

In the High Court of Judicature at Madras

Dated: 09.06.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.645 of 2015
and M.P.No.1 of 2015

D.Palanisamy ... Appellant

Vs.

- 1.The Principal Chief Conservator of Forests,
Government of Tamil Nadu,
Panagal Building, Saidapet,
Chennai-600 015.
- 2.The Conservator of Forests,
Madurai Circle, Race Course Road,
Madurai-625 002.
- 3.The District Forest Officer,
Madurai Division,
Race Course Road,
Madurai 625 005. .. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 22.04.2013 and made in W.P.No.11634 of 2013
by the learned Judge of this Court.

Petition presented under Article 226 of the Constitution of India to issue a writ of certiorari mandamus Calling for the records of the respondents herein and quash the 1st respondent's proceedings in Na.Ka. No.Aa1/ 2499/2011 dated 13.8.2012 and consequently direct the 1st respondent herein to entertain the application for alteration of the date of birth in the service records given by the petitioner in the year 1987 after verifying the supported documents i.e. extract of Birth Certificates etc.

For Appellant : Mr.R.Thiyagarajan, SC
for Mr.G.Sankaran

For Respondents: Mr.N.Inbanathan
Government Advocate

J U D G E M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Petitioner has focused the instant intra-Court appeal before this Court as against the order dated 22.04.2013 in W.P.No.11634 of 2013 passed by the Learned Single Judge.

2.The learned Single Judge while passing the impugned order in W.P.No.11634 of 2013 on 22.04.2013 filed by the Appellant/Petitioner in paragraphs 8 and 9 had observed the following:

"But the above contention can hardly be accepted. Just as the petitioner woke up in the year 2011 from his slumber, he could have done it way-back in 1990 or 1991. After giving a representation in 1987, the petitioner allowed a period of twenty four years to pass by without any events. Therefore, the petitioner is atleast guilty of delay and laches in raking up the issue once again after twenty four years.

The Supreme Court has depreciated repeatedly the practice of Government Servants, seeking such benefits towards the fag end of their carrier." and resultantly, dismissed the Writ Petition without costs.

3.Assailing the correctness of the order so passed in W.P.No.11634 of 2013 by the Learned Single Judge, the Learned counsel for the Appellant/Petitioner contends that the Learned Single Judge had dismissed the Writ Petition at the admission stage itself without waiting for a reply from the Respondents and also without verification of the intervening departmental proceedings as well as the proceedings of the First Respondent dated 05.09.2011 in calling for the relevant records from the office of the Respondents 2 and 3 as well as the copies of the official communications received by the Appellant and ultimately, carried away by averments in the impugned order by shifting the blame on the Appellant.

4.According to the Learned counsel for the Appellant/Petitioner, the Appellant/Petitioner was appointed as trainee Forest Ranger in January 1984 and his service register was opened in the year 1985 and made an application seeking to alter his date of birth during the year 1987 before the Appointing Authority namely, the First Respondent through proper channel and the same was duly forwarded by the Third Respondent to the Appointing Authority through proper channel as per proceedings in Letter No.13155/88/Pa1 dated 02.05.1989.

5.It is represented on behalf of the Appellant/Petitioner that the Appellant submitted his original birth extract when called for and on 26.04.1993, the Appellant made further reminder. As a matter of fact, only after repeated representations, the representation dated 29.11.2002 was responded by the Third Respondent with a reply that the proposal for alteration of date of birth was forwarded to the Appointing Authority through proper channel as early as on 02.05.1989 as per proceedings in O.Mu.No.111/63/2002/Pa1 dated 06.05.2003. There are subsequent representations and communication of the Third Respondent dated 09.09.2004 and 22.12.2004 respectively. Later, representation including representations dated 21.09.2010 and 16.01.2010 were responded by the First Respondent calling for connected records from the office of the Respondents 2 and 3 as proceedings dated 05.09.2011. Indeed, even the proceeding dated 05.09.2011 was issued by the First Respondent and the same was communicated to the Appellant with instructions to submit all the official correspondences already received and the same was duly complied with by the Appellant on 09.09.2011.

