



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

WRIT PETITION NO. 3071 OF 2019

Bhimrao S/o Sadashiv Bhagat,
Aged - 55 years, Occupation - Retired,
R/o. Abbas-lay-out, Ward No.-3,
NalWadi, Near Priyadarshini College,
Wardha – 442001.

.... **PETITIONER**

// VERSUS //

1) The Wardha District Central
Co-operative Bank Limited,
Opposite Railway Station,
Wardha-442001, through
Chief Executive Officer,
(Administration)

2) District Deputy Registrar,
Co-operative Societies, Wardha.

.... **RESPONDENTS**

Mr. Masood Shareef, Advocate for the petitioner.
Mr. S.K. Bhoyar, Advocate for the respondent No.1.
Mr. A.A. Madiwale, Assistant Government Pleader for
respondent No.2.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ

Date when arguments were heard : 27.07.2023.

Date when the judgment was pronounced : 25.08.2023.

JUDGMENT : PER VRUSHALI V. JOSHI, J.

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The petitioner has preferred this Petition to grant the retirement benefits in accordance with by-laws of the Society considering the change in date of birth.

3. The petitioner was appointed initially on the post of 'Clerk' and joined his service on 01.07.1989. The respondent No.1 is Banking Society and the employer of the petitioner. Actual date of birth of the petitioner is 06.12.1963. As per this date of birth his date of retirement is 05.12.2021. However, the date of birth recorded in record of the Bank, at the time of joining the service, was 20.08.1960 and as per the said date of birth, the date of retirement of the petitioner is 19.08.2018.

4. After joining the service, the petitioner realised that his date of birth in the record of the Bank is recorded as 20.08.1960 therefore, immediately vide letter dated 28.01.1991, he requested the Manager of the Wardha District Central Co-operative Bank, Dahegaon Branch, District Wardha to make the change in the service record, which is within five years of his service as per the provision of law. The petitioner informed the Bank that as per the record of the Collector Office, his actual date of birth is 06.12.1963. He issued reminder dated 25.09.1992, but no action was taken. In support of

his contention, he has provided the certified copy of the birth entry shown in the record of the Collector Office of Wardha District showing his date of birth as 06.12.1963, he has also produced the Maharashtra Government Gazette dated 08.04.1999 showing change in his date of birth and also submitted the affidavit.

5. The Auditor has also informed the Bank about this letter and the Gazette publication in the objection raised in Audit Report of the Financial Year ended on 31.03.1999. In response to the Audit objection, the Manager of the Dahegaon Branch of the respondent No.1 Bank has submitted a compliance report and thereby informed to the petitioner that the documents for the change in date of birth are forwarded to the Head Office and the issue is pending with the Head Office.

6. Instead of making change in the service record, vide it's letter dated 11.02.2006, the Assistant Manager (Administration), Wardha District Central Co-operative Bank Limited informed the petitioner that in view of legal opinion, order of the competent Court regarding the change in the date of birth is required to take action regarding the issue. According to petitioner, there was no reason to refuse the Government record like birth entries made by the

Collector Office and the publication in the Maharashtra Government Gazette.

7. The petitioner approached the Chief Judicial Magistrate, Wardha and moved an application for direction to the Gram Panchayat for taking entry of his date of birth i.e. 06.12.1963, in the Birth Record of the Gram Panchayat, Karanji (Bhoge), District Wardha to issue birth certificate to the petitioner under Section 13(3) of the Maharashtra Birth and Death Registration Act, 1969 and under Rule 9(3) of the Maharashtra Birth and Death Registration Rules, 2000. The Chief Judicial Magistrate, Wardha allowed the Miscellaneous Criminal Application No.305/2015 and thereby directed the Registration Office of Gram Panchayat Karanji (Bhoge), District Wardha to make entry of the date of birth of the petitioner in the record of the Gram Panchayat as 06.12.1963. Accordingly, the Gram Panchayat has also made entries in its record and issued a Birth Certificate dated 27.03.2017 showing date of birth as 06.12.1963.

