



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 763 OF 2021**

Prakash Narayanrao Thakare, aged about 58 years,  
Occu-Retired Supervisor, Sonaji Maharaj High School,  
Sonala, Tq.Sangrampur, Dist. Buldana, R/o Sonala,  
Tq. Sangrampur, District Buldana.

**PETITIONER**

**VERSUS**

1. Sonaji Maharaj Education Society, Sonala,  
Tq.Sangrampur, Distt.Buldana, Through four  
Members of Executive Committee.
  - a. Prabhakar Namdeo Tapre. **(DELETED)**
  - b. Ramchandra Mahadeo Malokar, Age 75,  
At Bawanbir, Tq.Sangrampur, Distt. Buldana.
  - c. Shrikrushna Jagdeo Thakare, Age 81, at Post  
Sonala, Tq.Sangrampur, Distt. Buldana.
  - d. Prabhakar Yashwant Wakde, Age 67,  
C/o Gajanan Sankul, Bharat Vidyalaya,  
Tapdiya Road, Akola.
2. The Headmaster, Sonaji Maharaj High School,  
Sonala, Tq.Sangrampur, Distt. Buldana.
3. Education Officer (Secondary), Zilla Parishad  
Buldana, Tq. and Distt. Buldana.
4. Presiding Officer, School Tribunal, Amravati  
Division, Amravati.

**RESPONDENTS**

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Shri R.L. Khapre, Senior Advocate with Shri Abhishek Shukla, Counsel for the  
petitioner.

Shri S.V. Deshmukh, Counsel for the respondent no.1.

Shri R.M. Tahaliyani, Counsel for the respondent no.2.

Mrs.M.S. Naik, Assistant Government Pleader for the respondent nos.3 and 4.

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**CORAM : PRAFULLA S. KHUBALKAR, J.**

**DATE ON WHICH ARGUMENTS WERE HEARD : AUGUST 13, 2025**

**DATE ON WHICH JUDGMENT IS PRONOUNCWED: OCTOBER 16, 2025**

**JUDGMENT**

**RULE.** Rule is made returnable forthwith and heard finally with  
consent of the counsel for the parties.

2. Impugned in the petition is the judgment and order dated 03.11.2020 passed by the School Tribunal, Amravati (for short, 'the Tribunal') in Appeal No.20 of 2018 by which the appeal filed by the petitioner came to be dismissed by holding that his date of birth would be considered as 15.09.1960 for the purpose of determining his pensionary benefits by discarding his date of birth as 01.10.1962 which was although recorded in his service book.

3. The facts giving rise to the instant petition are succinctly put below:-

(i) The petitioner was appointed as an assistant teacher on 17.03.1989 and at the time of his entry in the Service, his date of birth was recorded as 01.10.1962 on the basis of a Kotwal book entry and his affidavit dated 29.12.1983.

(ii) After rendering service of about 29 years, in the year 2018, the Respondent No.3-Education Officer served a copy of communication dated 27.03.2018 addressed to the Headmaster of the school on the petitioner thereby informing that the petitioner's date of birth is confirmed and approved as 15.09.1960.

(iii) Feeling aggrieved by this letter, by terming this communication as a notice of retirement, the petitioner filed appeal before the Tribunal bearing Appeal No.20 of 2018.

(iv) The Respondent No.1-Management appeared before the Tribunal and raised a preliminary objection about maintainability of the appeal alleging that the appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service), Act, 1977 (for short, 'the Act of

1977') was not maintainable since there was no challenge to any kind of order of dismissal or removal or otherwise termination.

(v) By order dated 11.09.2018, the Tribunal upheld the preliminary objection and dismissed the appeal filed by the petitioner.

(vi) The petitioner challenged the aforesaid order before this Court *vide* Writ Petition No.6189 of 2018 contending therein that the impugned communication amounts to otherwise termination of the petitioner and hence the appeal was maintainable.

(vii) By order dated 03.04.2019, this Court allowed the petition holding, thereby, that the communication issued by the Education Officer which was subject matter of challenge in the appeal was a decision of the Management and resultantly held that the appeal was maintainable.

(viii) During the pendency of aforesaid writ petition, the petitioner had continued to work and after the matter was reminded back to the Tribunal, the petitioner remained in service and during pendency of the appeal, the petitioner retired from service on 01.10.2020 on attaining the age of superannuation.

