. Salvi, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : M.P. Thakur, AGP, for the Appellant; M.S. Karnik, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard Mrs. Thakur, learned AGP for the Petitioner and Mr. M.S. Karnik, learned Counsel for the Respondent.

2. Rule. Respondent waives service.

3. Petition is heard finally.

4. This petition filed under Articles 226 and 227 of the Constitution of India takes exception to the order dated 10.9.2009 passed by the Vice Chairman of the Maharashtra Administrative Tribunal (for short "the MAT") in OA No. 816/09 which was filed by the Respondent. The Respondent joined the government service as Sales Tax Officer Class II on 5.12.77 and has retired on attaining the age of superannuation from the post of Joint Commissioner of Sales Tax, Palghar, District Thane on 31.3.09. His date of birth in the service book at the time of joining service, was recorded as 16/3/1951. It appears that a few months before his date of superannuation i.e. 4.12.2008 he submitted a representation based on a copy of the birth date extract and school leaving certificate dated 22.10.2008 issued by the Head Master of Central Boys. School at Nimkhedi

(Bk.), District Jalgaon, for correction of his date of birth from 16.3.1951 to 24.2.1952. This representation was not decided for few months and therefore he submitted a further representation on 28.3.09. He filed Writ Petition No. 27/09 which was disposed off by this Court on 17.3.09 and the Competent Authority was directed to decide the pending representation expeditiously. The Competent Authority decided the representation on 31.3.09 and rejected the claim of the Respondent for correction of his date of birth. He therefore approached the Tribunal in OA No. 816/09 and succeeded in the same by the impugned order and we deem it appropriate to reproduce the reasoning set out in para 6 of the said order:

6. After hearing the learned Counsel for the Applicant and the learned Presiding Officer for the Respondents, it is explicitly clear now in view of the amendment to the earlier rule by the Maharashtra Civil Service (General Conditions of Service) Amendment Rules 2008 dated 24th December, 2008, published on 29th January 2009, wherein the restriction of five years has been lifted, as far as an employee who had joined the Government Services on or before 16th August, 1981.

5. Mrs. Thakur, the learned AGP submitted that the view taken by the Tribunal is grossly erroneous and it is contrary to the circulars issued by the State Government from time to time i.e. 24.6.92, 27.9.94 and 3.3.98 as well as the amended Rules 38(2) of the Maharashtra Civil Services (General Conditions of Service) Rules, 2008. She placed reliance on following decisions: i) State of T.N. Vs. T.V. Venugopalan, , (ii) State of Punjab and Others Vs. S.C. Chadha, . She also relied upon a decision of this Court in the case of Hamid Sh. Dawood Kagadi of Mumbai v. The Commissioner of Sales Tax, Maharashtra State and Ors. (CDJ 2007 BHC 950) wherein this Court had referred to Rule 38 of the Maharashtra Civil Service (General Conditions of Service) Rules.

6. Mr. Karnik, the learned Counsel for the Respondent on the other hand has supported the impugned order and pointed out that the Tribunal has not directed the State Government to correct the Petitioner's date of birth but it has only directed to decide his representation afresh because the representation submitted by the Petitioner was rejected solely on the ground that it was not submitted within the prescribed period of five years and the said reason was erroneous. Mr. Karnik also submitted that in any case the Petitioner has retired and he is claiming benefit of only 11 months service and therefore a sympathetic view is required to be taken rather than causing interference in the impugned order. As per Mr. Karnik the amended Rule 38(2) of the Maharashtra Civil Service (General Service Conditions) Rules specifically prescribes a condition of submission of representation within five years only to those officers who joined after August, 1981 and therefore by an inference it must be presumed that the officers who joined in August, 1981 or prior to that date are not covered by the limitation of five years to submit their representation for correction of date of birth and that after the said amendment of rules the circular dated 3.3.1998 became redundant and could not be made applicable or relied upon in the case of

the Respondent.

7. We have given our anxious considerations to the arguments advanced by both the parties as well as the reasons stated by the Tribunal in para 6 of the impugned order and as reproduced herein above. On our oral order, Mrs. Thakur has also placed before us the original Service Book of the Respondent. We have noted from the service book that the entries made therein were certified from time to time and they have been authenticated. The Service Book also has a form duly filled in by the Respondent himself on 4-4-1990 (the first page of the Service Book) and as per the same the Respondent himself furnished his date of birth as 16.3.1951 in the said form. On the same day i.e. 4.4.1990 he also furnished in Form No. 3, the details of his family members and he gave his date of birth as 16.3.1951 along with the dates of birth of his wife and two children. The Petitioner did not raise any objection for correction of his date of birth for almost eighteen years which is clear from the record and if this Service Book was seen by the Tribunal, perhaps the decision in OA No. 816/09 could be different.

