

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 30.01.2018
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.7115 of 2011
and
M.P. (MD) No.1 of 2011

S.Subburaj

... Petitioner

Vs.

- 1.The Secretary,
Government of Tamil Nadu,
Education Department,
Port St. George,
Chennai - 600 009.
- 2.Director of Elementary Education,
College Road,
Chennai - 600 006.
- 3.The Chairman,
Teacher's Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road,
Chennai 600 006.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating with the order of the 3rd respondent made in Proc.Rc.No.6477/A2/2010 dated 05.04.2011 and quash the same as it is illegal and in consequence direct the respondents to appoint the petitioner as an Assistant Elementary Education Officer by fixing his date of birth as 27.06.1970 instead of 08.04.1969 by disposing his application dated 12.01.2011 in accordance with Rule 49(a) of Tamilnadu Subordinate Service Rules.

For Petitioner : Mr.R.Surianarayanan
For Respondents : Mr.M.Muthu
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the records relating to the order of the 3rd respondent in proceedings dated 05.04.2011 and quash the same and direct the respondents to appoint the petitioner as an Assistant Elementary Education Officer by fixing his date of birth as 27.06.1970 instead of 08.04.1969.



2.The learned counsel appearing on behalf of the writ petitioner contended that the date of birth of the writ petitioner is entered in the school register as 08.04.1969. However, it is a wrong date of birth according to the writ petitioner. The writ petitioner claims that his actual date of birth is 27.06.1970 and he has already obtained a revised birth certificate from the Court by following the procedures and the certificate shows that the date of birth of the petitioner is 27.06.1970.

3.The writ petitioner submitted an application for selection to the post of Assistant Elementary Educational Officer and he has successfully passed the written examination and at the time of certificate verification the authorities competent found that the date of birth of the writ petitioner as per the school registers is 08.04.1969 and rejected his candidature on the ground that he was overaged. At the relevant point of time, the writ petitioner has obtained the revised birth certificate from the competent authority and produced the same before the selection authorities. The authorities have refused to accept the revised birth certificate produced by the writ petitioner and by relying on the original school certificates, they rejected the claim of the writ petitioner and accordingly not selected.

4.The learned counsel appearing on behalf of the writ petitioner drawn the attention of this Court in respect of Rule 49 (a) of Tamil Nadu State and Subordinate Rules. The Rule 49 (a) and (b) are extracted here under:

Rule 49 of Tamil Nadu State and Subordinate Rules provides Alteration of Date of Birth. Rule 49 (a) and (b) of Tamil Nadu State and Subordinate Rules states that is as under:

(a) If at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C. or Matriculation Register or School Records, he shall make an application to the Tamil Nadu Public Service Commission in case where the appointment is made in consultation with the Commission and in other cases to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and on receipt of the report, the Tamil Nadu Public Service Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected.

Provided that in case of a candidate who was born outside the State of Tamil Nadu, the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Tamil Nadu Public Service Commission, or the appointing authority, as the case may be shall examine and scrutinize the records that may



be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected.

(b) After a person has entered 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 into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-rule (a).

5. Relying on the above rules, the learned counsel appearing for the writ petitioner urged this Court by stating that even the candidates, who had participated in the process of selection is entitled to submit the revised date of birth for correction to the competent authorities. Thus, revised date of birth certificate produced by the writ petitioner ought to have been accepted by the respondents for the purpose of deciding the actual date of birth of the writ petitioner.

6. The learned Additional Government Pleader appearing on behalf of the respondent Nos. 1 and 2 opposed the contention by stating that the Tamil Nadu State and Subordinate Rules are inapplicable in respect of the candidates, who had participated in the selection of process. The rules shall be made applicable only in respect of the persons, who were actually appointed by the authority competent. Thus, the rejection of the claim of the writ petitioner stating that the date of birth as per the school records is 08.04.1969 alone is to be accepted for the purpose of considering the claim of the writ petitioner. This apart, the writ petitioner at the time of submitting the application had not produced any revised date of birth certificate and the petitioner mentioned the date of birth in his application as 08.04.1969 as per the school records and the xerox copy of the school records were also enclosed for the appointment to the post of Assistant Elementary Educational Officer. This being the factum of the case, the authority competent has to consider the selection only based on the entries made in the school register and the entries made by the writ petitioner in his application on his own hand.

7. This Court is of an opinion that the fact remains that the writ petitioner had submitted his application for selection to the post of Assistant Elementary Educational Officer. At the time of submission of the application the writ petitioner had produced the relevant school certificates. Date of birth record in the school certificates is 08.04.1969. Even, in the application form, the writ petitioner had stated his date of birth as 08.04.1969. Only at the time of the verification of the certificate, the writ petitioner had produced the revised birth certificate issued by the competent authority showing that his date of birth is 27.06.1970 and not 08.04.1969.



8. In respect of the Rule 49 (a) (b) of Tamil Nadu State and Subordinate Services Rules cited by the learned counsel for the writ petitioner, this Court has to consider the application of rules itself. The Tamil Nadu State and Subordinate Service Rules, 1983, provided to regulate the service conditions of the Government Employees.

