

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.37855 of 2015, 24197 & 15681 of 2017

S.Ponsingh Mohan Ram .. Petitioner in WP Nos.37855
of 2015 & 24197 of 2017

Smt.S.Paulvannam ... Petitioner in W.P.No.15681 of 2017

-vs-

1. The Secretary to Government
Labour & Employment Department
Fort St.George
Chennai 600 009 .. 1st Respondent in all the writ petitions
2. The Director of Industrial
Safety & Health 2nd respondent in W.P.Nos.37855 /15
Chennai 600 014 ... & 24197/17
3. The Principal Commissioner &
Commissioner of Revenue Administration
Chepauk 3rd respondent in W.P.Nos.37855/15,
Chennai 600 005 .. 24197/17 & 2nd respondent in
WP No.15681/17
4. The Secretary
Tamil Nadu Public Service Commission
Chennai 600 001 .. 4th respondent in W.P.Nos.37855/15,
24197/17 & 3rd respondent in
W.P.No.15681/17
5. K.Kaliannan .. 5th respondent in W.P.Nos.37855/15,
24197/17 & 4th respondent in
W.P.No.15681/17

W.P.No.37855 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the first respondent in connection with the impugned order passed by him in G.O.(D) No.37, Labour & Employment (M1) Department dated 10.7.15 and quash the same.

W.P.No.24197 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Quo Warranto, directing the fifth respondent requiring him to show cause under what authority he remains in Government Service and also hold the office of the Director of Industrial safety & Health Chennai-600 032 (in-charge) and continue in service beyond 31.05.2017 i.e., after attaining superannuation date as per the date of birth entered into service register at the time of entering Government service.

W.P.No.15681 of 2017 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Quo Warranto, against the fourth respondent for extension of service based on G.O.Ms.No.37 L & E Department dated 10.7.2015 issued by the first respondent and require him to show his authority to hold the office of The Director of Industrial Safety & Health Chennai-14 (in Charge) and continue in service beyond 31.5.2017 as illegal and unconstitutional resulting in the said office remaining vacant.

For Petitioners:: Mr.R.Thiagarajan
Senior Counsel for
Mr.A.Edwin Prabakar in
W.P.Nos.37855/15 & 24197/17
and Mrs.Adithya Reddy in
W.P.No.15681/17

For Respondents:: Mr.V.S.Sethuraman
Additional Advocate General
assisted by
Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 to 3 in W.P.No.24197/2017
& 37855/2015, R1 & R2 in
W.P.15681/2017.

No appearance for R4 in W.P.
24197/2017 & R3 in W.P. 15681/2017.
& R4 in W.P.37855/2015.

Mr.AR.L.Sundaresan
Senior Counsel for
Mr.V.Ravikumar for R5
in W.P.24197/2017 & R4 in
W.P.15681/2017, R5 in W.P.37855/2015.

ORDER

These three writ petitions are clubbed together for common disposal, since the relief sought for is one and the same, with the consent of the parties. Mr.S.Pon Singh Mohan Ram has filed W.P.No.37855 of 2015 challenging the impugned order passed by

the first respondent in G.O.(D)No.37, Labour & Employment (M1) Department dated 10.7.15, in and by which the first respondent, after examining the case of the contesting respondent Mr.K.Kaliannan to alter his date of birth as 20.9.1960 instead of 25.5.1959, who was formerly Inspector of Factories and then became the Additional Director of Industrial Safety & Health, ordered the alteration of the date of birth under General Rule 49(f) of the Tamil Nadu State and Subordinate Services as 20.9.60 with a further direction to make necessary entries in the service book of Mr.K.Kaliannan. The very same petitioner has filed another W.P.No.24197 of 2017 seeking a writ of quo warranto against the contesting respondent to show cause under what authority he remains in Government service and also the office of the Director of Industrial Safety and Health, Chennai in-charge and continue in service beyond 31.5.2017, namely, after attaining superannuation as per the date of entry entered into in the service register at the time of entry into Government service. W.P.No.15681 of 2017 has been filed by one Smt.S.Paulvannam, who retired as Selection Grade Superintendent on 31.3.2012 in the office of the Deputy Chief Inspector of Factories, seeking the same relief of writ of quo warranto against Mr.K.Kaliannan for extension of service based on G.O.Ms.No.37, Labour & Employment Department dated 10.7.2015 issued by the first respondent requiring him to show cause under what authority he holds the office beyond 31.5.2017.

