

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7210 of 2015

K.Prithika Yashini [Petitioner]
(Transgender) P.Kalai Arasan

Vs

1 The State of Tamil Nadu
Rep by its Secretary
Department of School Education
Fort St. George Chennai 9

2 The Director of Government Examination
D.P.I. Complex College Road
Chennai 6

3 The Controller of Examination
Bharathiar University Coimbatore

4 The Controller of Examination
Periyar University Salem

[Respondents]

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents 2 to 4 to make necessary changes in all the records and issue afresh certificates indicating petitioner's present name instead of earlier name on account of the subsequent event of sex-reassignment surgery underwent by the petitioner.

For petitioner : Mr.K.V.Sanjevkumar for
M/s Royan Law Associates

For Respondents : Ms.P.Rajalakshmi, GA (R1&2)
Mr.S.T.S.Murthy, for R3
Mr.P.Sanjay Gandhi, AGP (R4)

ORDER

Heard the learned counsel for the petitioner, Ms.P.Rajalakshmi, learned Government Advocate, who took notice for the respondents 1 and 2, Mr.S.T.S.Murthy, learned counsel who took notice for R3 and Mr.P.Sanjay Gandhi, learned Additional Government Pleader, who took notice for R4 and with their consent, the main writ petition itself is taken up for disposal.

2. The petitioner seeks for a writ of mandamus to direct the respondents 2 to 4 to make necessary changes in all the records and issue afresh certificates indicating petitioner's present name instead of earlier name on account of the subsequent event of sex-reassignment surgery underwent by the petitioner.

3. The petitioner who was born as a male completed school education and thereafter pursued Bachelor degree and obtained B.C.A degree during April 2011. Thereafter, the petitioner completed P.G. diploma in computer application during May 2012. The petitioner would state that throughout her life she predominantly had the physical features of the feminine character and there was a change in her physique and she consulted her doctor and during 2011 she underwent sex re-assignment surgery at Kilpauk Medical College Hospital, Chennai. The Professor of Plastic Surgery who performed re-assignment surgery has issued a certificate certifying that the petitioner is a transgender and she underwent re-assignment surgery. The Tamil Nadu Transgender Welfare Board has also given an identity card to the petitioner bearing No.3273/09. The petitioner also changed her name and the same has been published in the Tamil Nadu Government gazette. The petitioner would state that at present she is pursuing a course in Ayurvedic medicines. The petitioner would submit that representations were submitted to the respondents 2 to 4 to change the petitioner's name in all her certificates and records, indicating her present name on account of the subsequent event viz., re-assignment surgery. Since the petitioner's representations presented in person were not considered, the petitioner has approached this Court by way of filing this writ petition.

4. In somewhat identical circumstances, one S.Swapna (Transgender) filed a writ petition before the Madurai Bench of this Court in W.P.(MD)No.10882 of 2014. In the said writ petition, the petitioner therein sought for setting aside the order passed by the Joint Director of Government Examinations dated 27.03.2014, by which, the request made by the petitioner for issuance of fresh SSLC and Higher Secondary Course certificates, giving identity of the petitioner as female was rejected. The Madurai Bench of this Court, by order dated 20.08.2014, after

considering the entire matter, held that the order of rejection was erroneous and remanded the matter to the Joint Director of Government Examination for fresh consideration with a direction to accept the certificates issued by the Tahsildar and other authorities and make appropriate changes in all the relevant records. The operative portion of the order reads as follows:-

"5. The third respondent rejected the application primarily on the ground that the prevailing rules does not permit such sex and name changes. The regulations were all made long back without for seeing the future developments. When a transgender undergoes a sex reassignment surgery and makes an application thereafter for change of name and sex in the relevant records on the basis of various documents including the certificate issued by the Medical Officer, the concerned authorities are expected to verify the records and make consequential changes in the concerned records. The petitioner cannot be dragged from pillar to post on the ground that there are no rules permitting such changes in educational records. The petitioner has produced sufficient documents to prove her identity. The application should have been considered on merits by the third respondent. The authorities in a case of this nature must extent their helping hand to a transgender rather than denying the relief on technical reasons. I am therefore of the view that the third respondent erred in rejecting the request made by the petitioner.

6. In the result, the impugned order is set aside. The matter is remanded to the third respondent for fresh consideration. The third respondent is directed to accept the certificates issued by the Tahsildar and Medical Officer, besides the certificate issued by the Madurai Kamaraj University and make appropriate changes in all the relevant records. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed".

5. The only difference between the present writ petition and the earlier writ petitioner is that in the earlier writ petition, there was an order of rejection and in the instant case, there is no order of rejection and the representations are pending.

6. In the light of the above, this Court is of the view that the petitioner is entitled to the relief sought for and she is entitled to the name mentioned in the certificates to be changed by mentioning the present name, which is on account of re-assignment surgery performed in a Government Hospital, which has also recognized and certified.

7. Since there is no acknowledgement for the petitioner's representations, there will be a direction to the petitioner to submit a fresh representation to respondents 2 to 4 and the respondents 2 to 4, after taking into consideration all the certificates produced by the petitioner, viz., the certificate issued by the Professor of Plastic Surgery of the Kilpauk Medical College Hospital, Chennai and the Identity card issued by the Tamil Nadu Transgender Welfare Board, consider the same and make appropriate changes in all the relevant records of the petitioner which are maintained by respondents 2 to 4. The above direction shall be complied with, within a period of eight weeks from the date on which the representation is submitted.

The writ petition is disposed of with the above directions.
No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

- 1 The Secretary,
State of Tamil Nadu
Department of School Education
Fort St. George Chennai 9
- 2 The Director of Government Examination
D.P.I. Complex College Road
Chennai 6
- 3 The Controller of Examination
Bharathiar University Coimbatore

4 The Controller of Examination
Periyar University Salem

+1 CC to Mr.S.T.S.Murthi, Advocate Sr.14307
+1 CC to The Government Pleader, High Court, Madras. Sr.14393

CO-GR
ths : 20.03.2015

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