REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 9704 of 2010
(@ SPECIAL LEAVE PETITION(C)NO.8779 OF 2007)

STATE OF MAHARASHTRA & ANR. ... APPELLANT(S)

VERSUS

GORAKHNATH SITARAM KAMBLE & ORS. ... RESPONDENT(S)

J U D G M E N T

DALVEER BHANDARI, J.

Applications for exemption from filing Official Translation and certified copy of the impugned order are allowed.

Leave granted.

Heard learned counsel for the parties.

2. This appeal emanates from the judgment of the High Court of Judicature at Bombay delivered in Writ Petition No.6531 of 2006 dated 19th January, 2007.

3. Brief facts which are necessary to dispose of the appeal are recapitulated as under :

4. Respondent no.1 was appointed as as Assistant Teacher on 13.02.1978. He filed a Secondary School Leaving Certificate indicating 02.06.1949 as proof of his date of birth. In the service record also consequently the same date of birth was recorded.

5. On 23.05.2004, respondent no.1 filed an application to the Education Officer (Primary), Zilla Parishad, District Sangli complaining that though in the School Leaving Certificate his date of birth is 02.06.1949 whereas, in fact the date of birth in the

record of the Tahsildar is 03.05.1951, so the date of birth be corrected in the service record of the respondent according to the record of the Tahsildar.

6. The application, filed by the respondent no.1 was rejected by the Block Education Officer on the ground that the same is time barred and was not filed within five years from the date of joining i.e. 13.02.1978. He referred to Rule 38(2)(f) of the Maharashtra Civil Services (General Conditions) Rules, 1981 (for short 'the Maharashtra Rules, 1981') and the notification issued by the State. Relevant rule reads as under :

> **"38(2)(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."**

7. Respondent no.1 filed another application to the Head Master, Zilla Parishad primary school, Tujarpur, Taluka Walva, District Sangli. This application was also rejected on 09.12.2004.

8. Respondent no.1 again filed an application before the Education Officer (Primary), Zilla Parishad, Sangli on 22.07.2006. When respondent no.1 did not receive any satisfactory reply, he filed a Writ Petition No.6531 of 2006 before the High Court of Judicature at Bombay. The Writ Petition filed by the respondent was allowed by the impugned judgment dated January 19,2007. The High Court, in paragraph 2 of the impugned judgment, noted Rule 38(2)(f) of the Maharashtra Rules, 1981 but while interpreting the rule, the High Court has virtually re-written the rule and in paragraph 5 of

the impugned judgment, the High Court observed as under :

> **"....under the instructions issued, it is proved that the entry should not be normally changed after a period of five years...."**

The expression "normally" has not been used in the Rules and interpretation of this expression has led to an erroneous finding in the impugned judgment. In the impugned judgment the High Court failed to give any sustainable or acceptable reasons as to why the date of birth was permitted to be changed at the fag end of the career of respondent no.1.

9. The High Court, in the impugned judgment, has failed to notice the settled legal position which is crystallized by a series of judgments of this Court. All the judgments have consistently taken the view that change in the date of birth cannot be permitted at the fag end of the service career. In the instant case, according to the Notification dated 24th December, 2008, it is made clear that no alteration of the entry should be allowed after five years.

10. The spirit and the intention of this rule is reflected in a series of judgments of this Court. After the rules, a notification has been issued by the Government of Maharashtra. The relevant part of the notification dated 24th December, 2008 issued by the Finance Department, Government of Maharashtra, is set out as under :

" FINANCE DEPARTMENT
Mantralaya, Mumbai 400032, dated 24th December, 2008
NOTIFICATION
CONSTITUTION OF INDIA

No.MCS 1007/C.R.7/07/SER-6-In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Maharashtra is hereby pleased to make the following rules further to amend the Maharashtra Civil Services (General Conditions of Services) Rules,1981, namely:-

1. These rules may be called the Maharashtra Civil Services (General Conditions of Services) (Amendment) Rules, 2008.

2. In rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, (hereinafter referred to as "the principal Rules"), in sub-rule (2), under the heading Instruction,-

(a) for Instruction No.(1) and (2), the following Instructions shall be substituted, namely:-

"(1) No application for alteration of the entry regarding date of birth as recorded in the service book or service roll of a Government servant, who has entered into the Government service on or after the 16th August 1981, shall be entertained after a period of five years commencing from the date of his entry in Government service.