2. Mr.R.Thiagarajan, learned senior counsel for the petitioners submitted that first of all, the impugned order dated 10.7.2015 passed by the Secretary to Government, Labour and Employment Department ordering the alteration of date of birth of the contesting respondent Mr.K.Kaliannan as 20.9.1960 instead of 25.5.1959 is highly arbitrary and discriminatory in nature, as it is denying and deferring the legitimate promotion of Mr.S.Pon Singh Mohan Ram to the post of Director of Industrial Safety and Health. Moreover, the impugned order dated 10.7.2015 reflects the non application of mind of the authorities who have issued the same, since the Principal Commissioner and Commissioner of Revenue Administration and the Secretary of the Tamil Nadu Public Service Commission, the respondents 3 & 4 had already refused to give concurrence in the absence of any records in their office. While so, without calling for the entire records for the purpose of careful perusal of the same, the first respondent should not have ordered for altering the date of birth of K.Kaliannan. When the respondent Mr.K.Kaliannan has specifically mentioned his date of birth as 25.5.1959 in the SSLC book and the same was also confirmed by his father with a declaration attached to the SSLC book, the first respondent has failed to refer to the said vital document. However, the statement given before the Assistant Collector, Namakkal for alteration of his date of birth from

25.5.1959 to 20.9.1960 alone was barely relied on. Besides, the first respondent miserably failed to see that the Government servant should not be allowed to alter his date of birth at the fag end of his service. Although the application filed originally by the contesting respondent dated 27.2.92 seeking alteration of his date of birth to the Assistant Collector, Namakkal, which was wrongly recommended to the Special Commissioner and Commissioner of Revenue Administration, stood rejected vide his proceedings bearing No.G3/87425/92 and the same was also communicated to the first respondent, consequently the first respondent also in his communication dated 11.1.99 rejecting the claim of the contesting respondent for alteration of his date of birth, by another letter No.34402/E1/2002/1 L&E Department dated 18.9.2002, has again rejected the same.

3. Aggrieved by the rejection of his request for alteration of date of birth made by the first respondent, the contesting respondent unsuccessfully filed O.A.No.277 of 2003 before the Tamil Nadu Administrative Tribunal to set aside the order of the Government and the Tribunal also, after going into the details and the merits of the rejection, found that the order of the Government was valid, accordingly, the Tribunal dismissed the O.A.No.277 of 2003 by order dated 15.5.2004. Aggrieved thereby, the contesting respondent filed W.P.No.28968 of 2004 before this Court and the Hon'ble Division Bench in its order dated 15.7.2008, setting aside the order of the Tribunal, issued a direction to take necessary steps to alter the date of birth of the contesting respondent Mr.K.Kaliannan from 25.5.1959 to 20.9.1960 as per his representation dated 27.2.92 as expeditiously as possible. Aggrieved by the same, the petitioner filed a review application in R.A.No.109 of 2016 challenging the order passed by the Hon'ble Division Bench in W.P.No.28968 of 2004 and the same was also dismissed on 26.8.2016. As against this order, S.L.P.Nos.3028 & 3029 of 2009 were filed and the same were dismissed on 31.3.2017. Since the contesting respondent has not adduced any credible evidence before the authorities to prove that he was born on 20.9.60, his date of birth has been wrongly altered. Moreover, before the authorities, the contesting respondent examined only one witness, namely, his mother for the purpose of proving his date of birth and also his sister, who is younger to him. When it is a settled law that the date of birth of a government servant is required to be proved by adducing and placing unimpeachable evidence by the persons of respectable inhabitation of the same village/locality who had the knowledge of the date of birth of the contesting respondent, especially those who do not relate to him for the purpose of proving his date of birth, the Assistant Collector, Namakkal, accepting the evidence of the interested witnesses, namely, the mother and sister of the contesting respondent, made a wrong recommendation, which was also rejected

by the first respondent.

4. Explaining further, the learned senior counsel for the petitioners submitted that when the contesting respondent made his application on 27.2.92 for alteration of his date of birth under Rule 49 within a period of five years from the date of joining the post to the Tamil Nadu Public Service Commission, his application was forwarded by the Chief Inspector of Factories to the Special Commissioner and Commissioner for Revenue Administration. But the said request was not accepted by the Principal Commissioner of Revenue Administration and thereafter, accepting the recommendation made by the Principal Commissioner of Revenue Administration, the Government also finally rejected his request. Although the said order of rejection made by the first respondent was confirmed by the Tamil Nadu Administrative Tribunal in O.A.No.277 of 2003 by order dated 15.4.2004, this was reversed by the Hon'ble Division Bench in its order dated 15.7.2008 passed in W.P.No.28968 of 2004, as a result the petitioner is losing his chances of promotion as the Head of the Department, since the contesting respondent, who was supposed to attain the age of superannuation on 31.5.2017 based on his original date of birth viz., 25.5.1959, will continue to hold the post till 30.09.2018. This will cause irreparable loss to the petitioner.