9. Rule 2 (i) of the Tamil Nadu State and Subordinate Services Rules provides, A person is said to be "appointed to a service" when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members there of. Therefore, it is made clear that only if a person was issued with an order of appointment and discharges his duties for the first time in respect of the post borne on the cadre of such service or commences the probation, instruction or joined in the training programme.

10. Rule 2 (ii) of the Tamil Nadu State and Subordinate Services Rules provides "Approved Candidate". Approved candidate means a candidate whose name appears in an authoritative list of candidates approved for appointment to any service, class or category.

11. Rule 2 (iii) speaks about "Approved Probationer". Approved Probationer in a service, class or category means member of that service class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category.

12. Thus, this Court has to consider whether the writ petitioner is an appointed candidate to service or an approved candidate or an approved probationer. In this regard on a perusal of the rules in respect of person not appointed, the same cannot be made applicable to the writ petitioner. The writ petitioner had not been appointed and no order of appointment was issued. Admittedly, the writ petitioner does not fall under the category of appointed candidate. Secondly, in respect of the approved candidates, the rules stipulates that a candidate, whose name appears in a final selection list of candidates approved for appointment to any service. Therefore, it is clear that a final selected list should have been issued. In other words, a candidate, who was finally selected and the list was published and to be interpreted that an approved candidate is a person, whose name has been included in the final selection list. There cannot be any other further verification by the selecting authorities. Thus, the final list of selection prepared and published alone to be considered for the purpose of deciding the factor whether the candidate is an approved candidate or not. In respect of approved probationer that cannot be made applicable to the writ petitioner, since he was not appointed.



13. Now, this Court has to consider the fact in relation to the selection of the writ petitioner. The writ petitioner had participated in the written examination and succeeded. The process of certificate verification and interview were conducted. The writ petitioner participated in the process of interview and certificate verification. At the time of certificate verification, the authority verified the date of birth of the writ petitioner as per the original school certificates is 08.04.1969. Then, the writ petitioner made a representation to the authorities that he had obtained a revised date of birth certificate from the competent authority and accordingly, his date of birth is 27.06.1970. The revised date of birth was not accepted on the ground that the original date of birth entered based on the school records and the application submitted by the writ petitioner also states that his date of birth is 08.04.1969. Accordingly, the claim of the writ petitioner was rejected. The impugned order was passed pursuant to the direction issued by this Court on 27.01.2011 in W.A.No.924 of 2010 to re-consider the case of the writ petitioner. The reasons stated in the impugned order is that the rule provisions of the State and Subordinate Services Rules, are not applicable in respect of the candidates, who are participating in the process of selection. Further, it is stated that the writ petitioner is not even selected to hold any service, he was called only for certificate verification as such the said rules and provisions will not apply to the writ petitioner. This apart, the Teacher Recruitment Board, is only a recruiting agency and not an appointing authority.

14. This Court is also of an opinion that the writ petitioner participated in the selection process conducted by the Teacher Recruitment Board. Undoubtedly, the Teacher Recruitment Board, is a recruiting agency and not an appointing authority. The appointing authority had not issued any final list of approved candidates or appointment order. It is an admitted fact that the writ petitioner had not been served with any order of appointment. In these circumstances, it is to be considered for the purposes that the writ petitioner had participated in the process of selection and can never be held that the writ petitioner was a finally selected candidate and an order of appointment was issued. Even, otherwise the appointing authority has not issued any confirmation in respect of the selection list prepared by the Teacher Recruitment Board.

15. The legal principles in the matter of selection is that mere selection will not confer any right on the candidate to seek appointment. The selection cannot be a ground for filing a writ petition seeking an order of appointment. Even, after the selection, the appointing authority has got powers to cancel the selection, that is the reason why the Constitutional Courts have held that the mere selection will not confer any right on the candidates. Selection if conducted on extraneous consideration or if any malpractices or corrupt activities are found then, the Courts can



interfere with. In all other circumstances, it is for the appointing authority to issue an order of appointment. In other words the appointing authority is empowered to cancel the selection, even at the last stage and the same cannot be questioned by the candidates, who have participated in the process of selection.

16. This Court is of an opinion that the writ petitioner had participated in the process of selection and successfully selected in the first round of selection process and finally was rejected on the ground that he was overaged at the time of certificate verification. This being the factum of the case, the relief sought for in this writ petition cannot be granted to the writ petitioner and the reasons stated in the impugned order are in accordance with the legal principles settled by this Court and there is no infirmity in the impugned order.

17. Accordingly, the writ petition stands dismissed. However, there shall be no orders as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Education Department,
Port St. George,
Chennai - 600 009.
2. Director of Elementary Education,
College Road, Chennai - 600 006.
3. The Chairman,
Teacher's Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
College Road, Chennai 600 006.

+1cc to Special Government Pleader in SR.No.45523.

W.P. (MD) No.7115 of 2011
and
M.P. (MD) No.1 of 2011
30.01.2018

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