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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11345 OF 2012

1. **The Commissioner,**  
Municipal Corporation of Greater  
Mumbai, Mumbai – 400 001
2. **The Commissioner of Health,**  
K/West Ward,  
Municipal Corporation of Greater  
Mumbai, Andheri (West),  
Mumbai – 400 058

... Petitioners

**Vs.**

**Mohammed Salim Bhagwan Khan,**  
Madh Jathy Hindu Cementery Staff  
Quarters, Room No.2, via Versova  
Mumbai – 400 061

... Respondent

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GANESH  
KULKARNI

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WITH  
INTERIM APPLICATION NO.7333 OF 2025  
IN  
WRIT PETITION NO.11345 OF 2012

Suryakant Bhagwan Tawade Nee  
Mohammed Salim Bhagwan Khan

... Applicant

**In the matter between**

The Commissioner, M.C.G.M. & Anr.

... Petitioners

**V/s.**

Suryakant B. Tawde

... Respondent

Mr. Suresh Pakale, Senior Advocate with Mr. Santosh  
Parad for the petitioners-MCGM.

Mr. Shan Clifford Cardoz for the respondent.



CORAM : AMIT BORKAR, J.  
RESERVED ON : APRIL 17, 2026.  
PRONOUNCED ON : APRIL 30, 2026

**JUDGMENT:**

1. By the present writ petitions instituted under Articles 226 and 227 of the Constitution of India, the petitioners, namely Municipal Corporation of Greater Mumbai, have called in question the legality and correctness of the judgment and order dated 26 April 2012 passed by the Industrial Court at Mumbai in Complaint (ULP) No.49 of 2008.

2. The petitioners, who were the original respondents before the Labour Court, submit that the respondent, being the original Complainant, instituted a complaint challenging the order dated 20 March 2010 issued by the petitioners, whereby he was informed that his last working day in service would be 30 June 2010 on the ground of superannuation. In the said complaint, the respondent prayed for a declaration that the aforesaid order was unfair, unjust, illegal, and impermissible in law. He further sought setting aside of the said order dated 20 March 2010 and prayed for a direction restraining the petitioners from retiring him with effect from 1 July 2010. The respondent also sought a further direction that he be continued in service until he attained the age of fifty-eight years, according to him on 15 April 2013, and that he be permitted to discharge duties and receive monthly wages till the said date.



3. The petitioners state and submit that they filed a detailed Written Statement to the complaint before the learned 5th Labour Court, controverting the allegations made therein and opposing the reliefs claimed by the respondent.

4. The petitioners further state and submit that both parties led oral as well as documentary evidence before the learned Labour Court in support of their respective cases.

5. The petitioners submit that upon conclusion of the evidence adduced by both sides, the learned 5th Labour Court was pleased to allow the complaint by judgment and order dated 5 April 2011. By the said order, the learned Labour Court held and directed as under: (i) It was declared that the respondents therein had engaged in unfair labour practices under Section 28 of the MRTU and PULP Act read with Item 1(a), (b), (d) and (f) of Schedule IV thereto, and they were directed to cease and desist from such practices; (ii) It was held that the date of birth of the Complainant was 15 April 1955, and the respondents were directed to carry out correction of the said date in the service record of the Complainant; (iii) The Complainant was directed to be reinstated in service with continuity of service and full back wages with effect from 1 July 2010.

6. The petitioners further state that, being aggrieved by the aforesaid judgment and order, they preferred Revision Application (ULP) No.106 of 2011 before the Industrial Court at Mumbai. It is stated that the said Revision Application came to be partly allowed. However, insofar as Clauses 3 and 4 of the operative part



of the order of the Labour Court were concerned, the same were maintained under the impugned revisional order.

7. Being dissatisfied and aggrieved by the judgment and order dated 29 August 2012 passed by the learned Industrial Court, Mumbai in Revision Application (ULP) No.106 of 2011, the petitioners have instituted the present Writ Petition invoking the jurisdiction of this Court.

