

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.265 OF 2024

Ulhas Thanekar

...Petitioner

Versus

Secretary, Mormugao Port Authority And 2

Ors.

...Respondents

Mr Shivan Desai, Advocate *with* Mr Jonathan George, Advocate *for the Petitioner.*

**CORAM: M.S. SONAK &
VALMIKI MENEZES, JJ.**

DATE: 19th MARCH, 2024

ORAL ORDER : (Per M.S. Sonak, J.)

1. Heard Mr Shivan Desai with Mr Jonathan George, learned counsel for the petitioner.
2. The petitioner, an employee of Mormugao Port Authority (MPA), questions his proposed retirement from service on 31.05.2024 on the grounds that his correct date of birth is 21.07.1965 and not 28.05.1964. Accordingly, the petitioner submits that he would attain the age of superannuation of 60 years only on 20.07.2025; therefore, the insistence that he retires from 31.05.2024 is arbitrary and unconstitutional.

3. The petitioner was appointed with the MPA on 13.01.1995. His date of birth entered in the service record was 28.05.1964. This was based on the Matriculation Certificate provided by the petitioner at the time of his appointment and joining.

4. On 17.05.2023, the petitioner was informed that he would retire on 31.05.2024. Therefore, by his representation dated 11.07.2023, the petitioner urged that at the time of his appointment, he had submitted his birth certificate showing his date of birth as 21.07.1965 and there was a clerical error in recording his date of birth as 28.05.1964.

5. The petitioner's representation was rejected on 11.09.2023. The petitioner appealed, and this appeal was rejected on 01.12.2023. Even though there was no further appeal, the petitioner nevertheless appealed again, and even this appeal was rejected on 13.02.2024. Hence, this petition.

6. Mr Desai, learned counsel for the petitioner, submits that the CCS CCA or Fundamental Rules do not apply to the MPA and its employees. In fact, even the Government of India Ministry of Shipping has clarified that the Rules applicable to Central Government employees are not automatically applicable to the employees of Major Port Trust. He submitted that the MPA unnecessarily circumscribed its discretion to entertain an application for correction of the birth date made beyond five years by relying upon the CCS CCA Rules or the FR to deny the correction sought by the petitioner.

7. Mr Desai submitted that in 2006-2008, the petitioner was promoted, and the reference documents prior to such promotion reflected the correct date of birth as 21.07.1965. He submitted that the petitioner was, therefore, under the

bonafide impression that his correct date of birth, i.e. 21.07.1965, stands recorded in his service records. He submitted that the claim about the petitioner's date of birth being 21.07.1965 is based upon a registered birth certificate. Therefore, there cannot be a dispute about its genuineness. Mr Desai also relied upon the Employment Exchange Card, which reflects the same date of birth.

8. Finally, Mr Desai referred to the Mormugao Port Employees (Superannuation and Age of Retirement Regulations, 1974) ('the said Regulations'), which, according to him, provide the power and discretion to alter the date of birth in the certificate recorded even if it is established that a bonafide clerical mistake has been committed in recording the date of birth in the Service Book. For all these reasons, Mr Desai submitted that relief, as prayed for in this petition, may be granted to the petitioner.

9. We have considered all the above submissions. However, we are not persuaded to accept any of them and to grant the petitioner any relief of the correction of his date of birth, which is hardly two months before the Petitioner is due to retire. Admittedly, it was only on 11.07.2023, i.e. hardly a year before the petitioner was to retire, that the petitioner made a representation for correction of his date of birth. The authorities have considered and re-considered the representations and appeals and rejected them for reasons cogent in the present case's facts and circumstances.

10. The records, at least, by a preponderance of probabilities, suggest that at the time of the petitioner's initial appointment and joining on 13.01.1995, the petitioner only produced his Matriculation Certificate, which was one of the two documents prescribed under the Note of Rule 4 of the said Regulations for

recording the birth date. Other documents, i.e., the birth certificate, were never produced at that time. The petitioner may have belatedly produced the birth certificate, but there is no statement in the petition about when the same was produced. To the Court's query, Mr Desai was also unable to point out any date on which such a birth certificate was produced.

