

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2016

PRONOUNCED ON : 29.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH

Writ Petition No. 31358 of 2014

A. Somasundaram

Deputy Superintendent of Police

Special Branch CID

Mylapore, Chennai - 600 004

.. Petitioner

Versus

1. The Secretary to Government
Home Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009

2. The Director General of Police
Tamil Nadu, Chennai - 4

3. The Inspector General of Police
Intelligence, Mylapore
Chennai - 600 004

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in C.No.Estt.I(1)/SB/360/013726/2013 dated 15.07.2014 and quash the same and further direct the respondents to correct the petitioner's date of birth entered in the service register as 29.11.1960.

For Petitioner : Mr. M. Venkatachalapathy,
Senior Advocate

for Mr. Louisal Ramesh

For Respondents : Mr. S. Gunasekaran
Additional Government Pleader

ORDER

The petitioner calls in question the order dated 15.07.2014 of the third respondent, in and by which, the third respondent rejected the claim of the petitioner for alteration of his date of birth as 02.01.1958 instead of 29.11.1960 in his service records.

2. The petitioner claims that he born on 29.11.1960 to his parents at No.2, 'A' Block, Purasawalkam Police Line, Chennai and his date of birth has been duly registered with the Corporation of Chennai on 01.12.1960. Immediately after the birth of the petitioner, his parents have prepared his horoscope in which also, his date of birth is correctly indicated as 01.12.1960. However, at the time when the petitioner was admitted in the school in the year 1964, due to inadvertence his parents have given his date of birth as 02.01.1959 instead of 29.11.1960. The petitioner, after completing his schooling and after obtaining a Degree in Economics during the year 1986, joined the service as directly recruited Sub-Inspector of Police during September 1987 and presently, he is working as Deputy Superintendent of Police. At the time of entering the service, the petitioner's date of birth was given as 29.11.1960 as has been reflected in the school as well as college records. According to the petitioner, his father died on 07.12.2001 and after a few years thereafter, during February 2005, in a casual conversation with the members of the family for apportionment of the properties left by his father, a search was made for unearthing certain documents and at that time, the petitioner came in possession the horoscope prepared by his parents at the time of his birth. As per the horoscope, his date of birth is reflected as 29.11.1960 and therefore, the petitioner obtained his date of birth extract from the Corporation office in which also his date of birth was indicated as 29.11.1960. The petitioner therefore came to know that his correct date of birth has not been entered into his service records. Immediately, the petitioner submitted a representation dated 28.04.2005 to the third respondent seeking to alter his date of birth in his service records as 29.11.1960 instead of 02.01.1959. Such claim made by the petitioner was rejected by the third respondent in his proceedings dated 09.06.2005 stating that the petitioner has not sought for alteration of his date of birth within a period of five years, as required under the Rules.

3. The petitioner, thereafter, has filed a suit in O.S. No. 847 of 2006 before the learned VIII Assistant City Civil Judge, Chennai for a declaration to declare that his date of birth is 29.11.1960. In the suit, the respondents were impleaded as defendants. The suit was decreed on 24.07.2007 and on the strength of the decree obtained in the suit, the petitioner sent a representation to the respondents. In spite of the decree passed in the suit, the claim of the petitioner was rejected by the third respondent on 17.04.2012, However, once again, the petitioner made a further representation on 15.10.2013 which was once again rejected by the third respondent on 15.07.2014. Aggrieved by the same, the petitioner is before this Court with this writ petition.

4. When the writ petition was taken up for consideration, the learned Senior counsel for the petitioner would contend that the impugned order passed by the third respondent is arbitrary and discriminatory. In identical circumstances, in the case of one Mr. N. Mathivanan, Superintendent of Police, the department has considered his claim for correction of date of birth on the basis of a decree passed by the Civil Court. When similar claim was made by the petitioner, the department refused to alter the date of birth of the petitioner. The third respondent failed to note that immediately after coming to know about his correct date of birth, the petitioner has submitted a representation and when it was not considered by the respondents, he has filed a suit and obtained a decree. In the suit, the respondents were shown as defendants and therefore, the decree passed by the Civil Court is binding on the respondents. In this context, the learned Senior counsel for the petitioner relied on the decision of Andhra Pradesh High Court in the case of (Nadupuri Sanyasi vs. High Court of Andhra Pradesh) reported in 2002 (3) ALT 92 wherein it was held that when the Civil Court has passed a decree for alteration of date of birth, after contest, as per Rule 4 of the Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, correction of date of birth ordered by the Civil Court will be binding on the department. By placing reliance on the aforesaid decision, the learned Senior counsel for the petitioner prayed for allowing the writ petition as prayed for.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents would oppose the writ petition by contending that the claim of the petitioner for alteration of date of birth is highly belated. As regards the decree passed by the Civil Court, the learned Additional Government Pleader would only contend that the decree passed by the Civil Court will have the effect of taking into account the date of birth of the petitioner for some other purpose and it will not have a bearing on the department for alteration of his date of birth in his service records. When Rule 49 (C) of General Rules (Para-II) of the Tamil Nadu State and Subordinate Service Rules mandates an application for alteration of date of birth to be submitted by the petitioner within five years, the petitioner cannot be permitted to alter the date of birth in the service records after 17 years of his entry into service. Based on the statutory provisions contained in the Rule 49 (C) of the Tamil Nadu State and Subordinate Service Rules the third respondent is fully justified in passing the order dated 15.07.2014. It is further submitted that the petitioner has only challenged the order dated 15.07.2014 but failed to question the earlier orders of rejection dated on 09.06.2005 and 17.04.2012. As regards the comparison made by the petitioner with Tr. Mathivanan, the learned Additional Government Pleader would contend that Tr. Mathivanan sought for alteration of his

date of birth as 01.06.1951 by filing a suit in the year 1982. The said suit was filed within a period of five years from the date of his entering into service. Therefore, the petitioner is estopped from making a comparison with the order passed in favour of Tr. Mathivanan. At any rate, when the petitioner has belatedly submitted an application seeking alteration of his date of birth in the service records, the third respondent is wholly justified in passing the impugned order and he prayed for dismissal of the writ petition.