8. Mr. Pakale, learned Senior Counsel appearing on behalf of the petitioners, submitted that the Industrial Court failed to properly appreciate and correctly weigh the admissions given by the respondent during cross-examination at Exhibit U-8. It was pointed out that the respondent categorically admitted that, at the time of his initial appointment in service, a service record was prepared by the competent authority in the ordinary course of official business wherein his date of birth came to be entered as 2 June 1952. He further admitted that he had affixed his thumb impression on the said record and, after the contents thereof were read over and explained to him, he had also signed the same. It was emphasized that the respondent nowhere alleged compulsion, fraud, coercion or misrepresentation at the relevant time. Learned Senior Counsel therefore urged that such admissions went to the root of the matter and strongly supported the petitioners' stand that the service record was validly prepared and consciously accepted by the respondent.

9. It was further submitted that the respondent also admitted his signature upon the declaration at Exhibit C-6/3 dated 18 May



1976. According to the petitioners, once execution of the said declaration stood admitted, the burden shifted heavily upon the respondent to establish that the recorded particulars were incorrect. In absence of such cogent proof, it was contended that the Industrial Court ought not to have brushed aside documentary admissions made by the respondent himself.

10. Learned Senior Counsel next submitted that the respondent admitted in cross-examination that he had thereafter worked as Death Registration Clerk with effect from 16 June 2000 and that he was aware of the circular issued by the Corporation dated 10 March 1986. It was also elicited from him that during the entire tenure of nearly thirty-three years of service, he had never lodged any grievance, representation, or complaint seeking correction of his recorded date of birth. According to the petitioners, these facts clearly demonstrated acquiescence on the part of the respondent and showed that the dispute was raised only belatedly when retirement approached. It was urged that stale claims of this nature ought not to receive judicial encouragement.

11. Learned Senior Counsel further contended that the Industrial Court failed to properly appreciate the evidence of Shri Pravin Nabodh Tribhuvan, examined at Exhibit U-14. In cross-examination, the said witness admitted that he was not the author of the relevant document relied upon by the respondent, had no personal knowledge regarding its preparation or execution, was not the person who made the entry at Serial No.11354 in the General Register concerning the respondent, and had joined the school as Principal only in the year 2007. On the strength of these



admissions, it was submitted that the witness could not depose from personal knowledge regarding entries made long prior to his tenure and, therefore, the evidentiary value of such testimony was necessarily limited. The Industrial Court, according to the petitioners, erred in placing undue reliance thereon.

**12.** It was next urged that the Industrial Court also failed to properly consider the evidence of Shri Narendra Vidyadhar Tendulkar, who was examined on behalf of the petitioners. In his affidavit, the said witness stated that at the time of appointment the respondent's service record had been opened in the regular course and duly filled by the concerned department, wherein the date of birth was entered as 2 June 1952 after due verification. It was also deposed that the respondent had signed the service record after understanding the contents thereof. Learned Senior Counsel submitted that this evidence clearly established official regularity in maintenance of service records and ought to have been accepted in absence of contrary material.

**13.** It was further stated in the affidavit that, as per municipal service records, the respondent attained the age of fifty-eight years on 1 July 2010 and, in accordance with Rule 205 of the Municipal Service Regulations, 1989, retired on 30 June 2010 before office hours. According to the petitioners, the respondent throughout his long service career never objected to the recorded date of birth and the challenge raised only at the stage of superannuation was plainly an afterthought designed to secure continuation in service beyond the permissible age.



14. Reference was also made to paragraph 6 of the said affidavit, wherein Shri Tendulkar deposed that the Corporation had issued Circular No. MOM/2001 dated 10 June 1986 prescribing a specific procedure for correction of date of birth in service records. Under the said circular, all employees were granted an opportunity to seek correction on or before 15 September 1986 by producing conclusive documentary proof, and it was expressly provided that thereafter no application would be entertained. Since the respondent made his application only on 6 February 2006, long after expiry of the prescribed cut-off date, learned Senior Counsel contended that such request was not maintainable and could not have been considered. It was further submitted that applications seeking alteration of date of birth at the fag end of service are consistently viewed with caution and liable to be rejected at the threshold.

15. Reliance was also placed upon paragraph 7 of the affidavit, wherein it was stated that the petitioners had not engaged in any unfair labour practice under Items 1(a), (b), (d) or (f) of Schedule IV of the MRTU and PULP Act, 1971. It was therefore submitted that no foundation existed for grant of relief in favour of the respondent. Learned Senior Counsel lastly contended that in further examination-in-chief Shri Tendulkar stated that the documents produced at Exhibits C-3 and C-6 had been admitted by the respondent insofar as execution was concerned and were therefore admissible in evidence. On these premises, it was prayed that the impugned order be set aside.



