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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

Writ Petition (MD) No.3165 of 2014

and

M.P(MD)No.1 of 2014

P.Visvanathan

... Petitioner

Vs.

1. The Principal Secretary to
Government / Education Department,
Secretariat, Fort St., George,
Chennai 600 009.

2. The Director of School Education,
DPI Campus, Nungambakkam,
Chennai.

3. The Director of Government
Examinations,
DPI Campus, Nungambakkam,
Chennai.

4. The Principal,
AVC College (Autonomous),
Mannampandal,
Mayiladuthurai 609 305,
Nagapatinam District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for records pertaining to impugned order in O.Mu.No.73626/M/E3/2013 dated 26.08.2013 passed by the 2nd Respondent and quash the same and consequently directing the respondents to make correction in the mark sheets school records and transfer certificate regarding my date of birth as 11.08.1978 instead of 18.03.1976.

For Petitioner : Mr.R.Narayanan

For Respondents 1-3 : Mr.J.Gunaseelan Muthiah,
Government Advocate.

ORDER

Challenging the order passed by the second respondent
<https://hcservicescourts.gov.in/hcservices/> claim of the petitioner, dated 26.08.2013 on the
ground that the petitioner neither impleaded the second respondent
nor the officers of the education department as party to the



proceedings before the Judicial Magistrate Court, Thuraiyur in C.M.P.No.1319 of 2013 for change of his date of birth in the birth certificate, the present writ petition has been filed.

2.Heard Mr.R.Narayanan, learned counsel appearing for the petitioner and Mr.J.Gunaseelanmuthiah, learned Government Advocate appearing for the respondents 1 to 3.

3.According to the petitioner, he was born on 11.08.1978 and while he was admitted in the school, his date of birth was wrongly given as 18.03.1976. Therefore, the petitioner has approached the Judicial Magistrate, Thuraiyur under Section 10(3) of the Registration of Births and Deaths Act, 1969 and Tamil Nadu Registration of Births and Deaths Rules praying for change of his date of birth as 11.08.1978 instead of 18.03.1976. It is further stated that the learned Judicial Magistrate, after examining the witnesses and perusing the evidence, issued direction to the concerned Tahsildar, to change the date of birth of the petitioner as 11.08.1978. It is further stated that based on the said direction, the Tahsildar, Thuraiyur issued birth certificate changing the petitioner's date of birth as 11.08.1978. It is further stated that based on the said certificate issued by the Tahsildar, the petitioner has approached the second respondent by way of representation dated 22.08.2013 to correct his date of birth in the school certificate and also in his transfer certificate. Since the said relief has been rejected by the second respondent on 26.08.2013, the present writ petition has been filed.

4.Learned counsel appearing for the petitioner would submit that the competent authority namely, the Judicial Magistrate passed an order under Section 10(3) of the Registration of Births and Deaths Act, 1969 and Tamil Nadu Registration of Births and Deaths Rules to correct the petitioner as 11.08.1978 instead of 18.03.1976 and based on the said order, the Tahsildar has also issued birth certificate correcting his date of birth as 11.08.1978. Therefore, there is no impediment for the educational authorities to change the petitioner's date of birth in his educational certificates namely, in S.S.L.C and H.S.S and transfer certificate. In support of his contention, learned counsel appearing for the petitioner relied upon a decision of this Court in S.Rajesh Kumar Vs.The Secretary, Board of Higher Secondary Education, Madras made in W.P(MD)No.9340 of 2009, dated 18.09.2012.

5.Learned Government Advocate appearing for the respondents would submit that since the educational authorities have not acted in the proceedings under Section 10(3) of the Registration of Births and Deaths Act, 1969 and Tamil Nadu Registration of Births and Deaths Rules at the instance of the



petitioner, the authorities cannot alter his date of birth in the school certificates.

6.I have considered the submissions made by the learned counsel on either side and perused materials available on record.

7.Admittedly, the competent authority has passed an order under Section 10(3) of the Registration of Births and Deaths Act, 1969 and Tamil Nadu Registration of Births and Deaths Rules, and based on that a birth certificate was also issued by the Tahsildar and hence, there is no impediment for the educational authorities to change the petitioner's date of birth in his educational certificates namely, in S.S.L.C and H.S.S and transfer certificate.

8.In the above circumstances, this Court in S.Rajeshkumar's case (supra), has held as follows:

"30.As stated supra, as per the birth certificate issued by the Sub Registrar, Thiruvattar enclosed in the typed set of papers, the name of the child entered in the said certificate is S.Rajesh Kumar. The date of birth has been shown as 19.01.1975. When the statute provides for correction or cancellation of an entry in the register of births and deaths maintained by the Sub Registrar after coming into force of the Act, the said certificate can be relied on for making necessary changes in public records which includes the records maintained in the office of the Director of Government Examinations Chennai. The contention of the respondents that the said correction can be made only before the student leaves the school and not later, cannot be accepted for the reason that any entry in the birth certificate by virtue of registration or alteration or cancellation by the competent authority under the Registration of Births and Deaths Act, 1969, has to be given effect to otherwise, the purpose for registration or alteration or modification would be defeated. There cannot be different entries in the public records maintained by different authorities, one under the Registration of Births and Deaths Act, 1969 and the other by the educational authorities. The date of birth as entered in the birth extract has to be entered in all the public records uniformly, unless and until any statutory rules, restrict such entry, like in the case of a Government servant, governed by the Tamil Nadu State and Subordinate Services Rules. In the light of the above discussion, this Court is not inclined to accept the objections of the educational authorities made on the basis of the Subsidiary rules framed before the introduction of the Central Act, 1969".



9. Following the above said decision, the writ petition is allowed and the impugned order passed by the second respondent dated 26.08.2013 is set aside. The respondents are directed to correct the petitioner's date of birth based on the birth certificate issued by the Tahsildar, dated 06.08.2013 within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/

Assistant Registrar(A.S.,)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government / Education Department, Secretariat, Fort St., George, Chennai 600 009.
- 2.The Director of School Education,DPI Campus, Nungambakkam, Chennai.
- 3.The Director of Government Examinations, DPI Campus, Nungambakkam, Chennai.

+1cc to M/s.R.Narayanan, Advocate, in SR No.66612.

+1cc to Special Government Pleader in SR.No.67036.

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