8. In the meanwhile, as the petitioner was in need of money to resolve his financial problems has applied for voluntary retirement. The application of the petitioner was accepted by the

respondent No.1 Bank vide Resolution dated 01.12.2016 and it was informed to the petitioner vide letter dated 16.12.2016 that he is being discharged from the service w.e.f. 31.12.2016.

9. After the judgment and order dated 27.02.2017 in Miscellaneous Criminal Application No. 305/2015, the petitioner requested the Chief Executive Officer of the Bank to grant the retirement benefits according to date of birth as 06.12.1963. In response to the representation dated 31.10.2017, the respondent No.1 informed the petitioner that since the petitioner has obtained the voluntary retirement, the change in date of birth cannot be made. Vide order dated 16.12.2017, the respondent No.1 paid the retirement benefits to the petitioner by considering the date of birth as 20.08.1960.

10. He has further stated that since the grievance of the petitioner was not redressed, the petitioner through his Counsel gave a Legal Notice to the Chief Executive Officer of the Bank and informed the respondent No.1 to make the necessary changes in the official record pertaining to the date of birth of petitioner and considering the consequential extended service of the petitioner and the revised calculation of retirement benefits, the petitioner is

entitled to receive of Rs.8,41,428/-. As against Rs.8,41,428/-, the respondent No.1 has paid only Rs.2,96,098/- to the petitioner.

11. In response to the legal notice, it was informed that the petitioner is rightly paid the amount of Rs.2,96,098/- considering his date of birth as 20.08.1960. It was further informed that the petitioner has retired voluntarily in the year 2016 and later on, vide letter dated 31.01.2018, submitted his claim for additional benefits alleging the date of birth as 06.12.1963. The petitioner is entitled for retirement benefits of Rs.5,45,314/- and he has claimed the interest on such payment from the date, the amount is due to the petitioner.

12. The respondent opposed the petition stating that the respondent Bank had floated a Voluntary Retirement Scheme for its employees and the terms and conditions of the said Scheme are binding upon the petitioner. The petitioner has applied to the bank for voluntary retirement on 18.10.2016 and had given an undertaking on the Stamp-paper of Rs.100/- thereby has agreed to the terms and conditions of the said Scheme. The petitioner was relieved from the employment of the Bank on 31.12.2016.

13. Thus, from 01.01.2017, the petitioner does not remain as the employee of the respondent Bank. The petitioner has no locus thereafter to apply to the respondent Bank for consideration of his request for change in his date of birth as per the decision of the order passed by the Chief Judicial Magistrate in Miscellaneous Criminal Application No.305/2015.

14. The petitioner had applied to the respondent Bank for change in the date of birth on the basis of various documents as stated by him in the petition. The respondent Bank vide communication dated 11.02.2006 asked the petitioner to obtain the necessary order from the competent Court to that effect. However, since then he had not made any communication with the respondent Bank regarding change in his date of birth till his retirement. As such, since 2006 the petitioner had never adjudicated his claim prior to his retirement. The petitioner had never informed to the respondent Bank regarding pendency of the said application i.e. Miscellaneous Criminal Application No.305/2015, before the Magistrate Court prior to decision of his voluntary retirement application. The Bank was not aware about the pendency of any case regarding change in date of birth of the petitioner. The petitioner has not raised any objection in his Voluntary Retirement

Application dated 18.10.2016 regarding pendency of any case about adjudication of his claim about date of birth before the Chief Judicial Magistrate, Wardha. Had the respondent Bank been informed about the pendency of the said case, then it could have not granted the voluntary retirement to the petitioner.

15. The petitioner had received entire retirement benefits from the respondent Bank. The submission of the order passed by the Chief Judicial Magistrate is completely afterthought action on the part of the petitioner, after furnishing an application for voluntary retirement and accepting the terms and conditions of the said retirement Scheme and receiving the benefits has estopped the petitioner from raising any plea further for change in date of birth. The petitioner was the employee of the respondent Bank. The standing orders approved by the Deputy Commissioner of Labour, Nagpur governs the terms and conditions of the employment of the petitioner. Hence, prayed to reject the prayers made by the petitioner.

