

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.04.2018

Pronounced on : 23.04.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P.No.29669 of 2014

M.T.Ganesh Moorthy

... Petitioner

versus

1. The State of Tamil Nadu
Rep. by the Secretary to Government,
Home (Police 1A) Department,
Secretariat, Chennai - 9.
 2. The Director General of Police,
Kamaraj Salai,
Chennai - 4.
 3. The Director of School Education,
DPI Campus,
Chennai - 6.
 4. The Commissioner,
Corporation of Chennai,
Chennai - 3.
- ... Respondents

Writ petition filed under Article 226 of Constitution of India, seeking for the issuance of writ of certiorarified mandamus, to call for the records on the file of the 1st respondent pertaining to the impugned orders made in G.O.No.75 Home (Police 2) Department dated 08.04.1996 and the letter issued by the 1st respondent in letter No.20212/Pol.1A/2005 dated 24.05.2006 and to quash the same, consequently, to direct the respondent to alter the Date of Birth of the petitioner as 10.10.1962 in all service records.

For Petitioner : Mr.Venkatramani, Senior Counsel
for Mrs. Selvi George

For Respondents : Ms.Thangavadhana Balakrishnan,
Additional Government Pleader

ORDER

This writ petition seeking a declaration that the petitioner's real and correct date of birth is only 10.10.1962, as shown in the birth certificate and not 20.10.1961 as entered in the School records, in accordance with Rule 49 of Tamil Nadu State and Subordinate Service Rules 1961. This declaration is sought for after quashing the impugned order G.O.No.75 Home (Police - II) department dated 08.04.1996 and the letter issued by the first respondent dated 24.05.2006.

2. Quoting the provisions of Rule 16-A (4) of All India Service (DCRB) Rules 1971, the request for alteration of date of birth has been rejected in the impugned letter dated 24.05.2006.

2.1. The provisions of All India Service Rules would not be applicable to the case of the petitioner as the petitioner has been recruited by the Tamil Nadu Public Service Commission, which is a State service and not an All India service.

3. In the impugned G.O.No.75 dated 08.04.1996, the request for alteration of date of birth has been rejected giving the following reasons. Whether those reasons are acceptable or not is the issue to be considered and the acceptability/non-acceptability is indicated under each ground:

a) the father had been functioning as Deputy Registrar of Co-operative Societies and persons having literary knowledge could not have given a wrong date of birth.

This reasoning is apparently not correct as it is stated in the petition itself that the father was busy in the official work and the mother who was unlettered happened to give a wrong date.

b) The contention that the mother who gave the wrong date of birth has been disbelieved on the ground that while her general admission is that it is the father who looks into the education aspect of all the children, the statement of the mother that it is only she who admitted the petitioner in the school cannot be believed.

This disbelief is baseless and ill-logical and it has arisen out of misunderstanding and misinterpretation of the statement given. The admission that father would normally look into the educational aspect would refer to major decision making and the minor execution of the work relating to education would normally be done by the family members depending upon the context and circumstances.

c) The document styled as Jathagam cannot be taken into account as it is not proved that who wrote the document.

This finding is correct and jathagam cannot be taken into account when there are ways to prove the date of birth through other methods prescribed by the Statute.

d) The name of the petitioner in the birth certificate has been shown as Ganesan, whereas in the SSLC book, name has been shown as Ganeshamoorthy. It is not proved that both the names referred to are one and the same person.

This reasoning is devoid of pragmatism. Proof cannot be expected beyond the normal happening in the human life. When a nick name is used, it itself indicates that it is normally oral. What is practically done orally cannot be expected to be in the form of document. What is not practically done in the ordinarily way of life cannot be expected to be proved through writings only. Over all facts and circumstances can alone be the criteria to believe whether the statement that there was one name in the document and there was yet another name that was practically used while calling him.

e) Both the witnesses examined knew about the family of the petitioner only through their respective fathers and in fact, one of the witnesses is residing at Chennai only from 1976 and both of them did not speak about the fact that Ganesan is also known as Ganeshamoorthy. Moreover, nobody elder to petitioner's father has been examined.

This reasoning also is unreasonable. On certain aspects, evidence can be admitted when the witness speaks through father which is the only possibility.

f) The case of the petitioner is that he had three brothers and one sister and he is the last male-heir and thereafter the only child born is her sister. The last child is born on 26.12.1969, i.e. termed as 6th child as per records. The child born on 10.10.1962 (the petitioner) is stated to be the fourth child. Therefore, there is a possibility of one more child having born and died cannot be ruled out.

