

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.05.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.12733 of 2018
and
W.P.M.P.No.14921 of 2018

R.Rajasekaran

.. Petitioner

Versus

1. The Joint Director of School Education (Personnel)
Directorate of School Education
DPI Campus, College Road
Chennai - 600 006.
2. The Chief Educational Officer
Nagapattinam, Nagapattinam District.
3. The District Educational Officer
Nagapattinam, Nagapattinam District.

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the first respondent to pass appropriate orders for altering the petitioner's date of birth as 23.08.1961 in the Service Register and other connected records in the light of the decree passed by the Hon'ble Additional District Munsif, Mayiladuthurai in O.S.No.440 of 2005 dated 28.11.2007 and consequently, direct the respondents to continue the petitioner in service till 30.08.2019.

For Petitioner : Mr.P.Mohanraj

For Respondents : Mr.K.Karthikeyan, G.A.,

ORDER

This Writ petition is filed praying to issue a Writ of Mandamus directing the first respondent to pass appropriate orders for altering the petitioner's date of birth as 23.08.1961 in the Service Register and other connected records in the light of the decree passed by the Hon'ble Additional District Munsif, Mayiladuthurai in O.S.No.440 of 2005 dated 28.11.2007 and consequently, direct the respondents to continue the petitioner in service till 30.08.2019.

petitioner's actual date of birth is 23.08.1961. However, in the School records, it was wrongly mentioned as 03.05.1960 and the same was entered in his service records also and if his date of birth is treated as 03.05.1960, the petitioner is due to retire on 30.05.2018. Hence, the petitioner is before this Court with this Writ Petition.

3. Heard the learned counsel appearing on both sides and perused the materials available on record.

4. It is seen that the petitioner had earlier approached this Court in W.P.No.8031 of 2012 and this Court by order dated 06.08.2012 passed the following order:-

"2. In the affidavit filed in support of the Writ Petition, the petitioner has stated that as against the very same impugned order, he filed a civil suit in O.S.No.440 of 2005 before the learned Additional District Munsif, Mayiladuthurai. In that suit, the respondents herein remained set exparte and, therefore, an exparte decree was passed on 28.11.2007. In the said decree, the learned Additional District Munsif has declared that the date of birth of the petitioner is 23.08.1961 and he has further issued a mandatory injunction to the respondents to alter the date of birth of the petitioner in the service records as 23.08.1961. The grievance of the petitioner is that the decree of the civil court has not been implemented by the respondents.

3. In my considered opinion, this Writ Petition is highly misconceived. The petitioner has got remedy before Civil Court. The petitioner cannot try to convert this Court as an Executing Court to execute the decree passed by the learned Additional District Munsif, Mayiladuthurai in O.S.No.440 of 2005. Therefore, this Writ Petition deserves only to be dismissed.

4. In the result, the Writ Petition is dismissed. No cost. Consequently, connected MP is closed."

Thereafter the petitioner seems to have filed W.A.No.361 of 2014, which was later on withdrawn by the petitioner on 22.06.2017. After the withdrawal of Writ Appeal, the petitioner had sent a legal notice on 27.06.2017 to the respondents and the respondents on 09.03.2018 had after referring to the orders passed in W.P & W.A., had categorically rejected the plea of the petitioner claim to alter the date of birth from 30.05.1960 to 23.08.1961 based on the decree which was an exparte decree passed by the Additional District Munsif Court in O.S.No.440 of 2005 dated 28.11.2007. The petitioner could have corrected his date of birth initially when he was appointed on 25.03.1998, within five years from the date of his appointment. The

petitioner has approached the Civil Court after the expiry of five years and filed O.S.No.440 of 2005 and obtained an exparte decree. He has not pursued further. But approached this Court by filing W.P. and had filed W.A.. against the order of the learned single Judge and later on withdrew it. The petitioner has also filed E.P.No.1 of 2018 before the Principal District Munsif Court, Mayiladuthurai and the same is pending. The petitioner has approached this Court again for the very same relief at the fag end of his retirement stage. This Court is of the view that the Writ Petition is not maintainable on account of res-judicata, apart from that the petitioner has got alternative efficacious remedy under CPC, failing to do so and appearing this Court under Writ jurisdiction for the same cause of action is highly condemnable.

5. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

mra
To

1. The Joint Director of School Education (Personnel)
Directorate of School Education
DPI Campus, College Road
Chennai - 600 006.
2. The Chief Educational Officer
Nagapattinam, Nagapattinam District.
3. The District Educational Officer
Nagapattinam, Nagapattinam District.

+lcc to Mr.P.Mohanraj, Advocate Sr.No.34144
+lcc to Government Pleader Sr.No.34173

RSI(CO)
sm:30.5.2018

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