

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 9685 of 2017
and W.M.P.No. 10653 of 2017

K.Komethagam

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Petitioner

Vs

1. The Director of Medical Education,
Kilpauk, Chennai - 600 005.

2. The Dean,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

3. The Deputy Tahsildar,
Uthangarai,
Dharmapurai District.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the entire records in pursuant to the rejection order passed by the 1st respondent vide his proceedings in Ref. No.92531/N4/2016 dated 09.03.2017 and the consequential notice of retirement notice issued by the 2nd respondent vide Ref. No.023738/E2/2/2016 dated 12.08.2016 and quash both of them within a consequential direction to the respondents 1 and 2 to alter the petitioner's date of birth as 02.05.1969 instead of 02.05.1959 in the service records maintained in the 2nd respondent hospital in accordance with the birth certificate issued by the 3rd respondent complying with the decree dated 28.02.1990 made in O.S. No.120 of 1989 on the file of the District Court, Harur within a stipulated time.

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mr.K.Dhananjeyan
Special Government Pleader

O R D E R

Challenge in this writ petition is, an order of rejection passed by the respondents regarding the claim of alteration of date of birth for the petitioner.

2. The writ petitioner states that she had joined in the Government service on 7th November 2001 and her date of birth was entered in the service records as per the school record. But, it is not disputed that entries in the service record were made, based on the school record of the writ petitioner. However, the writ petitioner claims that her actual date of birth is 2.5.1969 and instead of that as per the school record, the date of birth was recorded as 2.5.1959.

3. The difference of 10 years is the claim of the writ petitioner. The difference of 10 years in date of birth is a hard fact to believe. Even then, this Court will be in a position to consider such a long gap provided, the writ petitioner is able to prove that she filed the application seeking alteration of date of birth within prescribed period of 5 years and she must be in a position to substantiate that the claim for alteration is genuine and supported with documents. In the absence any of these documents, this Court cannot consider the alteration of date of birth based on certain probable circumstances carried by the writ petitioner in this writ petition. Even, before the Authorities, the writ petitioner is unable to establish that the application seeking alteration of date of birth was filed within a prescribed period of five years, as per Rule 49 of the Tamil Nadu State and Subordinate Service Rules. This apart, the due date for retirement of the writ petitioner was 31.05.2017 and by this time, the writ petitioner would have got superannuated and relieved from the post.

4. May that it be, the Court has to consider whether the entitlement of the employee seeking alteration of date of birth is genuine or not. In the case on hand, the writ petitioner has not filed any documents to show that the application in prescribed format was presented before the Competent Authority within a period of 5 years from the date of her appointment. This apart, the difference in date of birth claimed is more than about 10 years. The burden of proof lies on the writ petitioner to prove her case. But, on perusal of the writ petition, the writ petitioner has not produced any substantial proof to show that the claim is genuine. However, this Court is not in a position to adjudicate the merits and demerits of the claim made by the writ petitioner. At the threshold, the writ petition, at this length of time, cannot be considered either by Court or by the authorities concerned. Once, the date of birth of an employee is entered based on the school records, the same has to be followed till the retirement and alteration cannot be made as routine affair. Alteration of date of birth will have longer implication affecting anyway other employees in respect of promotion and therefore, the alteration of date of birth must be strictly in accordance with the Rules and not otherwise.

5. Accordingly, the claim made in this writ petition is devoid of merits. Hence, this writ petition is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Director of Medical Education,
Kilpauk, Chennai - 600 005.
2. The Dean,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.
3. The Deputy Tahsildar,
Uthangarai,
Dharmapurai District.

+1cc to Mr.T.P.Prabakaran,Advocate sr.47819

+1cc to Government Pleader sr.48666

W.P.No. 9685 of 2017

nm(co)
ss(27/7/2017)

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