(ix) The petitioner was paid with regular salary for the period for which he had worked. Since the impugned communication has the effect to retire the petitioner on 30.09.2018 by considering his date of birth as 15.09.1960, prejudicially affecting his entitlement for the pensionary benefits, the appeal was contested by both the parties.

(x) On 03.11.2020, the Tribunal passed the final judgment and dismissed the appeal.

(xi) The petitioner has challenged the said judgment of the Tribunal by the instant writ petition.

4. Shri R.L. Khapre, learned Senior Advocate strenuously submitted that the petitioner's date of birth is recorded in the service book as 01.10.1962 on the basis of extract of the birth register maintained by the Kotwal and affidavit of the petitioner. He submitted that the said entry was verified by the competent authority and countersigned by the concerned headmaster and maintained for 29 years after the petitioner entered service and therefore in absence of change/cancellation of the said entry, the respondent no.3-Education Officer could not have unilaterally changed the same at the fag end of his service without affording an opportunity of hearing to the petitioner. He submitted that in view of the controversy raised by the Head master by letter dated 17.02.2018, calling upon the petitioner to submit his explanation, the petitioner has submitted his explanation dated 22.02.2018 and clarified the position that the entry of date of birth was made on the basis of entry in the Kotwal book. As regards confusion about name of the petitioner, he had given explanation that his birth name is Ramchandra and his name for official purposes is Prakash. On the basis of this explanation, it was submitted that the petitioner's date of birth was rightly recorded as 01.10.1962 on the basis of Kotwal book entry and it cannot be changed after five years of his entry in the service. As such, he submitted that the decision of the Education Officer to change the petitioner's date of birth is unsustainable being without any notice and opportunity.

5. Adverting my attention to Rule 11 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, he submitted that the headmaster is the only authority for verification of entries in the service book relating to date of birth, qualification, etc. and the rule requires the headmaster to personally verify the entries. He therefore submitted that the entry of date of birth as recorded in the service book was personally verified by the then headmaster and the same cannot be questioned after the petitioner has put in about thirty years of service. He also relied upon provision contained in Annexure 53 of the Secondary School Code to contend that once the entries of date of birth are made in service book, no alteration is allowed, except for reasons mentioned in the said provision and in absence of any cogent reasons, the change in date of birth made unilaterally is arbitrary and illegal. He also relied upon the provisions of Rule 38 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 and submitted that even the procedure akin to the procedure for change in date of birth of a Government servant is not followed at all.

In support of his contentions, learned counsel for petitioner relied upon the following case laws:-

- a. *Shankar Lal Versus Hindustan Copper Limited & Others* [(2022) 6 SCC 211].
- b. *Tata Memorial Centre Versus Tata Memorial Hospital Kamgar Sanghatana & Others* [2006(6) Bom.C.R. 887].
- c. *Dominic Fernandes Versus Voltas Limited* [2007(5) Bom.C.R.392].
- d. *Man Singh Versus State of Uttar Pradesh Through Secretary & Others* [2022 SCC OnLine SC 726].

6. Per contra, Shri S.V. Deshmukh learned counsel for the respondent No.1-Management vehemently opposed the petition and submitted that the petitioner cannot be entitled to claim benefits on the basis of wrong date of birth. He submitted that the petitioner's appointment on the basis of wrong date of birth is a fraud on his part and the petition deserves to be dismissed since he has not approached the Court with clean hands. The date of birth of petitioner is recorded in the service book on the basis of Kotwal book entry, which is with respect to birth of a person by name Ramchandra and not the petitioner. Further, the entry is based primarily on the basis of affidavit of the petitioner and in absence of any other credible evidence, the entry in the service book cannot be held to be conclusive. The petitioner has suppressed material facts and he is trying to take advantage of his own wrong. The petitioner's real date of birth is mentioned in the Secondary School Certificate and the transfer certificate as 15.09.1960. He submitted that he Education Officer has given due consideration to all the relevant documents and has rightly inferred that the petitioner's actual date of birth is 15.09.1960. In view of 'Note' appended to Schedule-E and Rule 11 of the Rules of 1981, the entry with respect to date of birth in the service book was required to be renewed after every five years and in absence of any such renewal, the same cannot be considered to be conclusive. He submitted that the instant writ petition is not maintainable in view of the disputed questions of fact as to the actual date of birth and actual name of the petitioner. In support of his contentions, learned counsel for respondent no.1 has relied upon following case laws:-

