

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 15.11.2016

Orders pronounced on 02-12-2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.17697 of 2016
and W.M.P.Nos.15404 and 15405 of 2016

V.Kalyanasundaram

.. Petitioner

Vs.

1. The District Collector,
Office of the District Collector,
Nagapattinam, Nagapattinam District.

2. The District Revenue Officer,
Office of the District Revenue Officer,
Nagapattinam, Nagapattinam District.

3. The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Nagapattinam, Nagapattinam District.

4. The Thasildar, Office of the Thasildar,
Vedaranyam, Vedaranyam Taluk,
Nagapattinam District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Na.Ka.No.2047/2016/Aa2, dated 27.04.2016 on the file of the second respondent and consequently passed an order in proceedings in Muu.Mu.1269/2016/A1, dated 30.04.2016 on the file of the third respondent herein, quash the same and direct the third respondent to reinstate the petitioner in his service. (Prayer amended - as per order dated 10.06.2016 passed in W.M.P.No.16670 of 2016 in W.P.No.17697 of 2016)

For Petitioner : Mr.S.Doraisamy for Mr.R.Muruga Bharathi
For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Na.Ka.No.2047/2016/Aa2, dated 27.04.2016 on the file of the second respondent and consequently passed an order in proceedings in Muu.Mu.1269/2016/A1, dated 30.04.2016 on the file of the third respondent herein, quash the same and direct the third respondent to reinstate the petitioner in his service.

2. It is the case of the petitioner that he was working as Village Administrative Officer at Thagattur Subramaniyakadu from 19.02.2009. Originally, he was appointed as Village Administrative Officer on 14.02.2009 as per the proceedings of the third respondent in Na.Ka.No.934/2009/Aa.1. After getting the orders of the third respondent, he joined the duty as VAO on 19.02.2009, after which, there are no charges against him and had put in unblemished service till date. It is his further case that he was actually born on 27.12.1959, which was registered in his Birth Certificate by the Sub-Registrar Office, Thagattur. But, the said date of birth was wrongly noted in his School Certificate as 25.04.1958 instead of 27.12.1959. Hence, on 10.08.2009, the petitioner made a representation to the respondents requesting them to enquire and alter his date of birth in the service records. After receiving the said representation, the fourth respondent forwarded the same in proceedings No.6042-2009-A3, dated 08.10.2009 to the third respondent recommending for alteration of the petitioner's date of birth in the service records as per Rule 49 of the Tamil Nadu State and Subordinate Service Rules, within five years from the date of his entry into service.

3. After receiving the letter from the fourth respondent, the third respondent forwarded the letter in Na.Ka.No.7315/2009/A1, dated 29.03.2010 to the first respondent. The first respondent, in his proceedings in O.Mu.13067/2010/Aa2, dated 05.05.2010 forwarded it to the third respondent for conducting enquiry and to submit a report within a period of 30 days with regard to the alteration of the petitioner's date of birth in the service records. In spite of the same, there was no progress, despite several representations made by the petitioner, i.e. on 09.05.2014, 18.12.2014 and 27.05.2015. Hence, the petitioner filed W.P.No.37883 of 2015 before this Court and by order dated 27.11.2015, this Court directed the second respondent to consider the petitioner's representation, dated 09.05.2014, 18.12.2014 and 27.05.2015 and pass appropriate orders, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of the order and to

communicate the decision taken by him to the petitioner. Thereafter, no enquiry was conducted by the second respondent. The petitioner sent legal notice, dated 27.04.2016, after which, the third respondent conducted enquiry regarding the change of date of birth of the petitioner. The petitioner appeared before the third respondent and submitted required documents. Thereafter, based on the report of the third respondent, the impugned order dated 27.04.2016 was passed by the second respondent rejecting the request of the petitioner on the ground that the date of birth had not been proved. Thereafter, the third respondent has passed order dated 30.04.2016 permitting the petitioner to get relieved from the service and to hand over the post to the incumbent. Challenging these two orders, the petitioner has filed this Writ Petition for the above relief.

4. When the Writ Petition is taken up for hearing, learned counsel for the petitioner mainly contended that the actual date of birth of the petitioner is 27.12.1959, which has been duly registered in the Birth Certificate in the Office of the Sub-Registrar, Thagattur, but the said date of birth had been wrongly noted as 25.04.1958 in the School Certificate and in the service records of the petitioner. Moreover, as per Rule 49 of the Tamil Nadu State and Subordinate Service Rules, the petitioner has rightly approached for change of date of birth within five years from the date of his entry into service. In spite of the same, the request of change of date of birth was not considered favourably. In support of his submissions, learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2009 (7) SCC 283 (CIDCO Vs. Vasudha Gorakhnath Mandevlekar), wherein, the Supreme Court held as follows:

"18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent. (See *Birad Mal Singhvi Vs. Anand Purohit* - 1988 Supp SCC 604 = AIR 1988 SC 1796)."

5. Therefore, learned counsel for the petitioner submitted that the Birth Certificate of the petitioner displays the correct date of birth and by accepting the same, the respondents ought to have changed the date of birth of the petitioner in the service records. Hence, he prayed for quashing the impugned orders and for consequential direction for alteration of change of birth of the petitioner and also to reinstate the petitioner

into service.