(2) Subject to Instruction (1) above, the correct date of birth of a Government servant may be determined, if he produces the attested xerox copy of the concerned page of the original birth register where his name and date of birth has been entered as per the rules for the time being in force regarding the registration of birth, and maintained at the place where the Government servant is born, such proof should be considered as an unquestionable proof for change of date of birth in service record....."
[Emphasis supplied]

11. According to the notification, from 16.08.1981 the date of birth of Government servants cannot be changed after five years from 16.08.1981. Assuming this notification is applicable only for employees who joined after 16.08.1981, even then according to the 'instruction(1)' of the Maharashtra Rules, 1981 that no application

for alteration of entry regarding date of birth should be entertained after a period of five years.

The said instruction is reproduced as under :

> **"(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....."**

12. Apart from the notification and the said instruction this Court in a series of cases have categorically laid down that the employees should not be permitted to change the date of birth at the fag end of his service career. In the instant case the application of alteration has been filed at the fag end of his service career after a lapse of twenty eight years.

13. In Union of India Vs. Harnam Singh, (1993) 2 SCC 162, this Court was confronted with almost similar facts. The Court laid down as under :-

> **"In the instant case, the date of birth recorded at the time of entry of the respondent into service as May 20, 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 year 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."**

14. In State of Tamil Nandu Vs. T.V.Venugopalan, (1994) 6 SCC p.302, this court was clearly of the opinion that the government servant should not be permitted to correct the date of birth at the fag end of his service career. The Court, in very strong terms, observed as under :-

> **".....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. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground....."**

15. In Secretary and Commissioner, Home Department and others Vs. R.Kirubakaran, (1994) Suppl.(1) SCC 155, the Court again

reiterated the legal position that the courts have to be extremely careful when application for alteration of the date of birth is filed on the eve of superannuation or near-about that time. The court observed as under :-

> **".....As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants to raise such a dispute without explaining as to why this question was not raised earlier....."**

16. Learned counsel for the respondent has placed reliance on the judgment of this Court in U.P.Madhyamik Shiksha Parishad & Ors. Vs. Raj Kumar Agnihotri, (2005) 11 SCC p.465. In this case, this Court has considered number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in State of Uttaranchal & Ors. Vs. Pitamber Dutt Semwal, (2005) 11 SCC p.477, the relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

18. Two decades ago this Court in Government of A.P.& Anr. Vs. M.Hayagreev Sarma, (1990) 2 SCC p.682, has held that subsequent claim for alteration after commencement of the rules even on the basis of extracts of entry contained in births and deaths register maintained under the Births, Deaths and Marriages Registration Act,

1886, was not open. Reliance was also placed on State of Uttar Pradesh & Ors. Vs. Gulaichi (Smt.), (2003) 6 SCC p.483, State of Tamil Nadu Vs. T.V.Venugopalan, (*supra*), Executive Engineer, Bhadrak (R & B) Division, Orissa & Ors. Vs. Rangadhar Mallik, (1993) Suppl.1 SCC p.763, Union of India Vs. Harnam Singh, (*supra*) and Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (*surpa*).

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of large number of employees, therefore, any correction at the fag end must be discouraged by the Court. The relevant portion of the judgment in Secretary and Commissioner, Home Department & Ors. Vs. R.Kribakaran, (*surpa*) reads as under :

> **"An application for correction of the date of birth by a public servant cannot be entertained at the fag end of his service. 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. 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 and before any such direction is issued, the court 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 time fixed by any rule or order. The onus is on the applicant to prove about the wrong recording of his date of birth in his service-book."**

20. In view of the consistent legal position, the impugned judgment cannot be sustained and even on a plain reading of the Notification and the instructions set out in the preceding paragraphs leads to the conclusion that no application for alteration of date of birth after five years should have been entertained.

21. The approach of the High Court in re-writing the rules cannot be approved or sustained. Consequently, the appeal filed by the State of Maharashtra is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs.

.....J.
(DALVEER BHANDARI)

.....J.
(DEEPAK VERMA)

NEW DELHI;
16TH NOVEMBER, 2010