- i. *Ramchandra Keshavrao Deo Versus Presiding Officer, School Tribunal, Nagpur & Others* [2006(2) Mh.L.J. 862].
- ii. *Mahadeo Pandurang More & Others Versus State of Maharashtra & Others* [2014(5) Mh.L.J. 877].
- iii. *Haryana Financial Corporation & Another Versus Kailash Chandra Ahuja* [(2008) 9 SCC 31].
- iv. *Aligarh Muslim University & Others Versus Mansoor Ali Khan* [(2000) 7 SCC 529].

7. Shri R.M. Tahaliyani, learned counsel for the respondent no.2-Headmaster and Mrs.M.S. Naik, learned Assistant Government Pleader for the respondent nos.3 and 4 also supported the arguments advanced by Shri S.V. Deshmukh, learned counsel for the respondent no.1.

8. In the backdrop of the above abovementioned submissions, rival contentions fall for my consideration. The controversy involved in the instant petition revolves around the issue as to whether the petitioner's date of birth is 15.09.1960 as alleged by the Management or it is 01.10.1962 as recorded in his service book as per entry in the Kotwal Book on the basis of which, the petitioner has rendered his services till his superannuation. Although the petitioner has retired during pendency of the appeal, the decision of the aforesaid issue became imperative so as to determine the entitlement of the petitioner to pensionary benefits.

9. Before dealing with the controversy, it is necessary to note some undisputed facts. The petitioner was appointed as a trained graduate teacher on 17.03.1989 against a clear vacancy and on completion of his

probation, he was confirmed in the service. The appointment of petitioner was also approved by the Educational Officer (Secondary). The petitioner's date of birth was mentioned in the service book as 01.10.1962 with an endorsement and signature of the Headmaster. The petitioner has retired on 01.10.2020 on attaining the age of superannuation. The regular salary of the petitioner for the period for which he had worked is already paid. However, the claim for pensionary benefits is in dispute with respect to the period of two years on account of controversy of his date of birth.

10. It has to be seen that the petitioner's date of birth as recorded in the service book is 01.10.1962 with a specific endorsement of the Headmaster that the entry is made on the basis of entry of birth in the Kotwal register and affidavit dated 29.12.1983. This entry in the service book is not canceled throughout the period of 29 years. It is the petitioner's case that the controversy with respect to his date of birth had begun because of the disputes in the Management since one group wanted to remove the petitioner from services and therefore racked up the controversy by letter dated 17.02.2018. The petitioner submitted his reply dated 22.02.2018 stating therein that his birth name was Ramchandra and his name for official purposes is Prakash and that his date of birth is 01.10.1962. In the same explanation he has also stated that this correction is also published in the official Government Gazette. After these communications were exchanged in between the petitioner and the Management, the Headmaster had issued a letter dated 15.03.2018 to the Education Officer suggesting correction in the petitioner's date of birth on the basis of some documents.

It appears that the Education Officer thereafter arrived at a conclusion to confirm the change of date of birth by communication dated 27.03.2018, which was issued on 05.04.2018. The said communication was subjected to challenge before the School Tribunal. As such, while taking the crucial decision about changing the date of birth of the petitioner by the Education Officer, the same was done at the fag end of service of the petitioner and that too without issuing him any notice and any opportunity of hearing. Since the decision to change the date of birth at the fag end of service of an employee entails serious consequences, mere issuance of letter dated 17.02.2018 by the Headmaster, cannot be termed as notice before the final decision of the Education Officer. Further, no reasons are mentioned in the impugned communication to discard the explanation submitted by the petitioner by his reply dated 22.02.2018. As such, the decision taken by the education officer to change the date of birth of the petitioner is a unilateral decision.

11. Pertinently, the petitioner's date of birth is recorded in the service book as 01.10.1962 and the same is verified by the then Headmaster on the basis of an entry of extract of Kotwal book and the affidavit submitted by the petitioner. Rule 11 of the Rules of 1981 requires the Headmaster to put a remark that the entries are made on verification of the original documents. Since the said remark is reflected in the service book, it cannot be now discarded without there being further endorsement for change in the date of birth.

