SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shriniwas Vs. State of Maharashtra and Others

Shriniwas Vs. State of Maharashtra and Others

SooperKanoon Citation : sooperkanoon.com/1184681

Court : Mumbai Aurangabad

Decided On : Apr-22-2016

Judge : R.M. Borde &Amp; P.R. Bora

Appeal No. : Writ Petition No. 2345 of 2015 with Contempt Petition No. 716 of 2015

Appellant : Shriniwas

Respondent : State of Maharashtra and Others

Judgement :

P.R. Bora, J.

1. Rule. Rule made returnable forthwith and heard finally with consent of the learned Counsel for the parties.

2. The present petition illustrates the harassment suffered by a gazetted officer because of the indifferent and callous attitude and approach of the Government officials, in getting corrected his date of birth, which was wrongly recorded in his service book, without any fault on his part.

3. The petitioner was selected through MPSC as a lecturer and joined his services in the year 1984. At the relevant time, the Service Books of the Gazetted officers used to be retained by the office of the Accountant General of Maharashtra. The

said practice suffered change in the year 1989 and the Service books were then transferred to the parent department from 1991 onwards. It is the specific case of the present petitioner throughout that after the service books were transferred to the parent department, the petitioner came to know that his date of birth has been wrongly recorded in the service book as 1st March, 1957 instead of 16th January, 1958.

4. After being aware of the mistake so occurred, the petitioner promptly filed a representation on 4th February, 1993 with the department for recording his correct date of birth in the service book. However, nothing was done for years together and the date of birth of the petitioner remained as 1st March 1957.

5. As has been contended by the petitioner, since in all other record including the seniority lists prepared in the year 1984, and thereafter his date of birth was correctly recorded as 16th January, 1958 and as no such occasion arose which would have caused any adverse effect on the service career or future prospects of the petitioner because of wrong date of birth recorded in his service book, the petitioner did not that zealously pursued the representation submitted by him way back in the year 1993, seeking correction in his date of birth.

6. However, after waiting for a long period when nothing was communicated to him, the petitioner moved another application on 22nd September, 2009,requesting the respondents/authorities to record his correct date of birth in the service record. In the said representation the petitioner referred to his earlier representation dated 4th February, 1993 and also annexed the copy of the said representation along with his fresh representation. The petitioner also annexed with his representation ample documentary evidence evincing that his correct date of birth is 16th January, 1958. The petitioner mentioned in his representation that in his school record; SSC Certificate; Pan Card; Driving licence; Insurance Policies purchased by him, everywhere his date of birth has been recorded as 16th January, 1958. The petitioner has also contended in the said representation that in the seniority list prepared in the year 1984, his date of birth has been correctly mentioned as 16th January, 1958. The petitioner also provided a probable reason for wrong recording of his date of birth in the service record. The petitioner brought

to the notice of the respondents authorities that at the relevant time, he and one another officer viz. John Gaikwad were selected and given appointments on the same day. The petitioner also informed the respondents authorities that said John Gaikwad is born on 1st March, 1957 and while mentioning the date of birth in the service record of said Gaikwad and the present petitioner, the same date of birth has been recorded. It was pointed out by the petitioner that the said mistake had inadvertently occurred at the hands of the official, who has filled in the particulars in the service books of said John Gaikwad and the present petitioner.

7. In spite of providing all such information by the petitioner, his representation was rejected by the respondents authorities vide order dated 20.10.2011 on the ground that he did not make application within five years of his entering into the service. The petitioner was, therefore, constrained to file an Original Application No.734/2010 before the Maharashtra Administrative Tribunal (for short, the Tribunal) challenging the said order dated 20.10.2011.

8. As has been mentioned in the petition and as is appearing from the material on record, the respondents authorities in their affidavit in reply, submitted in the aforesaid Original Application No.734/2010, had accepted the fact that the petitioner had filed the representation for correction of his date of birth on 4.2.1993.

9. After having considered the material placed on record, the learned Tribunal was pleased to remand the matter to the Government, vide order passed on 20th October, 2011, directing the respondents authorities to take appropriate decision within the stipulated period.

10. The petitioner filed Writ Petition No.9492/2011 before this Court taking exception to the order of remand passed by the Tribunal. During pendency of the aforesaid writ petition, the department again rejected the petitioner's application/representation on 24.11.2011 for the same reason. The petitioner, therefore, made necessary amendment in the writ petition filed by him. The said writ petition was heard and disposed of by this Court on 13th July, 2012. This Court directed the Government to take a decision on the application submitted by the petitioner for correction in his date of birth by keeping in mind that in his entire

service record, his date of birth has been mentioned as 16th January, 1958.

