



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.05.2016

CORAM :

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD)No.2493 of 2016

and

W.M.P(MD)No.2204 of 2016

P.Sivasamy

... Petitioner

Vs.

1.Tamil Nadu Electricity Board,
Rep. by Chairman cum Managing Director,
144, Anna Salai,
Chennai - 600 002.

2.The Secretary,
Tamil Nadu Generation and
Distribution Corporation,
Secretariat Branch, 144,
Anna Salai, Chennai 600 002.

3.The Chief Engineer (Personnel)
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.

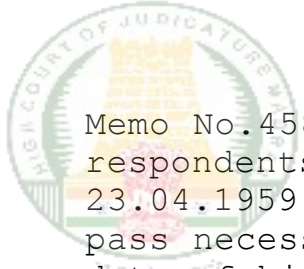
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the first respondent Memo No.45840/A2/A21/2015-1, dated 21.08.2015 and quash the same and direct the respondent to correct the date of birth as 23.04.1959 instead of 19.05.1958 in the service register and to pass necessary orders to the claim of the petitioner and alter the date of birth as 23.04.1959 with all consequential benefits on the representation, dated 18.05.1990.

For Petitioner : Mr.UM.Ravichandran

For Respondents : Mrs.Srimathy

O R D E R



Memo No.45840/A2/A21/2015-1 and quash the same and also direct the respondents to correct the date of birth of the petitioner as 23.04.1959 instead of 19.05.1958 in the service register and to pass necessary orders to the claim of the petitioner and alter the date of birth as 23.04.1959 with all consequential benefits on the representation, dated 18.05.1990.

2.The case of the petitioner is that he was initially appointed as Assistant Engineer/Electrical in Tamil Nadu Electrical Board in the year 1985 and thereafter, he was promoted as Assistant Executive Engineer/Electrical at Mettur Thermal Power Project. On 11.05.1990, the petitioner applied to the Sub Registrar, Guzhiliamparai, Dindigul District for his birth extracts to know his actual date of birth. After receiving the certificate from the Sub Registrar, he came to know that his actual date of birth is 23.04.1959, whereas in his school certificates and Government records, his date of birth has been wrongly recorded as 19.05.1958. Therefore, the petitioner has given a representation dated 18.05.1990 to the third respondent requesting him to alter his date of birth as 23.04.1959 instead of 23.04.1958 in his Service Register.

3.Thereafter, the petitioner has given another representation on 17.07.2015 by mentioning the Lr.No.AE/Elecl./Dn.12/MTTP/P1/D.886/90, dated 18.05.1990 with a request to consider his application for the alteration of his Date of Birth in Service Register. Along with the said representation, the petitioner also enclosed annexure of the Birth Register Extract. At the time of giving the first representation on 18.05.1990, the petitioner also submitted the annexure along with the representation, but the respondent has not consider the earlier representation dated 18.05.1990 and they have not stated about the status of the representation, dated 18.05.1990 in the impugned order. But the first respondent has passed the impugned order dated 21.08.2015 in Memo No. 45840/A2/A21/2015-1 rejecting the petitioner's representation dated 17.07.2015 and in the said impugned order, the first respondent states that as per the Regulation 110(b)(ii) of the Tamil Nadu Electricity Services Regulation, after a person has entered service under the Board, an application to alter the Date of Birth as entered in the records of the Board, shall be entertained only if such application is made within five years of such entry into service. But this petitioner has made his application only on 17.07.2015 i.e. after 30 years of his entry into service. Therefore, his request for alteration of Date of Birth was rejected.

4.Service Regulation 110(b)(i) and (ii) reads as follows:-

"(i) If, at the time of appointment, a candidate entered in the records mentioned in clause (a)(i) above, he shall make an applicable in the prescribed form to the



appointing authority stating the evidence on which it relies and explaining how the mistake occurred. The appointing authority shall cause an enquiry to be made by the Divisional Engineer, Operation and Maintenance having jurisdiction over the place or birth of the Board employee concerned. If the employee himself happens to be a Divisional Engineer/Operation and Maintenance whose place of birth falls within his own jurisdiction, some other Divisional Engineer nominated by the Chief Engineer/Personnel shall be asked to conduct an enquiry. If the employee is a Superintending Engineer/Distribution having jurisdiction over his place of birth, some other Divisional Engineer nominated by the Chief Engineer/Personnel who is not directly under the control of the applicant shall be asked to conduct an enquiry. On receipt of the report of enquiry, the case shall be submitted to the Board for decision. The decision of the Board shall be final.

(ii) After a person has entered service under the Board, an application to alter the date of birth as entered in the records of the Board shall normally be entertained only if such application is made within five years of such entry into service. Such an application shall be made in the prescribed form to the authority competent to make an appointment to the post held by the applicant at the time of his application. Such an application, not supported by entries in Secondary School Leaving Certificate, school, College or University Records, birth extract from records of local bodies or military discharge certificates, shall be summarily rejected. The appointing authority shall cause an enquiry to be made by an Executive Engineer/Operation and Maintenance having jurisdiction over the place of birth of the employee concerned. If the employee himself happens to be an Executive Engineer/Operation and Maintenance whose place of birth falls within his own jurisdiction some other Executive Engineer nominated by the Chief Engineer/Personnel shall be asked to conduct the enquiry. If the applicant is a Superintending Engineer (Operation and Maintenance) or Chief Engineer (Distribution) having jurisdiction over his place of birth, some other Executive Engineer nominated by the Chief Engineer (Personnel) who is not directly under the control of the applicant shall be asked to conduct the enquiry. Such enquiry reports in respect of Superintending Engineers and above shall be submitted to the Board through the Chief Engineer (Personnel). The decision of the Board shall be final."

