

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.41333 of 2006

Dr.P.Dananjayan

.. Petitioner

vs

1. The Principal,
Pondicherry Engineering College,
Pondicherry.

2. The Union of India,
rep. by the Chief Secretary,
Union Territory of Pondicherry,
Pondicherry.

3. The Secretary (Education),
Government of Pondicherry,
and the Chairman, Governing Body,
Pondicherry Engineering College,
Pondicherry.

.. Respondents

(R3 impleaded as per order dated
1.9.2017 passed in W.M.P.No.
23538 of 2017)

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records in Memorandum No.PEC/Estt/E1/PER/2004/No.2999, dated 16.7.2004 on the file of the first respondent and quash the same and further direct the first respondent to dispose of the petitioner's representation dated 21.6.2004 on merits within a reasonable time.

For Petitioner

:

Mr.A.L.Somayaji

Senior Counsel

for Mr.T.Dhanyakumar

For Respondents

:

Mr.A.Gandhiraj

Government Pleader

(Puducherry)

assisted by Mr.B.Nambiselvam

Additional Government Pleader

(Puducherry)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorari Mandamus to call for the records in Memorandum No. PEC/Estt/E1/PER/2004/No.2999, dated 16.7.2004, on the file of the first respondent and quash the same and further direct the first respondent to dispose of the petitioner's representation dated 21.6.2004 on merits.

2. The facts in a nutshell are as under: The petitioner, who was working as a Professor in the first respondent college, was requested to attend personal interview on 7.1.1999 for the post of Professor in Electronics and Communication Engineering. By an order dated 28.6.1999, the petitioner was offered the post of Professor subject to certain terms and conditions and was subsequently appointed as Professor by Office Order dated 26.7.1999, of course with retrospective effect from 28.6.1999. The petitioner was placed under probation for a period of two years from 28.6.1999. As per the instructions in the memorandum dated 28.6.1999, the petitioner produced his School Leaving Certificate and as per the said certificate, his date of birth was recorded as 12.5.1957 in the service book maintained by the first respondent. It is further stated that the petitioner was born on 21.7.1959 at Tiruoucanour and the same was registered with the Mannadipet Commune Panchayat on 28.7.1959 vide Registration No.153. On the basis of the said registration, the petitioner sought for correction of the date of birth by representation dated 21.6.2004. However, the first respondent, by the order under challenge in this writ petition dated 6.7.2004, refused to correct the date of birth of the petitioner. Assailing the said order, the petitioner has filed this writ petition for the relief stated supra.

3. The learned Senior Counsel appearing on behalf of the petitioner vehemently contended that the first respondent, while passing the impugned order, refused to consider the unimpeachable documents like birth extracts, etc., produced by the petitioner to prove the correct date of birth and had mechanically disposed of the representation on technical grounds.

4. He further contended that inasmuch as the petitioner had made a representation within five years of his entry into government service, the first respondent is bound to consider the said representation of the petitioner based on the unimpeachable documents and pass orders, which he had not done.

5. The learned Senior Counsel further contended that the first respondent vide the impugned order rejected the representation of the petitioner only on the ground that the

Civil Court dismissed the suit filed by the petitioner for correction of date of birth, without considering the vital fact that the appeal filed by the petitioner as against the said decree passed in the suit with an interlocutory application seeking to withdraw the suit with liberty to file application before the competent authority for correction of date of birth is pending disposal.

6. Per contra, the learned Government Pleader (Puducherry) appearing on behalf of the respondents submitted that the petitioner was initially appointed on direct recruitment as Lecturer in the Pondicherry Engineering College with effect from 2.5.1986 and was thereafter appointed as Assistant Professor with effect from 30.9.1992 on adhoc basis and was subsequently appointed as Professor on direct recruitment with effect from 28.6.1999 and, therefore, the limitation period of five years to seek correction of date of birth expired on 1.5.1991.

7. He further contended that the suit as well as the appeal filed by the petitioner seeking identical relief had been dismissed by the Courts below and even the Original Application filed before the Central Administrative Tribunal, Madras Bench was dismissed and, therefore, the writ petition at this belated stage seeking the very same relief is liable to be dismissed.

8. Refuting the above said contention, the learned Senior Counsel appearing on behalf of the petitioner contended that the petitioner joined as Lecturer in Electronics and Communications Engineering on 2.5.1986 and was promoted as Assistant Professor on 30.9.1992, from which post he resigned and joined as Professor on 28.6.1999, after furnishing all documents, including the proof of age and the first respondent accepted the resignation of the petitioner on 28.6.1999 before joining as Professor in Electronics and Communication Engineering Department and therefore the appointment was fresh and he was placed under probation for two years and, hence, his request for correction of date of birth was made well within five years from the date of appointment as Professor in the first respondent College.