11. The Government, however, again refused the request of the petitioner by communication dated 10th December, 2013 on the same ground that the application/representation filed by him was time barred. The petitioner was left with no other option except to file the Original Application before the Tribunal, challenging the said communication. Accordingly, the petitioner filed Original Application No.134/2014. The learned Tribunal partly allowed the said Original Application vide order passed on 28th November, 2014, whereby the respondents were directed to take a decision as regard recording the correct date of birth of the petitioner.

12. It is the contention of the petitioner that since he was to retire on 28th February, 2015 as per the date of birth wrongly recorded as 1.3.1957, he filed the present petition seeking a writ of mandamus against the respondents to record his correct date of birth in the service record as 16th January, 1958.

13. On 27th February, 2015, this Court has granted an interim relief in favour of the petitioner not to retire him from the services till the next date. The said interim relief has been thereafter continued from time to time.

14. During pendency of the present petition, as directed by the Tribunal, the respondents reconsidered the representation of the petitioner and again rejected the request of the petitioner on 16th December, 2015, stating the same ground that the petitioner did not file the application/representation for correction in his date of birth within the prescribed period of limitation. The petitioner has challenged the said order by filing a separate civil application in the present writ petition.

15. Smt. Jija Sampat Sane, working as Project Officer, Integrated Tribal Development Project, Aurangabad, has filed an affidavit in reply on behalf of Respondent Nos.1 and 2, wherein the respondents have reiterated their stand that the petitioner did not make the representation within five years from the date of entry in the service and, therefore, as per the provisions contained in Rule 2(a)(1) in Maharashtra Amendment No.MCS/1007/CR/7/ACR 61, dated 24th December,

2008, the representation of the petitioner has been rightly rejected.

16. The petitioner filed the affidavit in rejoinder to the affidavit in reply filed on behalf of Respondent Nos.1 and 2. Thereafter, the additional affidavit in reply came to be filed on behalf of Respondent Nos.1 and 2 through Smt. Jija Sane, the Project Officer. In the said affidavit in reply, the respondents have denied that the petitioner and John Gaikwad joined the services on one and the same day. It is clarified that the petitioner joined on 14th March, 1984; whereas Shri John Gaikwad joined on 19th March, 1984.

17. We have carefully considered the entire material on record. At the threshold, we wish to state that we are fully convinced that 16th January, 1958 is the correct date of birth of the petitioner and the same must have been record in his Service Book.

18. The petitioner has placed on record overwhelming evidence in support of his contention that his date of birth recorded as 1st March, 1957 in the service record is incorrect and his correct date of birth is 16th January, 1958. The material on record show that in the School Leaving Certificate as well as in S.C.C. Certificate, the petitioner's date of birth is recorded as 16th January, 1958. The Driving License, which has been issued by the RTO authorities in the name of the petitioner in the year 1993, the petitioner's date of birth is recorded as 16th January, 1958. In the PAN Card and the Birth Certificate issued by Pune Municipal Corporation also, the date of birth of the petitioner is shown as 16th January, 1958. In the insurance policy purchased by the petitioner in the year 1988, his date of birth is mentioned as 16th January, 1958. In the Seniority List published by the respondent department on 1st July, 1984, the date of birth of the petitioner is shown as 16th January, 1958 and his name is shown at Serial No.6 therein. The seniority lists as on 1st January, 1991 and 1st January, 1994 also show the date of birth of the petitioner as 16th January, 1958.

It is significant to note that the respondents, along with affidavit in reply, have filed a report submitted by the Deputy Secretary on the representation of the petitioner, seeking correction in his date of birth, which is at pages 197 to 200 of the paper book. The report clearly reveals that in the School Leaving Certificate and in SCC

Certificate of the petitioner, his date of birth is shown as 16th January, 1958. It has to be noted that the School Leaving Certificate is of the date 28th January, 1958; whereas the SSC certificate is of the date 16th May, 1976.