This apprehension is unwarranted as the birth certificate of the petitioner bear the name.

4. The respondents have opposed the grant of relief on the ground that when the claim for alteration of date of birth has been dismissed by the City Civil Court in O.S.No.4283 of 2007 on the following grounds, the writ court cannot grant any relief.

(i) the claim is barred by limitation as the petitioner should have submitted the claim for alteration of date of birth within a period of five years from the date of appointment as Government servant.

(ii) The claim for alteration of birth, as per SSLC scheme subsidiary Rule 5 can be effected, before the student leave the school and at any cost not after the student left the school.

(iii) the court has no authority to change the declaration

while the date of birth had been given by the mother.

4.1. Answering the last point first, no doubt, it is the mother, who is the most competent person to speak about the date of birth of her child. But, this statement can be accepted provided mother is a literate having complete understanding and recollection to speak about the date of birth (when she is the mother of 5 to 6 children). Moreover, when the mother herself claims that the date of birth as given by her is not correct, then it is not the authority of the court to speak anything against the claim of the petitioner, but it is the duty of the court to give effect to the claim made by the petitioner. Moreover, when the claim of the mother that the date of birth as entered by her is not correct, and that is supported by documents produced before the Court, then certainly, it is well within the power of the Court to effect necessary corrections so that the document available before the court do not carry incorrect details.

5. In order to support the contention that the claim is barred in terms of Rule 49(b) of the General Rules for State and Subordinate Services, it is contended that, the application for alteration of date of birth ought to have been filed within a period of five years from the date of entry into service and that the petitioner entered into Government service on 28.12.1984 and the application should have been submitted on or before 28.12.1989 and hence, the request made for alteration dated 24.01.2005 is clearly barred by limitation.

6. Whether this contention is factually and legally correct is the issue to be considered.

7. In order to appreciate the contention, the following dates and events are relevant.

Dates and Events

Sl. No.	Name of the Post	Date of Appointment	Date of Relief
1.	Junior Assistant, Directorate of Motor Vehicle Maintenance Department, Madras.	28.12.1984	15.07.1986 AN
2.	Senior Inspector, Co-operative Societies, Madras.	16.07.1986	24.01.1990
3.	Junior Employment Officer, Anna Nagar	25.01.1990	15.12.1991
4.	Deputy Superintendent of Police (Category-I)	16.12.1991	-

Sl. No.	Name of the Post	Date of Appointment	Date of Relief
5.	Indian Police Service (under promotion)	21.05.2003	-

8. From the service details, it can be easily discerned that the petitioner entered into the services as Deputy Superintendent of Police on and from 16.12.1991. He was conferred with IPS on 21.05.2003. The petitioner had applied for alteration of his date of birth on 30.06.1993. This application is within the period of five years from the date of joining in the Government Service in the capacity as Deputy Superintendent of Police.

8.1. The post through which the petitioner entered into service as Deputy Superintendent of Police is not by way of deputation or by way of promotion and it is the first time entry, through Tamil Nadu Public Service Commission by direct recruitment. Therefore, the contention that the petitioner was continuously in the State Government service from the post of Junior Assistant is not correct.

8.2. His application for correction of date of birth has been made within a period of five years from the date of entry into service as Deputy Superintendent of Police, which is a service through a separate statutory body, i.e. Tamil Nadu Public Service Commission.

9. In order to appreciate the merits of the claim, it is necessary to consider the stage at which the claim is made and the purpose for which the claim is made.

9.1. The claim for alteration of date of birth has not been made either at the eve of promotion or at the fag end of retirement. The first application itself has been given even in the year 1996. The second application has been given in the year 2000. The first application has been dismissed in the year 1996 and the second application has been dismissed in the year 2006.

9.2. The claim of the petitioner is based on a document which is maintained in the regular course of official duty, namely, the birth certificate of the petitioner. Apart from that, the birth certificates of the other brothers and sisters of the petitioner have been filed. These birth certificates being documents relevant under Section 35 of the Evidence Act cannot be lightly brushed aside. The comparison of date of birth of the petitioner would furnish clue as to whether the claim would be genuine or not.