12. Although respondents have made serious allegations of fraud being committed by the petitioner by mentioning wrong date of birth, it is crucial to note that there is nothing on record to establish the fraud. There is no material to show the steps taken by the Management to confront him about the aforesaid discrepancy and to correct the date of birth within five years of the petitioner's entry in the service. It is pertinent to note that although the date of birth of the petitioner is mentioned in the Secondary School Certificate and transfer certificate as 15.09.1960, there is no explanation from the petitioner in this regard. Further, the affidavit dated 22.08.2014 submitted by the petitioner depicts contrary stand with the earlier affidavit of the year 1983 about his birth name. However, this cannot be considered as fraud on the part of the petitioner and cannot authorize the Education Officer to take a unilateral decision to change his date of birth without offering him an opportunity of hearing and depriving him of the pensionary benefits to that extent. Pertinently, there is no enquiry initiated against the petitioner alleging any misconduct or fraud. It is also crucial to note that the Management has allowed the petitioner to render services for about 29 years by maintaining his date of birth as 01.10.1962, without any challenge being raised to the same. Apart from this, by virtue of an interim order passed by this Court in the petition dismissing the preliminary objection, the petitioner has worked till his superannuation, considering the date of birth as mentioned in the service book. Thus, the discrepancy pointed out by the Management cannot outweigh the equitable considerations and deprive the petitioner of retiral benefits for the disputed period of two years

considering the fact that the petitioner has actually worked for the said period.

As regards Rule 11 of the Rules of 1981 coupled with requirement to review the entry as per 'Note' appended to Annexure 53, it has to be noted that nothing prevented the Management from reviewing the entry after every five years. It is not the case of the Management that the petitioner in any way prohibited them from reviewing the entry. Thus, the Management is not entitled to take advantage of absence of periodic review of the said entry.

13. Let us now deal with the case laws relied upon by the counsel for the respective parties. To buttress his contentions, Shri R.L. Khapre, learned Senior Advocate for the petitioner placed reliance of the judgments delivered by Single Bench of this Court in *Tata Memorial Centre* (supra) and *Dominic Fernandes* (supra) and submitted that a unilateral change in date of birth of an employee involves civil consequences and the change must be made in conformity with rules of natural justice which at its lowest minimum mandates prior notice and opportunity of hearing to the person affected thereby.

14. In the wake of controversy involved which is related to unilateral decision of the Education Officer to change the date of birth of the petitioner at the fag end of his service, it is beneficial to make a reference to the authoritative pronouncement of the Hon'ble Supreme Court in *Shankar Lal* (supra) laying down the position about legality of unilateral change in date of birth. While dealing with an identical controversy about

unilateral change in date of birth of an employee, the Hon'ble Supreme Court has observed in paragraphs 27 and 28 as under:-

*“27. We find the action of the employer lacking in authority of law in this case on two counts. First, it fails for not adhering to the principles of natural justice. The decision not to follow the service book record was taken without giving an opportunity of hearing to the appellant. The opportunity of hearing of the appellant also accrued because the employer themselves had proceeded on the basis that the later date i.e. 21-9-1949 was the birth date of the appellant and this was a long established position. Moreover, since in the own records of the employer two dates were shown, under normal circumstances it would have been incumbent on their part to undertake an exercise on application of mind to determine in which of these two records the mistake had crept in. That process would also have had to involve participation of the appellant, which would have been compatible with the principles of natural justice.*

*28. There are several authorities in which this Court has deprecated the practice on the part of the employees at the fag end of their career to dispute the records pertaining to their dates of birth that would have the effect of extension of the length of their service. We are not referring to those authorities in this judgment as the ratio laid down on that count by this Court is not relevant for adjudication of this appeal.”*

As such, though the Management had relied upon the affidavits submitted by the petitioner and raised the issue of lack of explanation about the date of birth recorded in the Secondary School Certificate, the fact remains that the decision taken by the Education Officer to change the date of birth is at the fag end of service of the petitioner and without issuing prior notice and affording an opportunity of hearing to him.