6.It is the stand of the Appellant that the impugned order was passed by the First Respondent dated 13.08.2012 without reference to any of the aforesaid factors and it merely mentioned that the Appellant had not approached the First Respondent for all these years and therefore, it could not be taken into consideration as if the application was submitted within five years would be ex-facie contrary to the records and all the aforesaid proceedings.

7.Advancing his arguments, the Learned counsel for the Appellant submits that the Learned Single Judge had misconstrued as if the file relating to the application submitted by the Appellant was closed within a period of one year as the appellant was left over the issue. In reality, it was only the report with recommendations to alter the date of birth of the Appellant which was forwarded to the Appointing Authority. That apart, the impugned order was passed by the First Respondent without perusal of the records being called for. Added further, the claim of the Appellant ought to be considered on merits. It cannot be rejected on the ground of delay, which cannot be attributed against the Appellant which is quite clear based on the records.

8.The Learned counsel for the Appellant brings it to the notice of this Court that the First Respondent had passed the impugned order dated 13.08.2012 based on surmises and conjectures and the same was not properly appreciated by the Learned Single Judge at the time of passing orders in the Writ Petition.

9.Lastly, it is the plea of the Appellant that the Appellant had made application within five years from the date of joining Government service in compliance to Rule 49 of Tamil Nadu State and Sub-ordinate Service Rules and the delay in passing orders could not be attributed against the Appellant.

10.It is to be pointed out that it is the averments of the Appellant/Petitioner in W.P.No.11634 of 2013 that he was born in Jengalahalli Village, B.Pallipatti, Harur Taluk, in the then Salem District now after bifurcation of Salem District comes under Pappireddipatti Taluk, Dharmapuri District. It is stated that Petitioner's original date of birth is 07.05.1958 as per the certificate issued by the Department of Registration in Form No.9 under Section 12/17 of the Registration of Births and Deaths Act, 1969 maintained in the Sub-Registrar Office, Pappireddipatti, Dharmapuri District. But his date of birth was wrongly entered in the school transfer certificate as 05.06.1957 and the same was carried in his service records which is in fact incorrect.

11.The stand of the Appellant is that in the year 1986, when he was working as Forest Range Officer in Madurai division, made an application for alteration of date of birth in service records to the First Respondent along with supportive documents i.e., the copy of extract of birth certificate etc., through proper channel namely, his higher officer, the Third Respondent/District Forest Officer, Madurai within five years from the entry into service (during the running of 3 ½ years) and the same was accepted without any exception. Apart from the above, the Third Respondent had forwarded the said application of the Petitioner to his next higher officer, the Second Respondent for his consideration.

12.According to the Learned counsel for the Appellant that when the Appellant while working as Forest Range Officer at Kodaikkanal Division, as per the direction of the Third Respondent submitted the original certificate of the extract of birth register issued by the Sub-Registrar, Pappireddipatti, Dharmapuri on 26.03.1990 through the Deputy Conservator of Forests, Industrial Wood Production Division, kodaikkanal. Also since there was no response, Petitioner sent a reminder to the Third Respondent through the District Forest Officer, Kodaikkanal and since no reply was received from the Respondents 2 and 3 subsequent to the above said representations, the Appellant on 29.11.2002 when he was working at Kothagiri, through the Senior Manager, Tea Production Division, Kothagiri sent a reminder communicating the above said facts to the Third Respondent. Only through Letter No.11163/2002/Pa1, dated 06.05.2003, the Third Respondent informed the Petitioner for the first time since 1987 that his application for alteration of date of birth was forwarded to the Second Respondent for consideration and further, informed that

petitioner's file was closed at the one year end in Letter No.13155/88/P1 dated 02.05.1989.

13.The grievance of the Petitioner is that closure of his file containing his application for alteration of date of birth in service records as the one year old case on 02.05.1989 was never communicated to him etc.

