

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2018

CORAM

THE HONOURABLE MR. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.22267 of 2008

C.Tamilselvam

..Petitioner

Vs

1. State of Tamilnadu, rep.by
its Secretary to Government,
Higher Education Department,
Secretariat, Chennai-9.

2. Director of Collegiate Education,
Chennai-6.

..Respondents

PRAYER: This Writ petition was filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.(D) No.147, Higher Education Department, dated 28.07.2008 conforming the order passed by the 2nd respondent in his proceedings R.C.No.26790/C1/2004 dated 04.06.2007 and Quash the same and direct the respondents to alter the date of birth of the petitioner as 01.07.1951 instead of 12.04.1949 after conducting detailed enquiry in the village where the petitioner resided in accordance with the guidelines issued by the Government and confer all the Consequential benefits to the petitioner.

For Petitioner : M/S.S.Mani

For Respondents : Mr.R.S.Selvam
Government Advocate

ORDER

The petitioner has filed this Writ Petition praying to issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.(D) No.147, Higher Education Department, dated 28.07.2008 conforming the order passed by the 2nd respondent in his proceedings R.C.No.26790/C1/2004 dated 04.06.2007 and Quash the same and direct the respondents to alter the date of birth of the petitioner as 01.07.1951 instead of 12.04.1949 conducting detailed enquiry in the village wherein the petitioner resided in accordance with the guidelines issued by the Government and confer all the Consequential benefits to the petitioner.

2. The case of the petitioner is that, the petitioner was initially appointed as Assistant Professor for Statistics in Tanjore Medical College on 13.12.1974. Later he was regularized by the Tamil Nadu Public Service Commission to the said post and his services was also regularized from 20.02.1978. The Petitioner subsequently came to know that his Date of Birth has been wrongly entered as 01.07.1951 instead of 12.04.1949. Hence, he applied to change the said application and it was returned on the ground that he may be terminated at any point of time due to the reason that he was only 10(a)(i) candidate and directed to approach the 2nd respondent. Immediately, the petitioner approached the 2nd respondent on 21.07.1978 and the same was forwarded by the Principal, Tanjaore Medical College by a memo dated 29.07.1978. However, there was no action taken by the respondent and instead replied that the petitioner has not applied within a period of five years and the application made on 12.09.2003 was only a remainder and no fresh application was filed by the petitioner. However, by order dated 15.03.2004 his application was rejected by the 2nd respondent.

3. Challenging the said order an original application was filed on 15.03.2004, and the same was transferred and numbered as W.P.No. 2573 of 2007. This Court while allowing the Writ Petition has absorbed that the petitioner acts are to show that the petitioner's application has come under Rule 49 A of General Rules for Tamil Nadu State and Subordinate Services. This Court by order dated 27.04.2007 remanded the matter for passing orders on merits and stated that since the petitioner had applied within 5 years, the application should be considered on merits as to whether the petitioner is eligible for the said alteration.

4. The learned counsel for the petitioner would also contend that if the Government Servant make an application for alteration of date of birth it has to be forwarded to the Revenue Divisional Officer for the local enquiry and considering other documents the Commissioner of Revenue Administration has to submit a report and the appointing authority has to pass orders accordingly. But, in this case the 2nd respondent has rejected the petitioner's claim by his letter dated 4.06.2007 without any application of mind and inspite of the order being passed by this Court, the same was not considered and no document was produced by the respondent side.

5. The learned counsel for the petitioner would further contend that as per the rule 49 A of General rules and as per the substitutory support service the authorities have not conducted any enquiry and has simply rejected the claim of the petitioner regarding the date of birth and the respondents have passed an order by getting the signature from the father of

petitioner who is aged about 83 years old and who is not able to remember regarding the date of birth and the respondents have conducted an eyewitness enquiry and simply rejected the same.

6. Even though, the petitioner has produced the birth extract which has been clearly mentioned that the petitioner is an 3rd child born on 1.7.1951, but the respondent did not accept the claim of the petitioner and opted for an enquiry. The respondents have not considered the order in W.P.No. 22267 of 2008 and passed the impugned Order in R.C.No. 26790/C1/2004 dated 04.06.2007.

7. The learned counsel for the respondent would state that the document produced by the petitioner is a mere extract of Date of Birth Register which shows that a child was born of 01.07.1951 but there is no subsequent proof to corroborate that the petitioner was the said child. Hence, the respondents have rejected the claim stating that the claim was made merely after a lapse of 25 years. The learned counsel for the respondents would also state that the documents produced by the petitioner was merely an extract of Register of Birth in the Thanjavur Municipality in Col.No.11 in Sl.No. 68, and it was found that the child was born on 01.07.1951 is the third child for the petitioner's parents. Hence, the respondents claim is that there is no proof to show that the petitioner is the 3rd child. The Thanjavur Municipality register contains 22 columns in which Col. 11 relates to Ward / Division number, in the birth Register, col .11 was filled as III in respect of children with S.No. 1409 to 1445 born during July 1951. The petitioner S.I. Number is 1441. But, in the extract from the Register of birth it was mentioned as third child of their parents in Col. No. 11. It shows discrepancy between the two documents. Hence, the certificate is doubtful according to original birth register.

8. It is also seen from the records that the petitioner has completed his S.S.L.C in the pattern prescribed by the Examinations Department was that during the year 1966, the age limit prescribed for examination is that the candidate should have completed 15 years of age as on 01.03.1966. After consideration of all the documents and the enquiry the respondents have passed an order in G.O.147 Higher Education (F1) dated 28.07.2018, rejecting his claim. The petitioner was also relieved from his duties on 31.05.2007 after attaining the age of superannuation.

9. It would also be seen that the petitioner was given a complaint in the year 1978 to the Head of Department which was not received by the respondents. The respondents had denied that no such complaint was received from the claimant and the petitioner was not also able to produce any evidence to show

that the same has not been sent and the copy of the same was returned by them. Hence, the claim of the petitioner after a lapse of 25 years could not be accepted. Accordingly, the application sent by the petitioner in 12.09.2003 was not accepted and it is rejected by the authorities. Based on the above said Rule 49(b) of the General Rules for the Tamil Nadu State and Subordinate Service, the petitioner's request for alteration of date of birth was rightly rejected by the authorities and there is no error committed by the respondents in rejecting the claim of the petitioner. There is lapse on the part of the petitioner at the relevant point of time.

10. Hence, nothing survives for further adjudication this petition may be dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Secretary to Government,
State of Tamilnadu,
Higher Education Department,
Secretariat, Chennai-9.
2. The Director of Collegiate Education,
Chennai-6

+1 cc to M/s.C.S.Associates, SR No.52058

+1 cc to the Government Pleader, SR No.52370

W.P.No.22267 of 2008

rsv(co)
ssm(27/12/18)

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