



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2017

Delivered on : 02.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Writ Petition (MD) No.17094 of 2015

and

M.P.(MD) Nos.1, 2 and 3 of 2015

and WMP(MD)No.929/17

Sannasi,
S/o.B.Iruvan,
Statistical Officer,
Office of the Regional Joint Director of Statistics,
Madurai Region,
Madurai - 625 010.

... Petitioner

Vs.

1.The Chief Secretary,
Government of Tamilnadu,
Planning and Development Department,
Secretariat, St.George Fort,
Chennai.

2.The Principal Commissioner and Commissioner of
Revenue Administration,
Chepauk, Chennai - 600 006.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent disposed of in his Lr.No.3(3)60240/2000, dated 01.02.2001 passed by the 2nd respondent without jurisdiction and quash the proceedings and directing the 2nd respondent to dispose of the same according to law ordering correction of the Service Register with real date of birth 13.01.1959.

For Petitioner : Mr.R.A.Mohanram

For Respondents : Mr.B.Pugalendhi

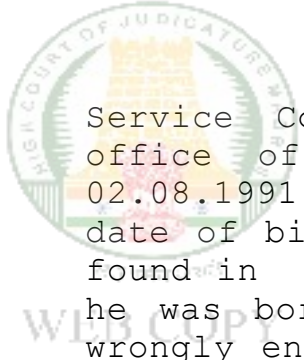
Additional Advocate General
assisted by Mr.N.S.Karthikeyan
Additional Government Pleader

ORDER

The above Writ Petition has been filed for issuing a Writ of Certiorarified Mandamus to quash the proceeding of the second respondent dated 01.02.2001 and direct the second respondent to correct the date of birth in the Service Register of the

<https://hccetcdonline.in/laservice> 13.01.1959.

2.The petitioner was appointed through Tamil Nadu Public



Service Commission as Assistant Statistical Investigator in the office of the Deputy Director of Statistics, Madurai, from 02.08.1991. At the time of entry into service, the petitioner's date of birth was given as 12.09.1957 based on the date of birth found in school records. However, the petitioner's case is that he was born only on 13.01.1959 and that the date of birth was wrongly entered into the school records though his date of birth as registered in the records maintained in his native place reveal that the petitioner was born on 13.01.1959.

3. The petitioner, contenting that his date of birth was wrongly entered in his SSLC book by his parents inadvertently, filed an application on 19.07.1996, for correction of date of birth to his appointing authority in the prescribed format. The petitioner has also further stated in the affidavit that along with the application, the petitioner has also submitted the birth certificate and other records to prove his real date of birth. The petitioner himself has admitted the fact that he applied for his date of birth extract from the office of the Sub-Registrar, Puthumandapam, Madurai and got it only on 11.06.1996.

4. The second respondent on receipt of the petitioner's application has referred to the Revenue Divisional Officer, Madurai, requesting him to enquire into the matter, by an official communication, dated 05.03.1998. The Revenue Divisional Officer, Madurai, after enquiry submitted a report dated 29.11.2000 and 21.12.2000. The report of the Revenue Divisional Officer, Madurai, reveals that the petitioner's father was a farmer and that the birth extract of the petitioner's brothers and sisters along with that of the petitioner which were produced by the petitioner were compared with the entries found in the original birth register and found genuine. However, the second respondent did not accept the reports of the Revenue Divisional Officer, Madurai and declined the request of the petitioner to alter the date of birth of the petitioner as 13.01.1959. The second respondent passed the order on 01.02.2001. However, the petitioner states that he preferred an appeal to the first respondent through the second respondent immediately after the order was passed by the second respondent and that the appeal was returned by a letter dated 16.03.2001 on the ground that the relative documents from the department were not received. The petitioner has stated in the affidavit that once again on 07.04.2014 he submitted an appeal with all relevant documents to the appointing authority, namely, the second respondent who forwarded his appeal with all documents to the first respondent. It was also stated by the petitioner that the first respondent has once again returned the appeal for want of records which prompted the petitioner to submit a representation once again on 07.05.2015, for resubmitting the appeal which was returned by the first respondent for want of original records. Since the representation of the petitioner, submitted to the second

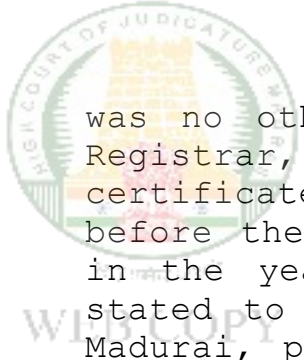


respondent was not considered, the petitioner has filed the Writ Petition.

5. The first respondent has filed a counter affidavit *inter alia* contenting that the order passed by the second respondent in the 2001 is in accordance with law and in terms of the provisions of the Tamil Nadu State and Subordinate Rules particularly Rule 49(b). It was further contented by the first respondent in the counter affidavit that the petitioner did not make any further representation as contented by the petitioner in the affidavit for about 13 years after the order was passed by the second respondent rejecting the request of the petitioner to alter the date of birth in the service records. Though it is submitted by the respondent that an appeal dated 07.04.2014 was submitted by the petitioner and that the appointing authority forwarded the appeal to the first respondent, it was stated by the first respondent that the appeal was also returned due to non-production of relevant documents and records. This was also communicated to the petitioner on 06.04.2015. Though the petitioner made a further representation to the appointing authority on 07.05.2015, it was pointed out in the counter affidavit that the petitioner was informed by the appointing authority by his letter dated 22.09.2015 that the petitioner's application was rejected on the ground that he had submitted the appeal belatedly after a period of 13 years. Hence, the respondents seriously contested the writ petition on the ground that the petitioner has abandoned his claim and the writ petition is liable to be dismissed on the ground that the petitioner has not explained the inordinate delay of 13 years in preferring the appeal. It was stated in the counter affidavit that the petitioner kept silent for more than 13 years and because of his inaction for long number of years, the writ petition itself is liable to be dismissed on the ground of delay and laches.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for the respondents.