8. The law on the issue of correction of date of birth by a government servant is well settled. In the case of Union of India Vs. Harnam Singh, the Supreme Court held that any representation made for correction of date of birth beyond the period prescribed under the service rules, cannot be entertained. It further held that:

A government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded if such an The application was made for such correction within a period of five years or any other period as claimed under the relevant rules.

In the case of Executive Engineer, Bhadrak (R and B) Division, Orissa and Others Vs. Rangadhar Mallik, the Supreme Court again referred to Rules 65 of the Orissa General Finance Rules and held that the application made for correction of date of birth beyond the time fixed within the said Rules was required to be rejected and any representation made for such correction near about the time of superannuation cannot be entertained. By referring to those earlier judgments the Supreme Court in the case of State of T. N. (supra) issued a caveat in the following words:

This Court has, repeatedly, been holding that inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the

Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for, gets expired...

Even in the subsequent decision in the case of S.C. Chadha (supra) the Supreme Court expressed its anguish and concern on the trends being noticed whereat the Administrative Tribunals were seen entertaining liberally such applications for correction of date of birth. In para 8 of the said judgment the Supreme Court stated thus:

8. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement waking up from their supine slumber raise a dispute about their service records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the concerned Administrative Tribunals, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

The Supreme Court observed further in para 11 of the said judgment as under:

11. An application for correction of the date of birth should not be dealt with by the Courts, 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 the promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant 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 clinching materials which can be held to be conclusive in nature, is made out by the Respondent and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, 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.

This Court (Divisions Bench) in the case of Hamid Sh. Dawood Kagadi (*supra*) while dealing with a similar case observed in para 12 of the said judgment as under:

12. In the light of above principles, we may refer to the provisions of Rule 38 of the Rules. It is obligatory upon the department to correctly record the date of birth of an employee in the service book. While recording the date of birth, they have to follow the prescribed procedure. The entry made in the service record is treated as final. In terms of Clause (f) of Rule 38(2), when once an entry of age or date of birth has been made in a service book, no alteration of the entry should thereafter be allowed, unless the conditions stated therein are satisfied....

9. In the instant case the record reveals and as has been pointed out by Respondent himself in his representation dated 4.12.08 addressed to the Principal Secretary in the Department of Finance that in his school record his date of birth was recorded as 16.3.1951 and even in the SSC certificate issued by the Board his date of birth was recorded as 16.3.1951. It is only in October, 2008 the Respondent decided to get additional benefit of service and approached, with an application, the Village Panchayat for the date of birth extract and after obtaining the same he approached the primary school and obtained the fresh school leaving certificate with the date of birth as 24.2.1953. Before he submitted the representation to the State Government for correction of date of birth he had not taken any steps to get the SSC Board certificate corrected. If really there was a mistake in the recording of his date of birth right at the first stage i.e. SSC Board, he ought to have applied to the Board for correction. We say so because the Tribunal has directed the State Government to reconsider his application and decide afresh. In our opinion, there is no tangible material submitted by the Respondent himself in support of his case for correction of his date of birth, and it was a sheer dishonest and frivolous claim made at the fag end of his service. Such attempts must be depreciated..

10. Rule 38(2) of the Maharashtra Civil Service (General Conditions of Service) Rules does not support the finding recorded by the Tribunal. The Tribunal observed that restriction of five years has been lifted as far as the employees who joined the government service on or before 16.8.1981. With respect, the Rule states that those employees who have jointed after August 1981 are required to submit their representations for correction of date of birth within five years and the inference s drawn by the Tribunal that the employees who joined in August, 1981 or before that are not governed by the limitation period of five years, is unsustainable. The circular dated 3.3.1998 would hold the field and the said circular was issued by following the law laid down by the Supreme Court in the case of Union of India v. Harnam Singh in Civil Appeal No. 502/1993 decided on 9/2/1993.

11. In our view, the order passed by the Tribunal shows over indulgence and is not supported either on the point of law or on facts and the Service Book, as referred to herein above, is self speaking and obviously it was a frivolous claim made by the Respondent by way of an after thought so as to gain extension of eleven months in service.

12. Hence this petition succeeds and the same is hereby allowed. The impugned order passed by the Tribunal is quashed and set aside.

13. Rule is made absolute accordingly but without any order as to costs.