Sl. No. Name of the family member Date of birth Date Registered

1.---	(M.T.Palaniappan)	08.05.1956	23.05.1956
2.-----	(M.T.Dhananchayan)	29.07.1958	11.08.1958
3.-----	(M.T.Krishnamoorthy)	25.11.1960	15.12.1960
4.	M.T.Ganesan	10.10.1962	14.11.1962
5.-----	M.T.Sumathi	15.12.1967	30.12.1967
6.-----	M.T.Lathamaheswari	26.12.1969	02.02.1970

9.3. Perusal of these details as disclosed in the birth certificate would go to show that initially, there is a time gap of two years between the birth of one child to other child up to the birth of this petitioner and only thereafter, there is a time gap of five years between the birth of the petitioner and his sister. If really, the petitioner had to make use of time gap, he might have preferred to use a still later year as a year of birth in order to gain advantage in the service period. It is highly unrealistic to imagine that the petitioner might have utilized the gap of five years which existed between his birth and birth of his sister as the registration of the birth has been made even in the year 1962, when the petitioner was a small child. Therefore, when the correction is asked for based on unimpeachable documents, the authenticity of which cannot be doubted and when the claim is made at a time when there was apparently no immediate benefits, the claim ought to have been considered. The rejection of the claim based on no acceptable reasons is liable to be rejected.

10. It is relevant to quote the decision of the Apex Court with relevant observations regarding the circumstances under which the claim for alteration of date of birth should not be considered:

"4. In U.P.MADHYAMIK SHIKSHA PARISHAD AND OTHERS Vs. RAJ KUMAR AGNIHOTRI (2006-2-L.W.182), the Supreme Court relying on its earlier decisions in STATE OF U.P. AND OTHERS Vs. GULAICHI (SMT), ((2003) 6 SCC 483), STATE OF UTTARANCHAL AND OTHERS Vs. PITAMBER DUTT SEMWAL (2002) 1 UPLBEC 441 SC, STATE OF T.N. Vs. T.V.VENUGOPALAN (1994) 6 SCC 302=1994 WRIT L.R.831=1995-1-L.W.13 S.N., EXECUTIVE ENGINEER, BHADRAK (R&B) DIVISION, ORISSA AND OTHERS Vs. RANGADHAR MALLIK, 1993 SUPP (1) SCC 763, GOVERNMENT OF ANDHRA PRADESH AND ANOTHER Vs. M.HAYAGREEV SARMA ((1990) 2 SCC 682), UNION OF INDIA Vs. HARNAM SINGH, ((1993) 2 SCC 162), BURN STANDARD CO. LTD. AND OTHERS Vs. DINABANDHU MAJUMDAR AND ANOTHER (AIR 1995 SC 1499) and THE SECRETARY & COMMISSIONER HOME DEPARTMENT & ORS Vs. R.KIRUBAKARAN, (JT 1993 (5) SC 404), had come to the conclusion that the correction in entries made in the Government records, on the basis of which the Government servant got the service, cannot be allowed to be changed just a few years before retirement or at

the fag end of his service.

As pointed out already, it is not a claim made just few years before retirement or at the fag end of his service, though there is a delay on the part of the authorities to pass final orders.

11. Explaining the law applicable to the employees recruited through Tamil Nadu Public Service Commission, which is highlighted in the case of In THE SECRETARY & COMMISSIONER Vs. R.KIRUBAKARAN, (1994) Supp (1) SCC 155), the Supreme Court has held as follows:

"9. The Tamil Nadu Service Manual contains Rules 49 and 49-A, which are the provisions in respect of alteration and correction of the date of birth. Whenever any application is filed by persons governed by those service rules, procedures prescribed therein have to be strictly followed, including the time-limit prescribed for making such an application. Clause (b) of the aforesaid Rule 49 provides that after a person has entered in service, an application to alter the date of his birth as entered in the official records "shall be entertained only if such an application is made within five years of such entry in service...." It need not be pointed out that if an application is made for correction of the date of birth mentioned in the service records at an early date or within the time prescribed, the authorities are in a much better position to verify the same. Normally, in most of the services, the date of birth is recorded in the service records on the eve of the appointment with reference to the date of birth mentioned in the Matriculation Certificate, Higher Secondary Education Board Certificate or any other certificate of similar nature produced by the applicant concerned at the time of making application for his appointment. As such whenever an application for alteration of the date of birth is made on the eve of superannuation or near about that time, the Court or the tribunal concerned should be more cautious because of the growing tendency amongst a section of public servants, to raise such a dispute, without explaining as to why this question was not raised earlier....."