11. Still, in the representation dated 11.07.2023 and the subsequent appeals, the petitioner tried to make out a case that the birth certificate was also produced at the time of joining in 1995, but the Authorities arbitrarily considered the Matriculation Certificate and recorded the petitioner's birth date as 28.05.1964 instead of 21.07.1965. Clearly, therefore, the petitioner attempted to bring his case within the Note to Rule 4 and the Regulations, where, in fact, the records do not support that the birth certificate was produced at the time of joining the service or that there was any clerical mistake in recording the birth date.

12. Rule 4 of the said MPA Regulations reads as follows:-

‘4. PRINCIPLE GOVERNING AGE OF RETIREMENT:

Except as otherwise provided in these regulations, every employee of the Board shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that an employee of the Board whose date of birth is the first of a month, shall retire from the service of the Board on the afternoon of the last day of the preceding month in which he attains the age of sixty years.

NOTE: The date on which an employee attains the age of 60 years shall be determined with reference to the date of birth declared by the employee at the time of his appointment and accepted by the appropriate authority on production, as far possible, of confirmatory documentary evidence such as Matriculation Certificate or extracts from Birth Register. The date of birth so declared by an employee and accepted by the appropriate authority shall not be subject of any alteration after the preparation of his service Book and in any event, after the completion of probation period

or declaration of quasi-permanency, whichever is earlier. An alteration in the date of birth of an employee can be made at later stage only with the sanction of a competent authority, if it is established that a bona-fide clerical mistake has been committed in recording the date of birth in the Service Book.'

13. Thus, from the above Rule, it is evident that the two prescribed documents to confirm the date of birth were the Matriculation Certificate or the extracts from the Birth Register. In this case, the petitioner had admittedly furnished the Matriculation Certificate based on which his date of birth was entered as 28.05.1965 in the service records. As noted earlier, there is no clarity about the stage at which the birth certificate was produced. In any case, the claim about the birth certificate being produced at the time of the initial appointment or date of joining does not appear correct. In fact, it is an incorrect claim, to say the least. This incorrect claim was made after almost 28 years of joining and hardly a year before the scheduled date of retirement.

14. The Note to Rule 4 upon which Mr Desai places reliance clearly suggests that the date on which an employee attains the age of 60 years shall be determined with reference to the date of birth declared by the employee at the time of his appointment and accepted by the appropriate authority on production, as far possible, of confirmatory documentary evidence such as Matriculation Certificate or extracts from Birth Register. Further, this Note suggests that the date of birth declared by the employee and accepted by the appropriate authority shall not be subject to any alteration after the preparation of the Service Book and, in any event, after the completion of the probation period or declaration of quasi-permanency, whichever is earlier. Admittedly, the Service Book was prepared soon after the petitioner's appointment in 1995, and there is no dispute that the

petitioner completed his period of probation in 1997. Admittedly, before these dates, neither was any alteration requested nor carried out in the Service Book.

15. Note 4 also states that the alteration in the date of birth of an employee can be made at a later stage only with the sanction of a competent authority if it is established that a bonafide clerical mistake has been committed in recording the date of birth in the Service Book. To bring his case within this part of the Note, the petitioner incorrectly alleged that he had furnished the birth certificate and Matriculation Certificate at the time of his joining or initial appointment. This is not at all borne out from the records. Instead, the petitioner had only furnished his Matriculation Certificate showing the recorded date and not any extract from the Birth Register or, for that matter, any other document to confirm his date of birth.

16. It is well settled that application for alteration of date of birth should normally not be entertained at the fag-end of an employee's career or within a few years from the date on which the said employee is to attain the age of superannuation based on the date recorded in the service records. The question in such a case is not whether the birth certificate or documents based upon which the alteration is sought are genuine. The question is about raising and pursuing such claims as soon as possible and not raising and pursuing such claims within hardly a year from the proposed date of retirement. Even accepting the contention that the above note does not prescribe any time limit to apply for the alteration of birth date, it is well settled that, in any event, such an application must be made within a reasonable time.

17. The Hon'ble Supreme Court has settled the above position in several decisions, including **Karnataka Rural Infrastructure Development Limited V/s. T.P. Nataraja and Ors.¹, Home Deptt. V/s. R. Kirubakaram², State of M.P. V/s. Premal Shrivastav³, LIC V/s. R. Basavaraju⁴, Bharat Coking Coal Ltd. V/s. Shyam Kishore Singh⁵** to cite a few.