19. If the aforesaid documentary evidence is considered, there remains no doubt that the true and correct date of birth of the petitioner is 16th January, 1958. The petitioner has admittedly entered in Government Service in the year 1984. The aforesaid documents are of the period much prior to that. As such, no doubt can be raised as regards the genuineness of the said documents. There seems no reason to disbelieve these documents. Further, as has come on record and as we have mentioned earlier, in the PAN Card; Driving License; Insurance Policies, everywhere, the date of birth of the petitioner is mentioned as 16th January, 1958. We reiterate that the Driving License has been issued in the name of the petitioner in the year 1993; whereas the insurance policy was purchased by him in the year 1988. Moreover, as mentioned earlier, in the seniority lists published in the year 1984; 1988; 1991 and 1994, the date of birth of the petitioner is recorded as 16th January, 1958. In view of the evidence, as above, we have no hesitation in recording a conclusion that the true and correct date of birth of the petitioner is 16th January, 1958 and not 19th March, 1957.

20. Now, the next question arises whether the petitioner had submitted the applicant and/or representation to correct his date of birth in the service record within five years of his entering the service. This issue assumes vital importance for the reason that on this sole ground, the representations of the petitioner have been time and again rejected.

21. Admittedly, the petitioner has entered into the government service in the year 1984. As such, the application-representation submitted by the petitioner on 21.2.2009, apparently appears to have been filed beyond the period of limitation. However, it cannot be ignored that since beginning the petitioner has been stating that he had filed such application/representation firstly on 4.2.1993 and the same has not been decided by the respondents.

22. It has to be stated that in the reply affidavit filed by the respondents/authorities before the Tribunal in OA No.734/2010, the department has accepted that the

petitioner had filed such representation on 4.2.1993. Moreover, the petitioner has placed on record the copy of the said representation dated 4.2.1993, which bears an endorsement thereon, evidencing that the said representation was duly received in the office of the respondents. Thus, to determine the controversy whether the petitioner preferred the representation and/or application within the stipulated period, the material date would be 4.2.1993 and not 21.2.2009. Ostensibly, the application filed on 4.2.1993 also appears to be beyond the period of five years since the petitioner has entered into the services in the year 1984. However, the petitioner has provided the explanation in that regard also. As contended by the petitioner, when he entered the services, the service books of the Gazetted Officers used to be retained by the Accountant General of Maharashtra. It is the further specific case pleaded by the petitioner that the aforesaid practice was discontinued and the service books were transferred to the parent departments from 1991 onwards. The aforesaid facts, which have been stated by the petitioner in the present petition and which were also stated by him in the Original Applications filed before the Tribunal, have not been denied or disputed by the respondents/authorities. Thus, till 1991, the petitioner was not having any access to his service book and, therefore, was not having knowledge as to which date has been recorded in his service book as his date of birth.

23. The service book was presented before us for our perusal. We have carefully perused 1st page of the said service book, which demonstrates that the particulars therein were filled in under the signature of the Project Officer, Integrated Tribal Development Project, Taloda on 12th April, 1991. The entry so made also shows that the date of birth recorded as 1.3.1957 was recorded as per the service record obtained from the office of Accountant General. It is thus quite clear that the representation by the petitioner to record his correct date of birth was preferred within five years of 12.04.1991, on which the date of birth has been recorded as 01.03.1957 in the service book of the petitioner. The period of five years will have to be computed from the year 1991, since prior to that, neither the petitioner, nor any of the officers in the Integrated Tribal Development Project was having any access or control over the service book which were admittedly in custody and control of the office of the Accountant General. The application submitted by the petitioner on 04.02.1993 was thus well within the prescribed period of the

limitation.

24. As noted above, the respondents have accepted that, such application was submitted by the petitioner on 4.2.1993. The burden, therefore, was on the respondents to explain as to why the said representation was not decided by them. When the respondents have not decided the said representation and kept the said representation pending for years together, no blame can be attributed on the part of the petitioner. Neither in the proceeding before the Tribunal, nor in the writ petitions filed by the petitioner before this Court, the respondents have provided any explanation as to why the representation filed by the petitioner way back in the year 1993 remained undecided.

25. In the above circumstances, the respondents are estopped from raising a plea that the petitioner did not file the representation seeking correction in his date of birth within the prescribed period. It is really disgusting that, even after the petitioner had brought all the aforesaid facts to the notice of the respondent authorities and submitted all relevant documents in support of his claim, the respondent authorities, have time and again blindly rejected his request on the same ground that, he did not submit the application within the period of five years. It demonstrates utter non application of mind and lack of sensitiveness on the part of the concerned Government officials.