16. Per contra, Mr. Cardoz, learned counsel appearing for the respondent in Writ Petition No.11345 of 2012, submitted that the respondent had been in continuous employment of the petitioners since 1 August 1973. During the course of service, his substantive designation was consistently shown as Cemetery Attendant. However, during the period from 16 June 2000 to 2 June 2006, the respondent was made to hold and discharge duties on the post of Death Registration Karkoon on a full-time basis at Versova Cemetery. Though he continuously performed functions attached to the said higher post, he was denied wages, allowances and service benefits admissible thereto. It was submitted that the petitioners derived work of higher responsibility without extending corresponding benefits.

17. Learned counsel further submitted that in January 2006 the petitioners called upon the respondent to produce proof of educational qualification, whereupon he applied for issuance of a school-leaving certificate on 3 January 2006. Upon receiving the said certificate, he came to know for the first time of his correct date of birth as recorded in school records. Thereafter, by letter dated 6 February 2006, he requested correction of the service record by substituting 15 April 1955 in place of 2 June 1952. However, despite such request, by order dated 20 March 2010 he was informed that he would retire on 30 June 2010 on the basis of the date of birth incorrectly entered in service records. It was urged that the respondent acted promptly after obtaining authentic material.



18. Learned counsel submitted that the date of birth relied upon by the respondent was reflected in the school-leaving certificate issued from records maintained in the General Register of the school, wherein dates of birth of students are duly entered in regular course. It was urged that the petitioners had never seriously disputed either the genuineness or authenticity of the said school-leaving certificate. In such circumstances, according to the respondent, there was no reason to discard a contemporaneous educational record.

19. It was further submitted that while the respondent was engaged in cemetery duties, the circular dated 10 March 1986 was never brought to his notice. The petitioners neither issued any communication individually informing him of the said circular nor produced material to establish that he was aware of its contents. According to the respondent, the circular itself imposed obligations upon the Head of Department and Ward Officers to follow a prescribed procedure in matters relating to correction of date of birth. The responsibility therefore lay upon the municipal authorities to act in accordance with their own circular, and the respondent could not be prejudiced because officers and staff failed to discharge official duties expected from them.

20. Learned counsel also submitted that the circular dated 10 March 1986 issued by Municipal Corporation of Greater Mumbai was placed on record and specifically recognised several forms of documentary proof for correction of date of birth at the instance of an employee, one of them being a school-leaving certificate. On that basis, it was contended that the respondent's request stood



supported by acceptable and recognised evidence. He accordingly prayed for dismissal of the writ petition with exemplary costs.

**REASONS AND ANALYSIS:**

**21.** I have considered the rival submissions and also perused the material which was brought before the Industrial Court. The controversy concerns the recorded date of birth in the service book of the respondent, the claim for correction thereof at a late stage, and the consequence which follows upon the date so recorded.

**22.** The first submission of the petitioners is founded on the admissions of the respondent in cross-examination at Exhibit U-8. The respondent admitted that at the time of his appointment the service record was prepared and his date of birth was entered as 2 June 1952. He also admitted that he had put his thumb impression on that record and, after the contents were read over to him, he signed it. He did not say that the entry was made under pressure or without explanation. He further admitted his signature on Exhibit C-6/3 dated 18 May 1976. These admissions are not of small value. When a service record is prepared in the ordinary course and the employee signs it after knowing the contents, the entry carries weight, unless convincing evidence is produced to displace it.

**23.** The petitioners also relied upon the further admission that the respondent had worked as death registration clerk from 16 June 2000 and that he was aware of the circular dated 10 March 1986. The respondent also admitted that during his service, nearly thirty-three years, he never made any complaint for correction of



his date of birth. A person who remains silent for such long years, and raises the issue only when retirement is near, creates a doubt on the bona fides of the claim. Courts have to be slow in accepting a request which comes after inordinate delay, because service records are meant to attain finality.