5. Opposing the above prayer, Mr.AR.L.Sundaresan, learned senior counsel for the contesting respondent, emphatically taking on the contentions as meritless, forcibly argued that all the three writ petitions are misconceived and they are not legally maintainable. The reason is that when the Hon'ble Division Bench of this Court has accepted the case of the contesting respondent for alteration of his date of birth as 20.9.1960, instead of 25.5.1959, on the basis of all acceptable evidence placed before the Court in W.P.No.28968 of 2004 and the said writ petition was allowed by a well speaking order dated 15.7.2008, setting aside the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.277 of 2003 dated 15.4.2004, with a direction to take necessary steps to alter the date of birth of the contesting respondent as per his representation dated 27.2.92 as expeditiously as possible, Mr.S.Pon Singh Mohan Ram cannot make any grievance. In deference to the said order, the Government also, as per Rule 49(f) of the Tamil Nadu State and Subordinate Service Rules, after due enquiry, passed the G.O.(D) No.37, Labour and Employment (M1) Department dated 10.7.2015 altering the date of birth of the contesting respondent as 20.9.1960. This order has become final. Moreover, when the petitioner unsuccessfully questioned the said order in Review Petition No.109 of 2016 before the Hon'ble Division Bench and also before the Apex Court in S.L.P.Nos.3028 & 3029 of 2017, he should not be allowed to canvass his case in the present writ

petitions wasting the valuable time of the department and also the precious time of this Court.

6. Heard the learned Additional Advocate General assisted by the learned Special Government Pleader for the State.

7. I fully agree with the submissions made by the learned senior counsel for the contesting respondent. When the order passed by the Hon'ble Division Bench of this Court in W.P.No.28968 of 2004 dated 15.7.2008 accepting the case of the contesting respondent for alteration of his date of birth as 20.9.1960 instead of 25.5.1959, was confirmed by the Apex Court in S.L.P.Nos.3028 & 3029 of 2017 after hearing both the parties by the order dated 31.3.2017, it is highly inappropriate for the petitioner-Mr.S.Pon Singh Mohan Ram to again resort to this Court wasting the precious time of this Court. Last but not the least, it may be mentioned that the W.P.No.15681 of 2017 filed by Smt.S.Paulvannam without any basis whatsoever seeking issuance of a writ of quo warranto cannot be entertained at all. The reason is that when she had retired as Selection Grade Superintendent on reaching the age of superannuation on 31.3.2012 from the office of the Deputy Chief Inspector of Factories, Chennai, it is not known how she can file this writ petition after five years of her retirement. Hence, this Court is not able to see any merit or locus standi for the petitioner Smt.S.Paulvannam to approach this Court, when the issue was already decided by the Hon'ble Division Bench and the said order was also confirmed by the Apex Court as referred to above.

8. For all the aforementioned reasons, this Court finds no merit in these writ petitions. Accordingly, all the three writ petitions are dismissed. Consequently, W.M.P.Nos.2 of 2015, 10968, 10969, 25558, 25559, 16973 & 16974 of 2017 are also dismissed. No costs.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Secretary to Government
Labour & Employment Department
Fort St.George
Chennai 600 009
 2. The Director of Industrial
Safety & Health
Chennai 600 014
 3. The Principal Commissioner &
Commissioner of Revenue Administration
Chepauk
Chennai 600 005
 4. The Secretary
Tamil Nadu Public Service Commission
Chennai 600 001
- +2 Ccs to Mr.A. Edwin Prabakar, Advocate sr 4207,4209.
+1 CC to Mr. Adithya Reddy, Advocate sr 4208.
+3 Ccs to Mr.V. Ravikumar, Advocate sr 3524 to 3526.
+1 cC to The Govt. Pleader sr 4626.

W.P.Nos.37855 of 2015 &
24197 & 15681 of 2017

SSI (CO)
SP(21/02/2018)

सत्यमेव जयते

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