This is a case where the petitioner herein has promptly raised the issue about two decades back and the authorities

concerned have kept it pending for a long time, for which, the petitioner cannot be made liable.

12. Explaining the nature of evidence that should be looked into the reliability of the evidence adduced, the relative value of documents produced for the justification for correction of date of birth, the Supreme Court has held as under:

In STATE OF PUNJAB Vs. MOHINDER SINGH (2005) 3 SCC 702, the Supreme Court has held as follows:

11. Horoscope is a very weak piece of material to prove age of a person. In most cases, the maker of it may not be available to prove that it was made immediately after the birth. A heavy onus lies on the person who wants to press it into service to prove its authenticity. In fact, a horoscope to be treated as evidence in terms of Section 32 clause (5) must be proved to have been made by a person having special means of knowledge as regards authenticity of a date, time etc. mentioned therein. In that context horoscopes have been held to be inadmissible in proof of age. (see [Ramnarain Kallia v. Monee Bibee](#), [Biro v. Atma Ram](#) and [Satish Chandra Mukhopadhyaya v. Mohendra Lal Pathak](#).)

12. On the contrary, the statement contained in the admission register of the school as to the age of an individual on information supplied to the school authorities by the father, guardian or a close relative is more authentic evidence under Section 32 clause (5) unless it is established by unimpeachable contrary material to show that it is inherently improbable. The time of one's birth relates to the commencement of one's relationship by blood and a statement therefore of one's age made by a person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32 clause (5).

13. As observed by this Court in [Umesh Chandra v. State of Rajasthan](#) ordinarily oral evidence can hardly be useful to determine the correct age of a person, and the question, therefore, would largely depend on the documents and the nature of their authenticity. Oral evidence may have utility if no documentary evidence is forthcoming. Even the horoscope cannot be reliable because it can be prepared at any time to suit the needs of a particular situation. Entries in the school register and admission form regarding date of birth constitute good proof of age. There is no legal requirement that the public or other official

book should be kept only by a public officer and all that is required under [Section 35](#) of the Evidence Act is that it should be regularly kept in discharge of official duty. In the instant case the entries in the school register were made ante litem motam."

If the facts of this case are scanned in the light of the dictum laid down, guidelines shown in the above decision, it is clear that the document relied upon (birth certificate) is ante litem motam maintained by the statutory authority, which is regularly kept in the discharge of official duty and it constitute good proof for date of birth. Therefore, when authentic document is relied upon to correct the date of birth, it should be entertained.

13. The next contention is that already a claim made has been dismissed in the suit in O.S.No.4283 of 2007 and hence, the writ petition is not maintainable. Admittedly, the suit filed praying for alteration of date of birth is dismissed. But, in case of a public servant, seeking alteration in the date of birth, the claim should have been filed only before the Administrative Tribunals. From the year 2004 onwards, the jurisdiction of the Administrative Tribunal has been transferred to the High Court and therefore, the writ jurisdiction is the appropriate remedy in case of the petitioner. The Judgment rendered in O.S.No.4283 of 2007 is without jurisdiction and therefore, it is a void decree, i.e. a decree is a non-existing one or not in existence at all. Therefore, the decree in the suit does not bar the jurisdiction of the writ court.

14. When a public servant discharging public functions, demand correction of date of birth in the Service Register, which is made neither at the fag end of the career nor in anticipation of any promotion and the claim is supported by impeccable public documents and the authenticity of which cannot be challenged, then, normally, the Court must be inclined to effect the correction. Therefore, the claim of the petitioner has to be accepted and the writ petition has to be allowed.

15. In the result, the writ petition is allowed, quashing the impugned order G.O.No.75 Home (Police - II) department dated 08.04.1996 and the letter issued by the first respondent dated 24.05.2006. It is declared that the petitioner's real and correct date of birth is only 10.10.1962, as shown in the birth certificate and consequently, the respondents are directed to effect necessary changes in all the service records of the petitioner, within a period of one month from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
Home (Police 1A) Department,
Secretariat, Chennai - 9.
2. The Director General of Police,
Kamaraj Salai,
Chennai - 4.
3. The Director of School Education,
DPI Campus,
Chennai - 6.
4. The Commissioner,
Corporation of Chennai,
Chennai - 3.

+1cc to Mrs. Selvi George, Advocate sr.no.30106
+1cc to Government Pleader in sr.no.30340

W.P.No.29669 of 2014

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