26. We express our serious concern over the casual and callous approach of the respondents authorities who have rejected the application of the petitioner after passing of the order by this Court on 13.07.2012 in writ petition No.9492/2011. Vide the said order, this Court had cast a burden on the respondents authorities to find out as to on what basis the date of birth of the petitioner was recorded in the service book as 01.03.1957. This Court had also indicated the respondents to find out whether it was an error on the part of the department. It seems that, the officer, who has subsequently considered the representation of the petitioner and rejected the same, did not bother to adhere to the observations and directions given by this court in order dated 13.07.2012 in writ petition No.9422/2011 and had mechanically passed the order thereby again rejecting the request of the petitioner.

27. In order dated 16th December, 2015, whereby the respondents have lastly rejected the request of the petitioner to correct his date of birth in his service record, reference is given of Section 2(a)(1) of the Government Notification dated 24th December, 2008, whereby the Maharashtra Civil Services (General Conditions of Service) Rules, came to be amended. The said Rule 2(a) (1), reads thus, -

"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."

28. We have elaborately discussed herein above as to how the representation/application submitted by the petitioner was within period of five years of his entering into the service. We need not to repeat the entire said discussion. Vide the Notification dated 24th December, 2008, the aforesaid amendment was made in Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Said Rule 38 lays down the procedure for, "Writing the events and recording the date of birth in the service book of a Government servant." Sub-clause (2) of the said Rule specifically deals with the recording of the date of birth and prescribes the procedure to be followed. We deem it appropriate to reproduce herein below the said Rule 38(2).

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

(1) .....

(2) While recording the date of birth, the following procedure should be followed::::

(a) The date of birth should be verified with reference to documentary evidence and a certificate recorded to that effect stating the nature of the document relied on;

(b) In the case of a Government servant the year of whose birth is known but not the date, the 1st July should be treated as the date of birth;

(c) When both the year and the month of birth are known but not the exact date, the 16th of the month should be treated as the date of birth;

(d) In the case of a Government servant who is only able to state his approximate age and who appears to the attesting authority to be of that age, the date of birth should be assumed to be the corresponding date after deducting the number of years representing his age from his date of appointment;

(e) When the date, month and year of birth of a Government servant are not known, and he is unable to state his approximate age, the age by appearance as stated in the medical certificate of fitness, in the form prescribed in rule 12 should be taken as correct, he being assumed to have completed that age on the date the certificate is given, and his date of birth deduced accordingly;

(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.;"

29. From the aforesaid Rule, it is quite evident that 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 book 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 the service book, no alteration of the entry should thereafter 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.

30. The order passed by this Court on 13.7.2012 in Writ Petition No.9492/2011 was in view of the aforesaid provision. In the said order, this Court had directed the respondents/authorities to find out whether it was an error on the part of the department which has resulted in incorrect recording the date of birth of the petitioner or otherwise. However, as we have noted earlier, the respondents/authorities have ignored the said directions and have again rejected the request of the petitioner on the same ground. The petitioner was consistent throughout in his submission that his date of birth was incorrectly recorded in the service book because of some inadvertent mistake on the part of the concerned employee, who has taken the said entry in his service book. As we have stated above, Rule 38 casts an obligation upon the department to correctly record the date of birth of an employee in the service book and while recording the date of birth, the prescribed procedure has to be followed. We have also reproduced herein above the procedure to be followed. Clause 2(a) of Rule 38 specifically provides that the date of birth should be verified with reference to the documentary evidence and the certificate recorded to that effect stating the nature of the document relied on.

31. In the instant case, the perusal of the petitioner's service book reveals that his date of birth as 1.3.1957 has been recorded as per the service record obtained from the Accountant General. However, though several rounds of litigation in this regard had taken place, in none of the said proceedings, the respondents/authorities have provided any explanation as to relying on which document, the date of birth of the petitioner was recorded as 1.3.1957 and which were the said documents verified by the department while recording the date of birth in the service book of the petitioner.

32. We have mentioned earlier that the School Leaving certificate and SSC certificate are the documents, which are primarily relied upon for verifying the date of birth. In both these documents, the date of birth of the petitioner is recorded as 16th January, 1958. The respondents have not brought on record any evidence to show that the date of birth, as recorded in the service book, was on the basis of any documentary evidence or the certificate provided by the petitioner. The only inference, therefore, emerges that incorrect entry as regards to the date of birth in

the service book of the petitioner was not due to any mistake on the part of the petitioner, but due to want of care on the part of some other person, who was entrusted with the duty to take such entry at the relevant time and it obviously appears to be an inadvertent clerical error.

