

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.21325 of 2018

V.Ranganathan

.. Petitioner

Vs.

1. The Director
Directorate of School Education
Perunthalaivar Kamarajar
Education Complex
Nellithope Post
Pondicherry - 605 005.

2. The Registrar
Central Administrative Tribunal
Madras Bench, High Court Buildings
Chennai - 600 104.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorari and Mandamus to call for the records relating to the order passed by the second respondent dated 2.8.2018 in M.A.No.310/00304/2018 and O.A.No.310/00255/2018, to quash the same and to consequently direct the first respondent to record entry regarding the date of birth in the service book of the petitioner as 18.9.1959 and allow him to continue in service till 30.09.2018, the date of superannuation with all consequential monetary and other attendant benefits.

For Petitioner

: Mr.N.G.R.Prasad
for Mr.G.Gnanasekar

For Respondents

: Mr.Syed Mustafa
Special Government
Pleader
(Puducherry)
for 1st respondent

ORDER

(Made by Mrs.V.K.Tahilramani, Chief Justice)

Heard the learned counsel for both sides.

2. The issue in this writ petition relates to change of date of birth. The petitioner was appointed as Post Graduate Teacher in Kamban Government Higher Secondary School, Puducherry, on 5.8.1988. According to the petitioner, his date of birth was wrongly entered as 17.8.1958, whereas it ought to be 18.9.1959. He made various representations to the authorities. However, the date of birth was not changed. Hence, the petitioner preferred OA 310/00255/2018 before the Central Administrative Tribunal, Madras Bench. The said Original Application came to be dismissed by order dated 2.8.2018, which has been impugned in the present writ petition.

3. The Original Application came to be dismissed upholding the contention of the first respondent that though the petitioner entered into service on 5.8.1988, he was shown his service book in 1997, when he was working in Soucilabai Government Girls Higher Secondary School, Puducherry, in which his date of birth was shown as 17.8.1958; thereafter in the final seniority list of Lecturers (PFTs) issued on 8.9.1997, his date of birth was shown as 17.8.1958; and again in the final seniority list of Vice Principal issued on 3.8.2011 before which tentative seniority list was issued on 15.10.2010 his date of birth was mentioned as 17.8.1958, and all along the petitioner kept quiet and only in the year 2018, i.e., in the very year that he was to retire, he preferred the Original Application and, hence, he was disentitled to the relief.

4. It is an admitted fact that the petitioner was appointed on 5.8.1988 as Post Graduate Teacher. Thereafter, on 21.8.1989, the petitioner has preferred a representation stating that his correct date of birth is 18.9.1959 and, hence, the date of birth of 17.8.1958 entered in his service record ought to be corrected to 18.9.1959. Thereafter, according to the petitioner, he again gave a representation on 11.4.1991 and 11.5.1995 (the said representations are at pages 3 and 4 respectively of the typed set of papers).

5. Though the learned counsel for the first respondent fairly admitted that the representation dated 21.8.1989 was received by them, however, he stated that they do not have any record to show that the representations were preferred by the petitioner on 11.4.1991 and 11.5.1995. However, the original

copies of the representations dated 11.4.1991 and 11.5.1995, which are annexed to the petition at pages 3 and 4 respectively, which were produced before us by the learned counsel for the petitioner during the hearing of this petition, show that they were indeed received by the first respondent on 11.4.1991 and 11.5.1995, from the acknowledgments thereon. Thus, it is seen that the petitioner has been constantly agitating from the year 1989 for change of date of birth in his service record.

6. Once the petitioner has made a representation, it is for the first respondent to conduct an enquiry and thereafter make necessary changes if they are called for. However, no enquiry has been conducted by the first respondent at all and the same date of birth has been continued in the service record.

7. According to the learned counsel for the first respondent, even though Rule 56 of the Fundamental Rules, as amended by GI DP&AR Notification No.19017/7/79-Estt(A), dated 30.11.1979, states that a request in relation to change of date of birth has to be made within five years, the request for change in date of birth was only made at the fag end of the career of the petitioner, which cannot be allowed. In support of his contention, he has placed reliance on a decision of the Supreme Court in the case of Union of India v. Harnam Singh, (1993) 2 SCC 162. The learned counsel for the first respondent relied on the observations in the said decision that alteration of date of birth sought after being in service for 35 years cannot be allowed.

8. On a perusal of the decision in the case of Harnam Singh, supra, it is seen that the first representation for change of date of birth was made 35 years after he had entered into service. However, in the present case, it is seen that right from 21.8.1989 the petitioner has been making representations to change his date of birth. This is within the stipulated time period as mentioned in Rule 56 of the Fundamental Rules. The petitioner cannot be blamed for the inaction of the first respondent for not conducting an enquiry after the first representation was received on 21.8.1989 and in view of the earlier representations, it cannot be said that the petitioner made a representation/request at the fag end of his career. In this view of the matter, the decision in the case of Harnam Singh, supra, would not be applicable to the present case.

9. As stated earlier, the petitioner, within the time frame mentioned in Rule 56 of the Fundamental Rules, has been making representations time and again, however they have not been considered.

In this view of the matter, as the petitioner's case is clearly covered by Rule 56 of the Fundamental Rules, the prayer of the petitioner for change of date of birth from 17.8.1958 to 18.9.1959 has to be allowed. Accordingly, this writ petition is allowed and the order dated 2.8.2018 passed by the Tribunal is set aside. The first respondent to change the date of birth of the petitioner in the service record from 17.8.1958 to 18.9.1959 and allow him to continue in service till 30.9.2019, that is date of superannuation with all consequential benefits. No costs. Consequently, W.M.P.Nos.24997 and 24998 of 2018 are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

sasi
To:

1. The Director
Directorate of School Education
Perunthalaivar Kamarajar
Education Complex
Nellithope Post
Pondicherry - 605 005.
2. The Registrar
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Madras Bench, High Court Buildings
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+2cc to Mr.M.Gnanasekar, Advocate Sr.58044
+1cc to the Government Pleader (Puducherry) Sr.57983

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srg 30/08/2018