

THE COMMISSIONER OF POLICE, BOMBAY AND ANR.

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v.

BHAGWAN V. LAHANE

NOVEMBER 26, 1996

[K. RAMASWAMY AND G.T. NANA VATI, JJ.]

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Maharashtra Civil Services (General Conditions of Service) Rules, 1981 : Rule 36.

Service Law—Date of birth—Correction of—Instructions regarding—Respondent appointed as Sub-Inspector—Secondary school Leaving Certificate filed at the time of entry into service—Date of birth recorded on the basis thereof—Representation for correction of date of birth—Rejection—Application before Tribunal—Tribunal accepted the case of respondent and directed correction of date of birth—Appeal—Held, the respondent ought to have produced the reliable material to show that the birth date mentioned in the School Leaving Certificate was incorrect—No such material was produced by him—As the employee failed to show that the entry was made due to want of care on the part of some other person or that it was an obvious clerical error, the Tribunal ought not to have directed the appellant to correct the same.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15432 of 1996.

From the Judgment and Order dated 6.10.92 of the Maharashtra Administrative Tribunal, Bombay in O.A. No. 1511 of 1991.

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G.B. Sethi and D.M. Nargolkar for the Appellants.

A.M. Khanwilkar for the Respondent.

The following Order of the Court was delivered :

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Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

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A This appeal by special leave arises from the order of the Maharashtra Administrative Tribunal, made on October 6, 1992 in OA No. 1511 of 1991. The respondent was selected as a Sub- Inspector and sent for training on July 15, 1974. On successful completion thereof, he was appointed and gained entry into the service on July 1, 1976. As per Rule 36 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (for short, the 'Rules') which repealed earlier orders and came into force on 15.8.1981 would indicate that once an entry of age or date of birth has been made in a service book, the same shall not be altered afterwards unless it is shown that the entry was due to want of care on the part of some person other than the individual in question or that it is an obvious clerical error. Instructions have been issued in that behalf which reads as under :

D "Instruction-(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.

E (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 terms :-

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

F (b) School leaving certificate, secondary school certificate examination/Matriculation certificate or University certificate;

(c) Extract from a birth or baptismal register;

G (d) Horoscope;

(e) Entry in family records or accounts books."

H The respondent made an application in 1982 for the correction of his date of birth on the ground that his correct date of birth was June 6, 1951 and it was wrongly entered in the service register as November 12, 1948. It

appears that the representation was rejected in 1983. He filed the OA in 1991 for the correction of the date of birth. The Tribunal in the impugned order, accepting the case of the respondent, has directed the appellant to correct the date of birth. Thus, this appeal by special leave. A

It is not in dispute that the respondent had produced Secondary School Leaving Certificate which contains his date of birth as November 12, 1948. One of the instructions indicates that his own statement or that of a parent, guardian, friend or relative on the date of entry in service and also the High School Leaving Certificate, Secondary School Certificate Examination, Matriculation Certificate or University Certificate, is the relevant document for that purpose. The respondent, admittedly, filed his Secondary School Leaving Certificate at the time of entry into service on the basis of which his date of birth was reflected in the service register as November 12, 1948. The respondent ought to have produced the reliable material to show that the birth date mentioned in the School Leaving Certificate was incorrect. No such material was produced by him. The extract from birth register produced by him along with his representation being inconsistent with the School Leaving Certificate produced by him earlier, he ought to have proved to the satisfaction of the competent authority that he was given a name before or soon after his birth and that his name was entered in the birth register at the time of registration of his birth, ordinarily, a child is not given a name before birth and in the entry in birth register only sex, viz., male or female would be mentioned. After naming ceremony, the name is given. It is, therefore, highly doubtful if the parents of the respondent who were villagers and illiterate had named the appellant either before or on the day of his birth. The explanation given now on behalf of the respondent that his elder brother, who was named Bhagwan, was born on 12.11.1949 and died on 26.11.1949 and, therefore, his birth date cannot be 12.11.1948 is also not convincing. His further explanation that as his elder brother died, his parents thought of calling him by the same name is also not believable. Moreover, if that was so, his parents would not have committed a mistake in giving his birth date to the School authorities even though they were illiterate. It appears that he got the entry in the birth register corrected, then obtained a copy of it and produced the same before the authority. Once it was found to be doubtful, the authorities were right in not correcting his birth date in the service book. Admittedly, the School Leaving Certificate was produced by the B
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- A** respondent and the entry in the service book was made on the basis of the birth date mentioned therein. As he failed to show that the said entry was made due to want of care on the part of some other person or that it was an obvious clerical error, the Tribunal ought not to have directed the appellant to correct the same.
- B** The appeal is accordingly allowed. OA stands dismissed. But, in the circumstances, without costs.

T.N.A

Appeal allowed.