7. The impugned order passed by the second respondent reveals that the second respondent has considered the request of the petitioner with reference to all the documents filed by the petitioner and the reports submitted by the Revenue Divisional Officer, Madurai. The second respondent has given sufficient reason for not accepting the reports of the Revenue Divisional Officer. As a matter of fact, the petitioner's father has given the date of birth of the petitioner as 12.09.1957, at the time of getting admission to the petitioner in school. Hence, the SSLC book of the petitioner shows the petitioner's date of birth as 12.09.1957. However, it is stated by the petitioner, even in affidavit that he found the mistake only in the 1996 and applied for birth extract and obtained the same in the year 1996. There



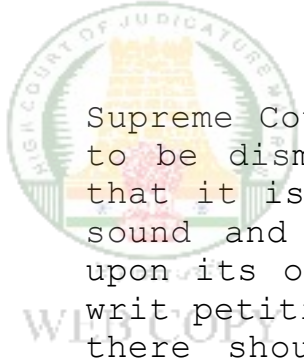
was no other record except the birth extract given by the Sub Registrar, Puthumandapam, Madurai, in the year 1996. All the certificates produced by the petitioner before this Court and before the second respondent reveal that they were obtained only in the year 1996. Though the entry in the Birth Register is stated to have been verified by the Revenue Divisional Officer, Madurai, pursuant to the direction of the second respondent, the petitioner has not diligently prosecuted the appeal after the rejection of his petition for alteration of date of birth. To convince that an appeal was filed before the first respondent as against the order of second respondent even in the year 2001, the petitioner has stated in the affidavit that an appeal had been filed in the year 2001 and that the same was returned for want of records. The petitioner has not produced the order passed by the Appellant Authority returning the appeal preferred by the petitioner. It is specifically contented by the respondent that there was no appeal challenging the order of competent authority rejecting the application of the petitioner for altering the date of birth in the service records. It was only in the year 2014, the petitioner has submitted a representation, dated 07.04.2014. This representation though was acknowledged by the second respondent, as seen from the communication, dated 06.04.2015, there was no reference to any other appeal or representation submitted by the petitioner earlier. No scrap of paper is produced before this Court to show that the petitioner has made a representation or preferred an appeal as against the order passed by the second respondent by proceedings, dated 01.02.2001. Materials on record disclose that the petitioner has kept quiet for more than 13 years after the second respondent passed an order rejecting the petitioner's request to alter the date of birth in service records, in the year 2001. The present writ petition has been filed on the basis of the representation that was submitted by the petitioner on 07.04.2014. Even in this representation, dated 07.04.2014, no reference is made to any other appeal or representation earlier. Hence, this Court is of the view the petitioner has not preferred any appeal within the reasonable time. After sleeping over his rights for more than 13 years, the petitioner has purposely sent a representation to the first respondent through the second respondent just before filling the present writ petition. Having regard to the admitted facts that the petitioner has not explained the delay of more than 13 years to file an appeal or to prefer the writ petition challenging the order of second respondent, this Court is inclined to accept the contention of the respondent that the writ petition is liable to be dismissed on the ground of delay and laches.

8. The learned Additional Advocate General appearing for the respondents relied upon the judgment of the Hon'ble Supreme Court in **Tukaram Kana Joshi v. M.I.D.C.** reported in **(2012) 8 MLJ 515 (SC)** wherein the Hon'ble Supreme Court has held as follows:



"11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)"



Supreme Court has held that the belated and stale claim is liable to be dismissed on the ground of laches. Though, it was held that it is not a Rule of Law but a Rule of practice based on the sound and proper exercise of discretion, each case must depend upon its own facts. The discretion of the Court to entertain the writ petition even in a case of long delay cannot be doubted. But there should be some explanation for the delay or that there should be something to indicate that the petitioner was not at fault and responsible for such inaction. Only in the case where the delay is explained and it does not cause any prejudice to the other side the delay can be condoned. Even for filing an application for alteration of date of birth, the period of limitation is only five years. However, this Writ Petition is filed after a lapse of 13 years just before retirement.

10. Having regard to the settled principles of law, this Court do not find any justification for the inordinate delay of 13 years to come forward with the representation to the appellate authority through the second respondent. Even though, an adverse order was passed by the second respondent way back in 2001, there is no record to show that the petitioner has approached any of the respondents within a reasonable time. The representation which was given to the first respondent after a period of 13 years cannot give rise to a fresh cause of action so as to justify the petitioner's long delay in approaching this Court. Hence, on the ground of delay and laches this writ petition is liable to be dismissed. As a result, this writ petition is dismissed. No costs. Consequently, the connected WMP(MD)929/17 and M.P.(MD) Nos.1, 2 and 3 of 2015 are closed.

Sd/-
Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Secretary,
Planning and Development Department,
Secretariat, St. George Fort,
Chennai.
2. The Principal Commissioner
and Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 006.

+2cc to M/s. R.A. MOHANDRAM Advocate in SR. No.58220 & 58197

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.58727

SRM

JS/KP/12.5.2017/6P-6C