6. I heard the learned Senior counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents. The issue arise for consideration in this writ petition is whether the claim of the petitioner for alteration of his date of birth in the service records can be considered by the respondents beyond the period prescribed under Rule 49 (C) of General Rules (Para-II) of the Tamil Nadu State and Subordinate Service Rules.

7. On perusal of the records, it is seen that the petitioner's date of birth was recorded as 29.11.1960 in the birth certificate issued by Corporation of Chennai on 01.12.1960. However, when he was admitted in the school, it was erroneously given as 02.01.1959 instead of 01.12.1960. According to the petitioner, this date of birth indicated in the school records and college records were the basis for inclusion of his date of birth as 29.11.1960 in his service records as well. It is his specific contention that during February 2005, he came to know about his date of birth recorded in the horoscope prepared by his parents as 02.01.1959 and when he obtained his birth extract maintained by the Corporation of Chennai, it tallied with the one indicated in the horoscope. Therefore, the petitioner immediately approached the respondents to alter his date of birth in the service records but it was rejected on 09.06.2005. The petitioner also filed a suit for declaration in O.S. No. 847 of 2006 and obtained a decree thereof on 24.07.2007. According to the petitioner, inspite of the decree passed by the civil court, the third respondent has passed the impugned order of rejection on 15.07.2004,

8. Admittedly, the petitioner entered into service as directly recruited Sub Inspector of Police during September 1987. The request for alteration for alteration of date of birth in the service records was given for the first time during the year 2005. As the claim made by the petitioner for alteration of date of birth was belated, the third respondent has passed an order dated 09.06.2005 refusing to entertain the request of the petitioner. Admittedly, this order dated 09.06.2005 of the third respondent was not subjected to challenge by the petitioner in a manner known to law. Instead, the petitioner has filed a suit in O.S. No. 847 of 2006 against

the respondents herein and obtained a decree thereof on 24.07.2007. Immediately after obtaining such decree, for the reasons best known, the petitioner did not approach the respondents. Here again, the petitioner waited for about five years and made a claim for alteration of his date of birth which was rejected by the third respondent on 17.04.2012. The order dated 17.04.2012 has not been enclosed in the typed set of papers to show that the petitioner has made his request for alteration of date of birth soon after the order of decree passed by the trial Court. Even this order dated 17.04.2012 has not been challenged by the petitioner. When a subsequent order of rejection dated 15.07.2014 was passed by the third respondent, the petitioner has come up with this writ petition.

9. A perusal of the order dated 15.07.2014 would indicate that the third respondent rejected the claim of the petitioner for alteration of his date of birth after 25 years of entering into service. Therefore, the third respondent has indicated in the order dated 15.07.2014 that the request made by the petitioner belatedly is not feasible of consideration as per the Rules. It is clearly indicated in Rule 49 (C) of General Rules (Para-II) of the Tamil Nadu State and Subordinate Service Rules that an application for alteration of date of birth has to be submitted by a government servant within a period of five years and any application received after such period need not be entertained. As mentioned above, in the present case, the petitioner, for the first time, sought for alteration of his date of birth after 17 years of his entering into service and it was rejected by the third respondent on 09.06.2005. The petitioner, instead of challenging the order dated 09.06.2005 has filed a suit for declaration. In my considered view, in such a circumstances, the decree obtained by the petitioner in the civil suit will not bind the respondents in so far as it relates to the claim of the petitioner for alteration of his date of birth in the service records. What could not be achieved by the petitioner before the respondents is sought to be achieved by him by filing a civil suit to get over the statutory provisions contained in Rule 49 (C) of General Rules (Para-II) of the Tamil Nadu State and Subordinate Service Rules. Rule 49 (C) confers on the respondents discretionary power to take into account the circumstances under which a claim for alteration of date of birth is made. In the present case, as mentioned above, there is no justifiable reasons assigned by the petitioner for not attempting to get his date of birth altered within a period of five years as has been contemplated under Rule 49 (C) of General Rules (Para-II) of the Tamil Nadu State and Subordinate Service Rules. While so, the third respondent is fully justified in rejecting the claim of the petitioner for alteration of date of birth beyond the period of five years. I do not find any reason to interfere with such an order passed by the third respondent.

10. In the result, the writ petition is dismissed as devoid of any merits. There shall be no order as to costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government
Home Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009
2. The Director General of Police
Tamil Nadu, Chennai - 4
3. The Inspector General of Police
Intelligence, Mylapore
Chennai - 600 004

+1 cc to Government Pleader sr 56477

+1 cc to M/s.Louisal Ramesh Advocate sr 56726

W.P. No. 31358 of 2014

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