16. Heard Mr. Masood Shareef, learned counsel for the petitioner, Mr. S.K. Bhoyar, learned counsel for the respondent No.1

and Mr. A.A. Madiwale, learned Assistant Government Pleader for respondent No.2.

17. The petitioner has challenged the communication dated 31.01.2018 and 02.12.2017 passed by the respondent No.1 Chief Executive Officer (Administration), The Wardha District Central Co-operative Bank Limited, Wardha rejecting the request made by the petitioner to change his date of birth in official record and grant consequential retirement benefits to him including the gratuity amount by taking into consideration the date of birth as 06.12.1963.

18. The petitioner has taken voluntary retirement by giving an undertaking and accepting the terms and conditions of the Scheme of Voluntary Retirement. It is not disputed that the petitioner had applied to the respondent Bank for change in date of birth on the basis of various documents. At the time of appointment, he has produced the documents about his date of birth showing his date of birth as 20.08.1960 and, therefore, the said date of birth was taken on official record. The petitioner within five years from the date of his appointment, has applied for change in date of birth and produced some documents such as copy of the Gazette and the document from the office of Collector, Wardha. The respondent

Bank vide communication dated 11.02.2006 asked the petitioner to obtain the necessary order from the competent Court to include said date of birth in his official record. Since 2006, he had not made any communication with the respondent Bank regarding change in date of birth till his retirement. Even in his application he has not mentioned anything and gave the undertaking accepting the terms and conditions.

19. After his retirement, on the basis of order passed by the Chief Judicial Magistrate in Miscellaneous Criminal Application No.305/2015, he had again applied for change in date of birth, it appears from the record that the Bank was not a party to said Application which he has made in the year 2015 and it was not informed to the respondent Bank. The petitioner had never informed to the respondent Bank regarding pendency of said case prior to decision of his voluntary retirement.

20. The petitioner has relied on the decision in ***Gulabrao Tuljaram Mandge vs. Additional Commissioner, Nashik and others***, reported in ***2021(6) Mh.L.J. 430*** to indicate the legal effect of an entry in the birth register. There can be no dispute as regards the legal presumption to an entry in the birth register. However, the

respondent Bank was not aware about the pendency of the proceedings initiated by the petitioner in that regard. Moreover, the petitioner has not referred to the same in his voluntary retirement application dated 18.10.2016. On the contrary, the petitioner has received the entire retirement benefits from the respondent Bank on 18.10.2016. The petitioner has accepted the terms and conditions of the retirement Scheme and received the benefits without any protest. For this reason, the decision in Writ Petition No. 13535 of 2018 (*Shri. Ashok Shankar Kale vs. The State of Maharashtra and another*) decided at the Principal Seat does not assist the petitioner.

21. Once the VRS is accepted by the petitioner willingly then he must be adhered to its terms and conditions. The respondent Bank has relied on the judgment of the Hon'ble Apex Court in case of ***IFCI Limited Vs. Sanjay Behari and Others***, reported in (2020) 18 SCC 511, wherein it has held that :-

“21. The principle ground for assailing the impugned order is that any scheme for voluntary retirement is a package by itself. One cannot, thus, look to other voluntary retirement schemes, or other rules and regulations for the said purpose.

22. In our view, there can be no quibble with this fundamental principle. In fact, we had the occasion to recently propound the legal position in this behalf, in National Insurance Special Voluntary Retired/Retired Employees Association v. United

India Insurance Co. Ltd., (2018) 18 SCC 186. The view taken is that it is not appropriate to add or subtract from the Scheme, nor can any concessions be given contrary to the Scheme, or if they are not provided for under the Scheme. What is to be seen are the clauses of the scheme under which voluntary retirement has been taken and the terms of the scheme must be strictly followed. This Court has observed as under:

“19. We have, thus, no hesitation in coming to the conclusion that statutory or contractual, such voluntary retirement schemes as the SVRS-2004 Scheme have to be strictly adhered to, and the very objective of having such schemes would be defeated, if parts of other schemes are sought to be imported into such voluntary retirement schemes. What is offered by the employer is a package as contained in the schemes of voluntary retirement, and that alone would be admissible.