6. Countering the above submissions, learned Special Government Pleader appearing for the respondents, by referring to the counter affidavit, submitted that pursuant to the direction issued by this Court in W.P.No.37883 of 2015, dated 27.11.2015, the fourth respondent conducted detailed enquiry and submitted his report, dated 27.04.2016, and in turn, the third respondent examined the enquiry records and recommended for rejection of the claim of the petitioner as devoid of merits, vide order dated 27.04.2016. Learned Spl.G.P. further contended that the fourth respondent has conducted enquiry on the petitioner, Murugaiyan, Vadivel, Venugopal, Anandavalli, Chidambaranathan and Ayyappan, which revealed that the first male child born to the parents of the petitioner at Government Hospital, Thiruthuraipoondi, died after 15 days of the birth and the following children were born to the parents, i.e. V.Gunasekaran, V.Kalyanasundaram (petitioner), V.Rajendiran, V.Chandrasekaran, V.Ayyappan, V.Nagarasan and V.Chidambaranathan.

7. Learned Spl.G.P. further submitted that during the enquiry, the original Birth Certificate in respect of Rajendiran, Chandrasekaran and Nagarajan, who are the brothers of the petitioner, had not been produced and hence, the age correlation could not be verified. Further, the elder brother of the petitioner, namely Gunasekaran, is a retired V.A.O and in his Service Register, the date of birth has been recorded as 12.07.1955. While so, the first child born to the parents of the petitioner was recorded as, on 11.11.1956, as found in the Birth Certificate issued by the Sub-Registrar, Thiruthuraipoondi on 24.08.2010, and hence, there is a discrepancy in the age between the first child and the second child. With regard to the younger brother, namely Rajendiran, the proof of birth had not been produced by the petitioner in support of his claim. But in the pension records, the said Rajendiran's date of birth had been recorded as 19.06.1962, and hence, these records had not been taken as absolute proof. Learned Spl.G.P. further submitted that the independent witnesses enquired have not spoken about the actual date of birth of the petitioner. It is the further contention of the learned Spl.G.P. that as per the SSLC Certificate, the petitioner has completed the course on 10.05.1975 and the date of birth of the petitioner has been recorded in the School records as 25.04.1958 and only on that basis, the petitioner was allowed for admission in the School and allowed to sit in the Examination at the appropriate age and the parents of the petitioner have furnished declaration in the SSLC Certificate as to the facts furnished therein including the date of birth of the petitioner. Hence, there is no sufficient proof to conclude about the actual date of birth as requested by

the petitioner.

8. Learned Spl.G.P. further contended that though the petitioner has given his claim for change of date of birth within the prescribed time stipulated under the Rules, it is proper on the part of the petitioner to ensure that his date of birth has been correctly recorded in his educational records earlier to his entry into Government service. Moreover, the third respondent passed order on 30.04.2016 allowing the petitioner getting relieved from service on attaining the age of superannuation with reference to his date of birth being 25.04.1958 as found in the Service Register as well as in the educational certificates. Hence, for the above reasons, learned Spl.G.P. prayed for dismissal of the Writ Petition.

9. Keeping in mind the above submissions made on either side, I have anxiously considered the same and perused the materials available on record.

10. The petitioner has made his claim for change of date of birth based on the Birth Certificate said to have been registered before the Sub-Registrar, Thagattur. In support of this claim, learned counsel for the petitioner relied on the decision of the Supreme Court reported in 2009 (7) SCC 283 (cited supra) to show that the Birth Certificate is the authenticated proof of the date of birth of a person. Even though wrong entry of date of birth had been made in the School records, the document issued by the statutory authority, namely Sub-Registrar, is administrative in nature and it prevails over the entries made in the School records.

11. There is no quarrel over the said proposition of law laid down by the Supreme Court. At the same time, it has to be noted that the petitioner has noticed his correct date of birth only after his entry into service and he has made due representation for correcting his date of birth within the prescribed period of five years from the date of entry into service. All along, right from his entry into School, he has not noticed the correct date of birth and took steps to rectify the same only after entry into service. When that being the position, merely based on the Birth Certificate, this Court cannot give any direction to the respondents to alter the date of birth in the service records, as the documents, namely the Birth Certificate has been shown as proof only after joining in the service. Moreover, while conducting due enquiry with the respective persons, there was no sufficient evidence that could come out to prove the correct date of birth of the petitioner. There has been some discrepancies as discussed above.

12. Therefore, it has to be concluded that the petitioner

has not produced enough proof to prove his correctness of the date of birth and has miserably failed to stake his claim beyond reasonable doubt, coupled with the fact that he has already attained superannuation and got relieved from service, which is evident from the impugned order, dated 30.04.2016. Though the petitioner has duly represented before the respondents for change of date of birth within five years of his entry into service, the fact remains that he has not taken due steps to correct his date of birth before his retirement and he has approached the authorities and this Court only at the verge of his retirement. Moreover, the petitioner has also been permitted by the respondents to retire from service on attaining the age of superannuation. Hence, he is not entitled to the relief sought for in this Writ Petition.

13. The Writ Petition is accordingly dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The District Collector,
Office of the District Collector,
Nagapattinam, Nagapattinam District.
2. The District Revenue Officer,
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Nagapattinam, Nagapattinam District.
3. The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Nagapattinam, Nagapattinam District.
4. The Thasildar, Office of the Thasildar,
Vedaranyam, Vedaranyam Taluk,
Nagapattinam District.

+lcc to Mr. R. Murugabharathi, Advocate sr.71547
+lcc to The Government Pleader sr. 71698

Rj (co) ss (10/01/2017)

W.P.No.17697 of 2016