33. The petitioner since beginning has been saying that he and one John Gaikwad were selected at a time and 1.3.1957 is the date of birth of said John Gaikwad. There is every reason to believe that the concerned employee inadvertently or for want of care on his part, recorded the same date of birth in the service book of John Gaikwad and the present petitioner. In absence of any evidence that the date of birth, as recorded in the service book of the petitioner, has been recorded on the instructions of the petitioner or on the basis of any document or certificate produced record by the petitioner, it has to be held that same has been incorrectly recorded due to want of care on the part of some person other than the petitioner. In the circumstances, the respondents must have accepted the request of the petitioner and ought to have corrected the date of birth in the service book of the petitioner on the basis of overwhelming documentary evidence produced by the petitioner evidencing his date of birth as 16th January, 1958. The following instruction,

"(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."

relying on which the respondents have repeatedly rejected the request of the petitioner, in fact, cannot be made applicable to the case of the petitioner. The aforesaid instruction cannot be isolatedly read. It has to be conjointly red with Rule 38(2)(f), which reads thus, -

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.;"

34. In view of the Rule quoted as above, the excuse for not considering the request of the petitioner in respect of correcting his date of birth would not be available to the State Government. Even otherwise, in peculiar facts and circumstances of this case, there were lapses on the part of the Stat Government in recording the correct date of birth and making changes in the record in respect of the date of birth of the petitioner behind his back and as such, the State Government needs to be directed to correct the record.

35. After having considered the entire material on record, we have reached to the conclusion that the incorrect date of birth was recorded in the service book of the petitioner without any fault on his part, but due to want of care on the part of some other person and though the petitioner has submitted the representation for correction of the said date of birth within the stipulated period of five years, his date of birth was not corrected and his applications/representations were repeatedly rejected on erroneous and unsustainable grounds and the petitioner was unnecessarily harassed.

36. It is brought to our notice by the learned counsel appearing for the petitioner that though there was an interim order passed by this Court in favour of the petitioner not to retire him until further orders, the respondents have not paid the salary to the petitioner of the period of about 12 months during which the petitioner has worked throughout and duly discharged his duties. We see no reason for not paying the salary to the petitioner when he has worked in the relevant period and discharged his duties cast on him. The learned Counsel has further brought to our notice that the petitioner has stopped attending the duties w.e.f. 31st January, 2016 after he attained the age of superannuation as per his date of birth as 16th January, 1958. There appears substance in the allegation made by the petitioner that only because the petitioner is fighting for his rights and getting them established through the courts, he is being victimized and put to harassment.

37. After having considered the facts of the present case, which we have noted down in detail in the earlier part of the judgment, we find that the petitioner was unnecessarily harassed and subjected to approach the Tribunal as well as this court though his request for carrying out correction in his date of birth wrongly

recorded in the Service Book, was liable to be considered at the very first instance having regard to the overwhelming evidence given by the petitioner in order to support his contention that his true and correct date of birth was 16th January, 1958 and the date 1.3.1957 as recorded in the Service Book was due to want of care on the part of the concerned official, who has recorded the same. In the circumstances, we deem it appropriate to award Rs.25,000/- to the petitioner by way of costs.

38. In the result, the following order, -

ORDER

i) The respondents are directed to record date of birth of the petitioner in the service book and in all other service record as 16th January, 1958 by correcting the previous record showing the date of birth of the petitioner as 1.3.1957;

ii) The petitioner shall be considered to have retired on attaining the age of superannuation w.e.f. 31st January, 2016. The respondents are directed to compute the pension and other terminal benefits receivable by the petitioner, treating the date of superannuation of the petitioner as 16th January, 2016 and he shall be paid the pensionary benefits as expeditiously as possible and preferably within a period of six months from today. The respondents are further directed to pay to the petitioner the arrears of salary within a period of six weeks from today ;

iii) The respondents do pay Rs.25,000/- to the petitioner by way of costs of the present petition.

38. Rule is made absolute in the aforesaid terms. Pending Civil Applications, if any, stand disposed of. Contempt Petition stands disposed of. Contempt Notice discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com