22. It is, thus, abundantly clear that nothing more would be given than what is stated in the scheme, and for that matter, nothing less. If the employees avail of the benefit of such a scheme with their eyes open, they cannot look here and there, under different schemes, to see what other benefits can be achieved by them, by seeking to take advantage of the more beneficial schemes, while simultaneously enjoying the more beneficial aspects of the SVRS-2004 Scheme.”

24. We may usefully refer to the judgment in A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620, which set forth the very rationale of introducing a scheme for voluntary retirement,

i.e. to reduce surplus staff and to bring in financial efficiency. It is in this context that it is referred to as the “Golden Handshake”. Ex gratia amounts are paid, not for doing any work or rendering any service, but in lieu of employees leaving services of the company and foregoing any further claims or rights in the same. It is optional, not compulsory. It is a take it or leave it situation. Thus, anyone availing of a VRS does so with his eyes wide open. On having availed of the benefits under the scheme, if there are future changes, which may give any of the monetary benefits, the same cannot be read into the scheme. This would defeat the very purpose of having a VRS, i.e. to bring in financial efficiency, as it would not be possible that despite having paid the amounts, the organization can be lumped with further financial liability arising from re-thoughts by such persons, who have already availed of the VRS. The VRS cannot be frustrated in this manner. ”

He also relied in the case of ***Vice-Chairman and Managing Director, A.P. SIDC Ltd. and another Vs. R. Varaprasad and others***, reported in ***(2003) 11 SCC 572***, wherein it has held that :-

“12.When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is a matter of contract between the Corporation and the employees. It is not for the courts to re-write the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which Voluntary Retirement Schemes floated.”

The petitioner has willingly applied for VRS and he had accepted the amount without any protest nor he has stated about his date of birth at the time of applying for it. Hence, now he cannot turn around and claim for more benefit.

22. The respondent has stated that the writ petition is not maintainable against the respondent which is the District Co-operative Bank registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and under Multi-State Co-operative Societies Act, 1984 which carries banking business and is therefore governed by the Banking Regulation Act, 1949 does not thereby fall under Article 12 of the Constitution. The bank cannot therefore, be considered as 'State' under Article 12 of the Constitution. The respondent Bank has relied on the judgment in the case of *The Shamrao Vithal Co-operative Bank limited and another Vs. Padubidri Pattabhiram Bhat and another*, reported in *AIR 1993 BOMBAY 91*, wherein it has held that,

“24. A Multi-State Co-operative Bank cannot be compared, in the manner of its functioning, with the State Bank of India at all. As set out earlier, the Central Government does not have any all pervasive control over a Multi-State Co-operative Bank. Hence, merely because banking function is of public importance, this factor itself is not sufficient to make

the appellant bank “State” or “other authority” under Article 12.”

The respondent also relied on the case of ***K.K. Saksena Vs. International Commission on Irrigation and Drainage and others***, reported in ***(2015) 4 SCC 670***.

23. In support of argument that writ petition is maintainable, the petitioner has relied on judgment of the Hon’ble Supreme Court in the case of ***S.S. Rana Vs. Registrar, Cooperative Societies and another***, reported in ***(2006) 11 SCC 634***, wherein it has held that,

“18. In some decisions, some High Courts have held wherein that a writ petition would be maintainable against a society if it is demonstrated that any mandatory provision of the Act or the Rules framed thereunder, have been violated by it.”

The petitioner also relied on the case of ***Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and others***, reported in ***(2002) 5 SCC 111***, wherein it has held that :-

“98. We sum up our conclusions as under:

(1) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of “other authorities” in Article 12. To be an authority, the entity should have been created by a statute or under a

*statute and functioning with liability and obligations to the public. Further, the statute creating the entity should have vested that entity with power to make law or issue binding directions amounting to law within the meaning of Article 13(2) governing its relationship with other people or the affairs of other people their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence governmental. Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power - constitutional or statutory, and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258, enable determination of Governmental ownership or control. Tests 3, 5 and 6 are “functional” tests.*

24. Considering the above said observations, we are of the view that the writ petition is maintainable against the respondent.