18. In *T.P. Nataraja* (supra), an application was made for alteration of date of birth after 24 years of his joining service. The Court held that application for change of birthdate can: (i) only be as per relevant provisions/regulations applicable; (ii) even when cogent evidence exists, it cannot be claimed as a matter of right; and (iii) *the same can be rejected on the ground of delay/laches, especially when made at fag-end of service and/or when an employee is about to retire on attaining the age of superannuation*. Therefore, such a belated application made at the fag-end of the service deserved to be rejected on the ground of delay and laches without anything more.

19. In *R. Kirubakaran* (supra), the Hon'ble Supreme Court has held that the Tribunal or the High Court should not deal with an application for correction of the birth date, 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

1 (2021) 12 SCC 27

2 1994 Supp (1) SCC 155

3 (2011) 9 SCC 664

4 (2016) 15 SCC 781

5 (2020) 3 SCC 411

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. Accordingly, the practice of entertaining highly belated applications for alteration of date of birth was not approved.

20. In *Premlal Shrivastava* (supra), the Hon'ble Supreme Court pointed out that it had repeatedly expressed the view that if a government servant requests 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. Accordingly, it was held that the delay of over two decades in applying for the correction of date of birth was ex facie fatal to the case of the government servant, *notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed*. The Court held that it was trite that even in such a situation, such an application should be filed within a reasonable time. The application filed by the government servant 25 years after his induction into service, by no standards, can be held to be reasonable, more so when no feeble attempt was made to explain the said delay. The Court held that there was *no substance in the plea of the government servant that since Rule 84 of the M.P. Financial Code does not prescribe the time limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in the recording of his date of birth in the service book*.

21. In *LIC V/s. R. Basavaraju* (supra), the Hon'ble Supreme Court has held that the law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, but this Court has also held that a claim for a change in date of birth cannot be entertained at the fag-end of retirement. In *Bharat Coking Coal Ltd.* (supra), the Hon'ble Supreme Court recalled having consistently held that the request to change the birthdate in the service records at the fag-end was not sustainable. The Court referred to several earlier rulings on the subject. It held that even if there was good evidence to establish that the recorded date of birth was erroneous, a highly belated application for a change of birthdate should not be entertained.

22. In *U.P. Madhyamik Shiksha Parishad and Ors. V/s. Raj Kumar Agnihotri*⁶, the Hon'ble Supreme Court held that the birthdate as recorded in the service book at the time of his entry into government service shall be deemed to be the correct date of birth where a government servant had himself declared his date of birth in High School examination from, and the same was entered in High School Certificate as well as in his service record, the same cannot be allowed to be changed without recourse to law just a few years before his retirement. The Hon'ble Supreme Court rejected the argument about continuing cause of action.

23. Thus, given the above decisions of the Hon'ble Supreme Court, we cannot accept Mr Desai's contentions and entertain this petition. The circumstance that the MPA, while rejecting some of the petitioner's representations/appeals, referred

to the mediation of 5 years does not mean that the MPA has relied upon the CCS CCA Rules or the FRs applicable to Central Government Employees. The petitioner has relied upon GRs and Oms, which clarify that rules applicable to Central Government Employees are not automatically applicable to the employees of the MPA. Those communications indicate that the petitioner's belated applications made almost 28 years after joining service and hardly a year before the petitioner was due to retire could not be entertained on account of delay and laches.

24. In any case, as was held in *Premlal Shrivastava* (*supra*), even if there was no specific rule or order prescribing period within which applications for alteration of birth date could be filed, it was trite that such applications had to be filed within a reasonable period. The Court held that an application filed 25 years after induction into service could not be held as an application filed within a reasonable period. In the present case, the application was filed 28 years after the petitioner joined his service and hardly a year before the petitioner was due to retire. The same was, therefore, correctly rejected.

25. The circumstance that some documents were produced in 2006 or 2008 at the time of promotion reflecting on the date of birth is not very relevant. There is no clarity about the documents produced. In any case, based upon the alleged production of documents in 2006 or 2008, which was almost 10 years to 13 years from the date of initial appointment/joining, the petitioner could not have believed that the entry of his birthdate in the service book stood altered. There is a contradiction in the various claims now made belatedly by the petitioner.

26. For all the above reasons, we decline to entertain this petition and dismiss it without costs.

VALMIKI MENEZES, J.

M. S. SONAK, J.

JOSE FRANCISCO
DSOUZA

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