**24.** The evidence of Shri Pravin Nabodh Tribhuvan, examined at Exhibit U-14, he admitted that he was not the author of the document, had no personal knowledge of its execution, was not the maker of the entry at Serial No.11354 in the general register, and had joined as Principal only in 2007. Therefore, his evidence had limited value on the core issue. A witness who is not the maker of the record and who came much later cannot speak with authority about the original entry, unless he produces the relevant register and proves the record in the ordinary manner. The Industrial Court appears to have given more importance to this evidence than it deserved.

**25.** The affidavit of Shri Narendra Vidyadhar Tendulkar also supports the petitioners. He stated that the service record was opened at the time of appointment and was filled by the concerned department after verification, and that the respondent signed it after understanding its contents. He also stated that as per the municipal service record the respondent attained the age of fifty-eight years on 1 July 2010 and retired on 30 June 2010 in terms of Rule 205 of the Municipal Service Regulations, 1989. The service book was prepared at the inception of service and remained unchallenged for many years. That circumstance has significance.



26. Paragraph 6 of the affidavit of Shri Tendulkar has another material aspect. The Corporation had issued Circular No. MOM/2001 dated 10 June 1986 prescribing a procedure for correction of date of birth. The circular granted opportunity to employees to apply on or before 15 September 1986 by producing conclusive documentary proof. It further provided that thereafter no application would be entertained. This circular was not shown to be invalid, nor was it shown that the respondent had made any application within the time fixed therein. His application of 6 February 2006 was thus clearly beyond the prescribed period. The Industrial Court did not give due effect to this binding administrative instruction. When the employer has issued a procedure for correction and the employee sleeps over the matter for nearly twenty years after the cut-off date, the claim becomes doubtful and cannot be entertained.

27. The respondent, on the other hand, placed reliance upon the school-leaving certificate and contended that it showed the correct date of birth as 15 April 1955. He also said that he came to know of the correct date only when the certificate was obtained in January 2006, and therefore he moved promptly on 6 February 2006. This submission was made with some force, because a school leaving certificate is indeed a relevant document and, if genuine, it is a document of some probative value. It was also said that the petitioners had not seriously disputed its genuineness. Even so, the existence of such a certificate by itself is not enough in the present facts. The matter does not end with one school record. The court must also see why the respondent remained



silent for thirty-three years, why he signed the service record without objection, and why he did not avail the opportunity under the circular within the stipulated time. These circumstances weaken the claim.

**28.** It was further submitted for the respondent that the circular was never brought to his notice and that the responsibility lay on the departmental officers to act in accordance with it. This submission also cannot help him fully. The circular was of general application, and the respondent was in service for long years. More important, he signed the service record and the declaration in the year 1976. If the date of birth was wrong in the record, it was open to him to seek correction in accordance with the circular when the opportunity was available. The law does not permit a party to remain inactive for decades and then seek correction only at the threshold of retirement. Failure of officers to remind him cannot by itself erase the effect of his own long silence and his signature on the record.

**29.** On the whole, the Industrial Court appears to have placed excessive emphasis on the school-leaving certificate and on the assertion that the respondent learnt about the error only in 2006. The court did not assign proper weight to the respondent's admissions in cross examination, the long lapse of time, the signed service record, the 1986 circular, and the fact that the request was made after the cut off date fixed by the Corporation. The evidence of the petitioners shows that the service record was accepted for a long period and that the challenge was raised only when retirement was imminent. Such a claim, in the facts here, could



not have been treated as a correction request. It was a belated attempt to unsettle a settled service entry.

30. The finding, therefore, is that the respondent did not establish a legal foundation to displace the recorded date of birth in the service book. The school-leaving certificate, though relevant, does not override the effect of the admitted service record, the delay of many years, and the failure to act within the time prescribed by the circular. The petitioners were justified in acting on the date already recorded in the official service record. The Industrial Court committed an error in granting relief on the strength of incomplete appreciation of evidence. The complaint ought to have been dismissed.

31. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The writ petition is allowed;
- (ii) The judgment and order dated 29 August 2012 passed by the Industrial Court, Mumbai in Complaint (ULP) No.106 of 2011 is quashed and set aside;
- (iii) Complaint (ULP) No.106 of 2011 stands dismissed;
- (iv) Rule is made absolute in the above terms;
- (v) In the facts and circumstances of the case, there shall be no order as to costs;
- (vi) Pending interim applications, if any, stand disposed of.

**(AMIT BORKAR, J.)**