15. The learned counsel for the contesting respondents have vehemently submitted that the petitioner has failed to prove any de-facto

prejudice and only allegation about breach of principles of natural justice is not enough if the compliance of the same is a useless formality. By placing heavy reliance on the judgments of Hon'ble Supreme Court in *Aligarh Muslim University & Others* and *Haryana Financial Corporation & Another* (supra), the learned counsel for the respondent no.1 submitted that in absence of any prejudice being shown to have been caused to the petitioner, his contentions are baseless. By inviting attention to various paragraphs from these judgments, he submitted that in addition to breach of natural justice, the employee has also to prove that prejudice was caused to him. He submitted that in absence of any prejudice, issue of notice and affording any opportunity of hearing would have been a useless formality.

16. The position of law as laid down in the judgments relied upon by the respondents is not disputed. However, in the facts of the instant case, I am of the opinion that unilateral change in the date of birth of the petitioner and declaring him to have retired notionally prior to two years would definitely cause serious prejudice to his rights. Apart from the fact of substantial monetary loss on account of reduction in grant of pensionary benefits, the petitioner would be required to carry allegation of having committed a fraud, in case the challenge to the impugned communication is not allowed to be raised. As such the concept of useless formality as argued by the counsel for respondent is of no assistance in this situation.

17. As regards the issue of applicability of provisions of Secondary School Code, learned counsel for the respondent no.1 submitted that as far as conditions of service of assistant teachers are concerned, the same are governed by the Act of 1977 and the Rules of 1981 framed thereunder. In support of these submissions, he relied upon the judgment in *Mahadeo* (supra). The position of law laid down by this judgment is not disputed. Since the controversy involved in this matter is about unilateral change of date of birth, which issue is dealt with, in the judgment of the Hon'ble Supreme Court in *Shankar Lal* (supra), the judgment in *Mahadeo* (supra) relied upon by the respondents is of no assistance.

18. Depriving an employee of pensionary benefits by reducing or altering his qualifying period of service entails serious civil consequences and results in substantial prejudice to the employee concerned. It is fairly settled position of law that pension is not a matter of charity or discretion, it is a legal right to which the employee is entitled on account of his long and dedicated service. Any unilateral decision that adversely impacts an employee's entitlement to such benefits must necessarily comply with the principles of natural justice. Failure to do so not only causes hardship to the employee but also violates his fundamental rights. Such a unilateral decision without affording a fair opportunity of hearing is illegal and unconstitutional.

19. Although the parties have contested the instant proceedings tooth and nail, it has to be seen that the petitioner has rendered his

services till his superannuation by virtue of interim orders passed by this Court and he has been paid with regular salary. As such the controversy remains with respect to the determination of period of service for the purpose of his pensionary benefits. Thus, the fact situation demands that a pragmatic approach needs to be adopted to meet the ends of justice.

20. Since the controversy about change in date of birth of the petitioner was started by the Management at the fag end of his service and the same is concluded on the basis of a unilateral decision of the Education Officer, I am of the considered view that the petitioner could not be deprived of his pensionary benefits for the said period in absence of any proof of fraud. From the reasons recorded while dismissing the appeal, it appears that the Tribunal has appreciated the documents of Secondary School Certificate and transfer certificate and only on the basis of alleged contradictory stand taken by the petitioner, the inferences are drawn. However, the Tribunal had ignored the crucial aspect about the decision of the Education Officer, being unilateral and behind the back of the petitioner. Therefore, the judgment of the Tribunal is not sustainable.

21. On overall consideration of the factual and legal aspects, I am of the firm opinion that the situation demands indulgence under Article 227 of the Constitution of India. The instant petition succeeds. Hence, following order is passed:-

I. The Writ Petition is allowed.

- II. The judgment of the School Tribunal, Amaravati dated 03.11.2020 in Appeal no.20 of 2018 is quashed and set aside. Consequently, the letter dated 27.03.2018, which was forwarded on 05.04.2018, impugned in the appeal before the School Tribunal is also quashed and set aside.
- III. The petitioner is entitled for retirement and pensionary benefits by considering his date of birth as 01.10.1962.
22. Rule is made absolute in the aforesaid terms. The writ petition stands disposed of with no order as to costs.

**(PRAFULLA S. KHUBALKAR, J.)**