14.As far as the present case of the Petitioner is concerned, he submitted a representation during the year 1987 and the categorical plea of the Respondents is that Petitioner's file was closed during the year 1989. In this connection, it is to be pointed out that as per Rule 49 of General Rules of Tamil Nadu State and Sub-ordinate Services, he is entitled to project an application praying for alteration of date of birth within five years of entry into service as otherwise, the application is liable to be dismissed in an outright fashion.

15.The core contentions advanced on behalf of the Appellant is that Petitioner had submitted representations all these five years and hence, the Respondents are not entitled to seek umbrage the ingredients of Rule 49 of Tamil Nadu State and Sub-ordinate Service Rules. This stand of the Appellant cannot be accepted because of the simple reason that he became diligent only in the year 2011 and for 24 years after submitting his representation in the year 1987, he had remained stonic silent and his case is a drastic example of delay and laches in bringing it to a fore and an issue after a long lapse of 24 years, only during his last leg of his service, the Appellant is endeavouring to seek his benefits and the same cannot be countenanced in the eye of law in the considered opinion of this Court.

16.Viewed in that perspective, this Court holds that the impugned order passed by the First Respondent on 13.08.2012 is flawless. Consequently, the Writ Appeal is devoid of merits.

17.In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

DP

To

1.The Principal Chief Conservator of Forests,
Government of Tamil Nadu,
Panagal Building, Saidapet,
Chennai-600 015.

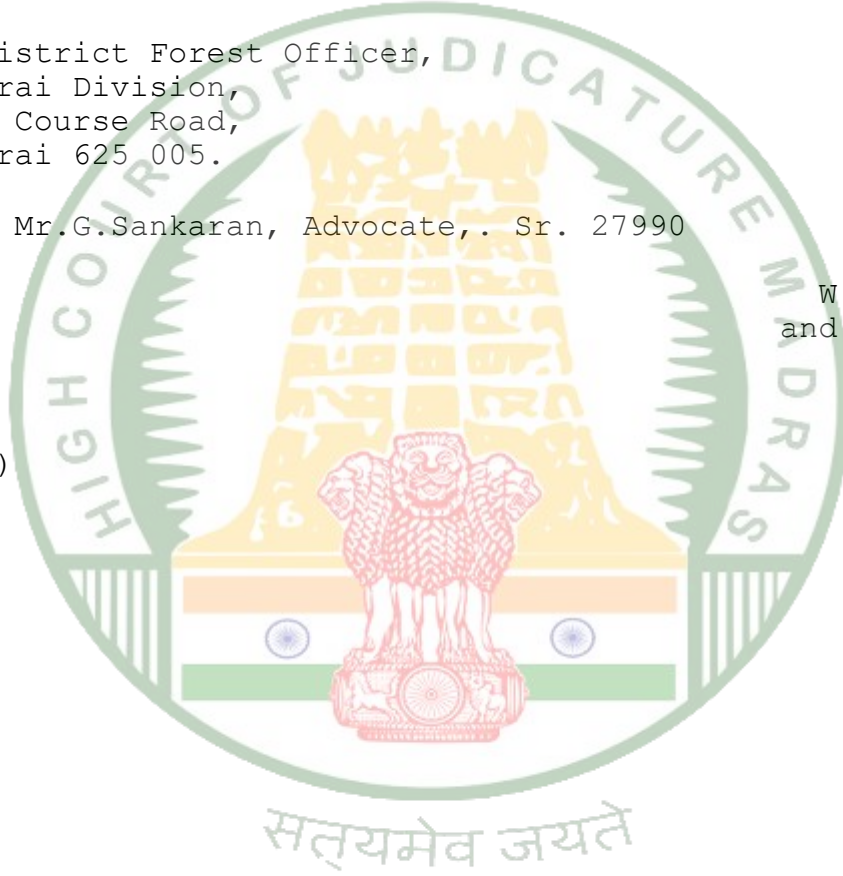
2.The Conservator of Forests,
Madurai Circle,
Race Course Road,
Madurai-625 002.

3.The District Forest Officer,
Madurai Division,
Race Course Road,
Madurai 625 005.

1 cc to Mr.G.Sankaran, Advocate,. Sr. 27990

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