

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.34134 of 2017

and

W.M.P.Nos.37891 & 37892 of 2017

T.Ravikumar

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary
Education Department
Fort St. George, Chennai - 600 009.

2.The Director of School Education
Chennai - 600 009.

3.The Director of College Education
Chennai - 600 006.

4.The Principal, Presidency College
Chennai - 600 005.

.... Respondents

PRAYER Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in connection with proceeding in Pa.Mu.No.20546/D4/16 dated 22.07.2016 consequently passed order in Pa.Mu.No.36130/D4/2016 dated 05.01.2017 by rejecting the petitioner's application by the third respondent herein and quash the same and direct the respondents to alter the correct date of birth of the petitioner as 15.09.1962 in stead of 30.01.1960 in his service register and to continue the petitioner in service.

For Petitioner : Mr.N.Beulah John Selvaraj

For Respondents : Mr.P.H.Aravind Pandian
Additional Advocate General
Assisted by
Mrs.P.Rajalakshmi
Additional Government Pleader

O R D E R

The order of rejection issued by the respondents in proceedings dated 05.01.2017 in relation to his claim for alteration of date of birth is under challenge in this writ petition.

2.The writ petitioner is now working as an Assistant Professor in Presidency College, Chennai. The petitioner claims that his date of birth was erroneously entered as 30.01.1960 and his actual date of birth is 15.09.1962. In this regard, the writ petitioner had submitted an application seeking alteration of date of birth on the ground that his parents had erroneously registered his date of birth as 30.01.1960 in stead of 15.09.1962 as per the horoscope.

3.At the outset the petitioner claims alteration of date of birth based on the horoscope maintained by his parents. The petitioner was appointed in the Higher Education Department in the cadre of Assistant Professor on 15.12.2007.

4.The learned counsel appearing on behalf of the writ petitioner states that the application seeking alteration of date of birth was filed within 5 years as per the Rules and therefore, the authorities are bound to consider the case of the writ petitioner as per the horoscope submitted by the writ petitioner.

5.The learned Senior Counsel appearing on behalf of respondents 1 to 3 opposed the contention by stating that the writ petitioner had not submitted the application within a period of 5 years of time as stated in the writ petition. This apart, horoscope cannot constitute a cause for alteration of date of birth. The date of birth of the writ petitioner has been recorded based on the school and college records submitted by him at the time of appointment. Based on the civil court decree, which was obtained by the writ petitioner in the year 2016, the authorities competent cannot alter the date of birth of the writ petitioner. Thus, there is no infirmity in respect of the rejection of the claim of the writ petitioner for alteration of date of birth. The petitioner has enclosed his SSLC mark sheet in page 1 of the typed set of papers. The mark sheet submitted by the writ petitioner shows the date of birth of the writ petitioner as 30.01.1960. The said mark sheet was issued on 18.05.1976. Thereafter, the writ petitioner would have completed HSC in Higher Education. During all these years, the petitioner has maintained his date of birth as 30.01.1960. Even at the time of appointment the said certificates were produced before the competent authorities. All of a sudden the writ petitioner had filed a civil suit in O.S.No.5437 of 2012 and the civil court

has passed a judgment and decree on 16.03.2016. It is pertinent to note that the writ petitioner is the plaintiff in the civil suit and one Mr.K.Thirunavukarasu, father of the writ petitioner, is the defendant in the civil suit. Naturally, there cannot be any defense at all, by impleading the father of the writ petitioner as the defendant, the suit was filed. Thus, such a decree obtained cannot be an executable decree as far as the official respondents are concerned. The official respondents 1 to 3 are not parties in the civil suit and there was no effective adjudication of the civil suit by all the necessary parties.

6.This being the factum of the case, the judgment and decree obtained by the writ petitioner granted by the II Assistant Judge in O.S.No.5437 of 2012 cannot be of any avail for the purpose of alteration of date of birth in the service records of the writ petitioner.

7.Further the findings of the learned II Assistant Judge in the civil suit is that "the defendant did not choose to participate in the proceedings by remaining exparte". Therefore, such an exparte decree obtained by impleading the father of the writ petitioner as a defendant cannot be relied upon, nor taken as a valid decree for the purpose of altering the date of birth of the writ petitioner in all his service records. In fact the suit itself is a collusive suit and an exparte decree was obtained.

8.Such being the factum of the case, respondents 1 to 3 have rightly rejected the claim of the writ petitioner for alteration of date of birth. The Hon'ble Division Bench of this court considered the scope of the claim regarding the alteration of date of birth in the case of A.Somasundaram V.Secretary to Government reported in 2017 SCC Online Mad 435 and the relevant paragraphs are extracted hereunder:

"7.The core issue to be considered in the present Writ Appeal is as to whether the Writ Appellant is entitled for alteration of date of birth in his service record on the basis of Civil Court decree. The Writ Appellant admittedly had recorded his date of birth as 02.01.1959, in all his Service Records right from his initial appointment in the Department on 28.09.1987 and that the application seeking alteration of date of birth was made at the first instance by the Writ Appellant only in the year 2005. The rejection order issued by the Deputy Inspector General of Police on 09.06.2005, and 17.04.2012, were not challenged by the Writ Appellant in any Writ Petition. Contrarily, he has chosen to challenge only the last rejection order dated 15.07.2014, issued by the third respondent, despite the fact that all the three rejection orders,

including that of the order of the Director General of Police relating to the very same relief sought for by the writ petitioner were available.

8.Further, the writ petitioner has challenged the order passed by the third respondent who is subordinate to the second respondent. When the second respondent -Deputy General of Police rejected the application seeking alteration of date of birth through his instruction dated 08.10.2010, the challenge to the last rejection order of the "

9.The Government employees, who entered into Government service cannot be permitted to alter their date of birth at their whims and fancies. The school record submitted at the time of appointment is to be followed scrupulously for the purpose of recording the date of birth of the Government employee. If at all, there is any error in respect of the entries made in the service records, the same must be corrected within a period of 5 years as contemplated under the Rules.

10.This apart, documents like horoscope cannot be relied upon for the purpose of altering the date of birth. This being the principles to be followed, this court is of an opinion that the writ petitioner has not made out any case for alteration of date of birth of the writ petitioner.

11.Accordingly, this writ petition is devoid of merits and stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

may a

To

1.The Secretary
Education Department
Fort St. George, Chennai - 600 009.

2.The Director of School Education
Chennai - 600 009.

3.The Director of College Education
Chennai - 600 006.

4.The Principal, Presidency College
Chennai - 600 005.

+1cc to Mr.N.Beulah John Selvaraj, Advocate sr.no.32675

W.P.No.34134 of 2017

kan(co)
nr 04/06/2018



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