



W.A.No.2086 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.2086 of 2019

V.Anusuya Devi

... Appellant

Vs.

- 1.The Director of School Education,
DPI Complex,
Chennai – 600 006.
- 2.The Joint Director of School Education,
DPI Complex,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Kancheepuram,
Kancheepuram District.
- 4.The Head Master,
Big Kancheepuram Government Girls
Higher Secondary School,
Big Kancheepuram,
Kancheepuram,
Kancheepuram District 631 502.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying
to set aside the order dated 26.04.2019 in W.P.No.17370 of 2018.



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For Appellant : Mr.S.Udayakumar

For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader
for R1 to R3

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This writ appeal has been directed against the order dated 26.04.2019 passed by the Writ Court in W.P.No.17370 of 2018.

2. The appellant was the writ petitioner who entered into service at the respondent Department i.e. the 4th respondent School as P.G. Assistant on 15.09.2012.

3. The date of birth of the petitioner/appellant which has been registered in the Service Register based on the certificate given by the School authorities as 17.05.1961. However, the actual date of birth of the petitioner/appellant was 06.12.1961 based on the birth certificate issued by the competent authority.



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4. Therefore, in order to make the correction in the Service Register of the date of birth of the petitioner/appellant, the petitioner/appellant through proper channel i.e. through the Headmaster of the 4th respondent School sent a request to the respondents 1 and 2 on 03.08.2015, where, the 4th respondent has stated the following:

“ பொருள். பெரிய காஞ்சிபுரம் அரசு மகளிர் மேல்நிலைப்பள்ளி - 2013 - ஜீன் முதல் முதகலைத் தமிழாசிரியராக பணிபுரிந்து வரும் திருமதி அனுசுயா தேவி - பிறந்த தேதி கல்விச் சான்றிதழில் 17.05.1961 எனப் பதிந்துள்ளது. ஆனால் பிறப்புச் சான்றிதழில் 06.12.1961 எனப் பதிந்துள்ளது - பிறப்புச் சான்றிதழின்படி பிறந்த தேதியினை மாற்றித் தரக் கோருதல் - சார்ந்து.

பெரிய காஞ்சிபுரம் அரசு மகளிர் மேல்நிலைப்பள்ளியில் ஜீன் 2013 முதல் திருமதி. வெ. அனுசுயா தேவி அவர்கள் முதுகலைத் தமிழாசிரியராக பணியாற்றி வருகிறார். அவருடைய கல்விச் சான்றிதழில் பிறந்த தேதி 17.05.1961 என்றுள்ளது. ஆனால் அவருடைய பிறப்புச் சான்றிதழில் 06.12.1961 என்றுள்ளது. ஆகவே தாங்கள் அவர்களுடைய பிறப்புச் சான்றிதழின்படி பிறந்த தேதியினை மாற்றித் தருவதினால் அவர்களுடைய பணிநீடிப்புக்கு உதவிகரமாக இருக்கும் என்பதனால், அத்தேதியினை மாற்றித் தந்து உதவுமாறு பணிவுடன் கேட்டுக் கொள்கின்றேன்.”

5. Despite this request had been made by the petitioner/appellant, the date of birth as per the birth certificate of the petitioner/appellant has not been corrected, instead the 3rd respondent has passed an order on 22.02.2018, where, he has stated the following:

“மேலும் பிறந்த தேதி மாற்றம் செய்யவாற்கான



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கருத்துருக்கள் இவ்வலுவலகத்திற்கு 22.12.2015 அன்று பெறப்பட்டுள்ளது. ஆனால் சார்ந்த ஆசிரியர் 03.08.2015 அன்று கருத்துருக்கள் அனுப்பப்பட்டதாக தனது கடிதத்தில் குறிப்பிட்டுள்ளார். அக்கடிதத்தில் இவ்வலுவலகத்தில் பெறப்பட்டதற்கான அதிகாரிகளில் ஒப்பமோ அலுவலகம் முத்திரை, பகிர்மான எண் ஏதுமில்லை என்பதையும், இதற்கான ஆதாரங்கள் சரியாக இல்லை என்பதால் தமிழ்நாடு அரசு பணியாளர்கள் சார்நிலை அலுவலர் விதிகளில் படி 5 ஆண்டுக்குள் கருத்துருவினை அனுப்பதால் மேற்படி பிறந்த தேதி மாற்றம் செய்வதற்கான கருத்தரினை ஏற்க இயலாது என்பதை சார்ந்த முதுகலை ஆசிரியருக்கு தெரிவிக்கலாகிறது.