9. I heard Mr.A.L.Somayaji, learned Senior Counsel for Mr.T.Dhanyakumar, learned counsel for the petitioner and Mr.A.Gandhiraj, learned Government Pleader (Pudhucherry) assisted by Mr.B.Nambiselvam, learned Additional Government Pleader (Pudhucherry) for the respondents and perused the documents available on record.

10. A bare perusal of the documents available on record show that the petitioner was appointed as Lecturer in

Electronics in the first respondent College with effect from 2.5.1986 and was placed on probation for two years from 2.5.1986. Thereafter, the petitioner was appointed as Assistant Professor, Electronics and Communication Engineer on purely temporary and ad-hoc basis with effect from 30.9.1992. It is seen that the petitioner was relieved of his duties with effect from 25.7.1994 for undergoing Ph.D. Course during the period from 27.7.1994 to 26.7.1997. It is to be seen from the service book of the petitioner that the petitioner was thereafter "appointed" as Professor (Electronics and Communication) with effect from the forenoon of 28.6.1999 vide order dated 26.7.1999 and he was again placed on probation for a period of two years with effect from 28.6.1999. The office order dated 26.7.1999 categorically states that "His resignation from the post of Assistant Professor in Electrical and Communication Engineering Department with effect from forenoon of 28.6.1999 as a technical formality is accepted". This only goes to show that the petitioner resigned from the post of Assistant Professor and was appointed afresh to the post of Professor.

11. It is not in dispute that an application seeking change of date of birth made after the period of five years from the date of entry into service is to be rejected on the sole ground that the same had been filed beyond the period of five years. However, the only fact in this case which gains prominence is that the petitioner was appointed afresh on 28.6.1999 and he was placed on probation for a period of two years with effect from 28.6.1999.

12. If the stand of the respondents that the petitioner was in service of the first respondent College from 2.5.1986 is accepted as such, there is no necessity for the first respondent to issue a memorandum dated 21.12.1998 to the petitioner for recruitment to the post of Professor and to direct him to produce original certificates of education qualification, mark lists, experience certificates and other testimonials, which were already available with the respondent authorities from 2.5.1986.

13. In the case on hand, the petitioner had admittedly filed a suit seeking alteration of change of date of birth and the same was dismissed by the trial Court. Such alteration of change of date of birth was sought based on the certificate issued by the Registrar under Section 12/17 of the Registration of Births and Deaths Act, 1969. The suit was dismissed by the trial Court. The Appeal was also dismissed by the Appellate Court observing that "the appellant/plaintiff fairly conceded that he has filed an application for withdrawal of the suit with permission to file a fresh application before the appropriate authority."

14. In *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36, the Hon'ble Supreme Court observed: "An appointment to a permanent post in Government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial. The period of probation may in some cases be some fixed period, e.g. six months or for one year or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant was appointed on trial is found unsuitable and his service is terminated by a notice." It was further observed after noticing the nature of an officiating appointment: "It is, therefore, quite clear that appointment to a permanent post in a Government service either on probation or on officiating basis, is from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time."

15. "Probation" connotes a period of trial. On successful completion of the probation an employee is confirmed in the appointment held by him. Obviously, the purpose of putting an employee on probation is to find out his suitability to hold the post substantively or permanently in the sense that he thereafter gets a right to hold the post. The fitness or suitability has to be judged at the time of confirmation and not, unless any specific rule or term of contract of service so provides, as on the date of the original appointment. If the employee is not found suitable either during the period of probation or on completion thereof he is not retained in service and the service is terminated by notice. It would be a contradiction in terms if it is said that an employee is on probation, namely, is on trial for being retained in service and yet during this period he has a right to hold the post to which he has been appointed on probation. In the case on hand, as could be seen from the service book of the petitioner, it is appointment of the petitioner on probation, consequent to his resignation, and it is not promotion of the petitioner to the post of Professor. Therefore, by no stretch of imagination, the petitioner's appointment could be treated as promotion.

16. The decisions relied on by the learned Government Pleader appearing on behalf of the respondents do not deal with a case where resignation of an employee was accepted and he was again appointed afresh on probation for two years. Therefore, this Court does not find it incumbent to deal with the said decisions, the proposition laid down by which is not disputed.

17. For the foregoing reasons and in view of the peculiar facts and circumstances of the case, this Court disposes of the writ petition with a direction to the first respondent to consider the representation of the petitioner dated 21.6.2004 in the light of the observations made above and pass fresh orders on merits and in accordance with law within four weeks from the date of receipt of a copy of this order without insisting on technicalities. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Principal,
Pondicherry Engineering College,
Puducherry.
2. The Chief Secretary,
Union of India,
Union Territory of Pondicherry,
Puducherry.
3. The Secretary (Education),
Government of Pondicherry,
and the Chairman, Governing Body,
Pondicherry Engineering College,
Puducherry.

+1cc to Mr.T.Dhanya Kumar, Advocate, S.R.No. 5180
+1cc to the Government Pleader, S.R.No. 4968

W.P.No.41333 of 2006

GN(24/10/2018)