25. The petitioner has also relied on the judgments as to how the proof of birth certificate issued by the Magistrate is reliable. No doubt the date of birth can be changed by producing reliable

documents within five years from the date of birth, the question in this case is that though he has applied for it has not produced reliable documents to change his date of birth during his tenure and before his VRS. From 2006 to 2016, he has not produced any document nor communicated in respect of said issue and after retirement, he has claimed for change of date of birth in official record and benefits on that basis which is not permissible.

26. The question to be considered is after acceptance of the request for voluntary retirement whether the petitioner could be permitted to take benefit of the fact that his date of birth has been permitted to be altered after his voluntary retirement from service. It is not in dispute that the petitioner moved an application under Section 13(3) of the Registration of Births and Deaths Act, 1969 (for short, the Act of 1969) alongwith Rule 9(3) of the Maharashtra Registration of Births and Deaths Rules, 2000 on 17.12.2015. When this application was pending, the petitioner sought to take benefit of the Voluntary Retirement Scheme floated by the respondent no.1-Bank. Such application seeking to take benefit of the said Scheme was made on 18.10.2016. The Bank considered the petitioner's request in accordance with the Voluntary Retirement Scheme and after waiving all relevant aspects accepted the petitioner's request of

seeking permission to voluntarily retire from service. Accordingly vide Resolution No.2 dated 01.12.2016 the petitioner's request was accepted and he was permitted to voluntarily retire on 31.12.2016.

27. The petitioner's application seeking voluntary retirement does not make any reference to the pending proceedings with regard to corrections of his date of birth. The said proceedings came to be decided after the petitioner voluntarily retired from service. The order to that effect came to be passed on 23.02.2017 by the learned Magistrate. It is on the basis of this order that the petitioner has sought to re-open the proceedings pertaining to acceptance of his request for voluntary retirement.

Another relevant aspect that requires mention is that on 18.10.2016 itself the Chief Executive Officer of the Bank had issued a show cause notice to the petitioner expressing displeasure about his working. The petitioner was asked to show cause as to why he should not be compulsorily retired from service. It appears that on the same day, the petitioner has submitted his application seeking voluntary retirement from the service.

28. Even if it is assumed that the date of birth of the petitioner stands corrected from 20.08.1960 to 06.12.1963 in view of the orders passed by the learned Magistrate under the Act of

1969, it cannot be lost sight of the fact that with the acceptance of the petitioner's request for voluntary retirement, there was severance of relationship of master and servant between the Bank and the petitioner on 16.12.2016 itself. Events that have occurred thereafter cannot be relied upon to the prejudice of the employer especially when the petitioner had voluntarily chosen to seek premature retirement from service. Further the decision to accept/reject such request for voluntary retirement is a conscious decision taken by the employer for the reason that the same involves financial implications. It is not the case of the petitioner that he was coerced to accept offer of voluntary retirement under the said Scheme. It will therefore have to be held that the order passed by the learned Magistrate on 23.02.2017 directing corrections in the date of birth of the petitioner being subsequent to the acceptance of the petitioner's request for voluntary retirement. The same would not give any cause of action to the petitioner to seek re-consideration of his offer for voluntary retirement. The refusal by the Bank to re-open the said matter on the basis of the corrections in the date of birth of the petitioner therefore cannot be faulted.

29. After considering the judgments and considering that as the petitioner has obtained the voluntary retirement, he has accepted

the terms and conditions by giving the undertaking on oath. At the time of retirement he had not mentioned anything about his date of birth, he has accepted the amount which was offered by the respondent. After retirement, the petitioner ceased to be the employee of the respondent Bank. There is no relation between the petitioner and respondent Bank as employee and employer. Therefore, in such circumstances, we are of the view that in the absence of breach of any legal right of the petitioner writ jurisdiction is not required to be invoked. The writ petition stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

Kirtak