முதன்மைக் கல்வி அலுவலர்
காஞ்சிபுரம்”

6. Challenging the same, the petitioner/appellant filed the said writ petition. However, the learned Judge by judgment dated 26.04.2019 rejected the plea of the petitioner/appellant on the ground that, if at all any change of date of birth is required to be made, that request should come immediately within the period prescribed under the Rule and not at the fag end of the retirement of the employee herein/the teacher concerned. The learned Judge has also stated that, at the time of filing the writ petition itself since the petitioner/appellant was 57 years therefore only few months were left for reaching the superannuation, at this fag



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end such kind of request cannot be considered and therefore on these grounds the said writ petition filed by the petitioner/appellant was rejected through the impugned order dated 26.04.2019.

7. Questioning the same, Mr.S.Udayakumar, learned counsel appearing for the petitioner would submit that, the petitioner entered into service on 15.09.2012, as per Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules such an application for change of date of birth with necessary proof should be made within a period of five years and within the said period of five years on 03.08.2015 such a request have been forwarded by the 4th respondent School who is immediate employer of the petitioner/appellant, despite that the 3rd respondent through the rejection order, which was impugned dated 22.02.2018 before the Writ Court, rejected the said plea of the petitioner/appellant stating that, within the five years period such a request had not been made.

8. We have heard Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondent Department who would also submit that, in view of the order passed by the Hon'ble Supreme Court which has been quoted in the very impugned order itself,



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such kind of belated plea for changing or altering the date of birth cannot be entertained, therefore that has been taken into account by the learned Judge who passed the order impugned, hence the learned Special Government Pleader wants to sustain the impugned order.

9. We have given our anxious consideration to the said submissions made by both sides.

10. The issue is in very narrow compass as admittedly the petitioner/appellant entered into service as P.G. Assistant on 15.09.2012, therefore as per Rule 49(b), the application if at all anything to be made to change the date of birth that should have been made within five years from the date of appointment or entered into service.

11. Here the petitioner/appellant had sent such a request through the 4th respondent on 03.08.2015. However, in the order impugned before the Writ Court dated 22.02.2018 the 3rd respondent took a stand that the said request made by the petitioner was not received by the 3rd respondent or any of the official respondents as claimed by the petitioner /appellant on 03.08.2015.



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12. However, in the impugned order, part of which has already been extracted herein above, it has been admitted by the 3rd respondent that the proposal for change of or alter of date of birth of the petitioner/appellant was received by the office of the 3rd respondent on 22.12.2015.

13. Assuming that, it is not on 03.08.2015 but only on 22.12.2015 the request of the petitioner with proposal from the 4th respondent was received by the 3rd respondent, even on that date it is well within the 5 years limitation as per Rule 49(b) as referred to above, when that being so, the rejection made by the 3rd respondent of the application of the petitioner for alteration of date of birth is totally unsustainable.

14. However, this aspect has not been considered in proper perspective by the learned Judge in the order impugned dated 26.04.2019. Therefore, we are inclined to pass the following orders in this writ appeal:

(i) The order of the learned Judge is set aside. Consequently, the impugned order before the Writ Court dated 22.02.2018 passed by the 3rd respondent also is set aside and the matter is remitted back to the



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respondents 1 to 3 for reconsideration. While reconsidering the same, the certificate i.e. the Birth Certificate produced by the petitioner/appellant along with her application, which is claimed to have been received by the 3rd respondent office on 22.12.2015, shall be taken into account and therefore the correct date of birth of the petitioner/appellant shall be carried out in the Service Register.

(ii) On completion of the aforestated, since the services of the petitioner/appellant would be extended by virtue of the correct date of birth to be entered, the petitioner/appellant would be entitled to get the service benefits, of course notionally.

(iii) It is made clear that, for the said extended period of service of the petitioner/appellant, since she is under the New Pension Scheme, her contribution towards the New Pension Scheme also to be taken into account and accordingly the total emoluments under the New Pension Scheme be calculated and paid to the petitioner/appellant. The aforestated shall be undertaken within a period of twelve weeks from the date of receipt of a copy of this judgment.



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WEB COPY 15. With these directions, this Writ Appeal is ordered accordingly.

However, there shall be no order as to costs.

(R.S.K., J.) (K.B., J.)

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl

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