<https://hcservices.ecourts.gov.in/hcservices/>

5. Therefore, as per the above Board proceedings, the petitioner has made his representation on 18.05.1990 within five

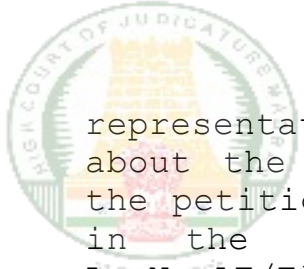


years from the date of his entry into service. Challenging the rejection order, the present writ petition has been filed by the petitioner on the ground that though he was entered into service on 29.05.1985 and after knowing about the original Date of Birth as 23.04.1959, he made a representation on 18.05.1990, i.e. within the time limit of five years. The said representation was sent by mentioning the letter number as Lr.No.AE/Elecl./Dn.12/MTTP/P1/D.886/90, dated 18.05.1990. Therefore, the petitioner state that being the official worked as Assistant Engineer, he quote the letter number in his representation dated 18.05.1990 and sent the same to the first respondent, but no action was taken. He has also made a ground that as per Service Regulation 110(b) alteration of Date of Birth of the Board service, when the person has entered into service, within five years, he should have made application to correct his Date of Birth. Therefore, when he was appointed on 29.05.1985, within five years i.e. on 18.05.1990, the petitioner has made a representation to the third respondent herein through proper channel in prescribed format to the first respondent to alter his Date of Birth as 23.04.1959 instead of 19.05.1958 in the Service Register.

6.On receipt of the notice in the writ petition, the respondents also entered appearance and filed their counter. For the averments made in the affidavit filed by the petitioner about the representation, dated 18.05.1990, the respondent stated in their counter in paragraph No.6 that the petitioner had not made any representation in earlier occasion, especially, during 1990, as averred by him in his affidavit and denied the other contentions.

7.During the course of argument, the learned counsel for the petitioner produced a Judgment passed by this Court in W.P.(MD) No.6678 of 2011 seeking alteration of Date of Birth, wherein this Court has considered that the Birth Extract is an important and primary piece of evidence. When the said extract has been found to be genuine, there is no reason as to why report to be rejected. In the said case, though the said petitioner in the said W.P.(MD) No.6678 of 2011 was approached the respondents in the said writ petition within five years and the same was rejected in the year 1994 itself. The rejection of his request is not correct and hence, in the said writ petition, this Court issued Mandamus directing the respondent to pass orders on the basis of the report, dated 28.04.2011.

8.The said case is squarely applicable to this petitioner's case. When the petitioner has sent a representation, dated 18.05.1990, by mentioning the letter number as Lr.No.AE/Elecl./Dn.12/MTTP/P1/D.886/90, it is the bounden duty of the respondent to verify and pass orders on the said



representation or they should give reply in the impugned order about the receipt of the representation, dated 18.05.1990. When the petitioner made representation on 17.07.2015, he had mentioned in the representation in reference column No.2 as 'my Lr.No.AE/Elec1./Dn.12/MTTP/P1/D.886/90'. Thus being the case, the respondent should have passed orders on the representation, dated 18.05.1990 or to mention about the non receipt of the representation in the said impugned order dated 21.08.2015. But without gone into the representation made by the petitioner on 18.05.1990, and without giving any reply in the impugned order, the first respondent had simply stated that the petitioner has made the representation only after 30 years of his entry into Board service, which is not at all acceptable one. Therefore, as per Section 110(b)(ii) of the Act, this petitioner has made representation on 18.05.1990 within five years from the date of his entry and that should be accepted by the respondents.

9. Therefore, in the above circumstances, I am inclined to set aside the impugned order, dated 21.08.2015, directing the first respondent to pass orders on the representation of the petitioner, dated 18.05.1990 in the Lr.No.AE/Elec1./Dn.12/MTTP/P1/D.886/90, sent by the petitioner on or before 26.05.2016.

10. The writ petition is allowed to that extent. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Vacation Officer,

/True Copy/

Sub Assistant Registrar

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To

1. The Chairman Cum Managing Director,
The Tamil Nadu Electricity Board,
144, Anna Salai, Chennai - 600 002.
2. The Secretary, Tamil Nadu Generation and
Distribution Corporation, Secretariat Branch, 144,
Anna Salai, Chennai 600 002.
3. The Chief Engineer (Personnel) Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 600 002.

+1CC to Mr.U.M.Ravichandran Advocate Sr.No.26667

+1CC to Mr.S.M.S.Johnny Basha Advocate Sr.No.26712

GJM/GSV/PM/SAR-II-20.5.15-5p-6C