

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4619 of 2018
and WMP.No.5694 of 2018

V.Malarvizhi

... Petitioner

-Vs-

The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the Respondent in O.Mu.No.80645/M/E3/2012 dated 03/11/2012 and to quash the same and consequently direct the respondent to pass orders for alteration of Date of Birth of the petitioner as 08/12/1965 instead of 28/05/1965 in the Service Records following the procedure contemplated under 49 of Tamil Nadu and Subordinate Service Rules within a time frame to be fixed by this Hon'ble Court.

For petitioner : Mr.G.Sankaran

For Respondent: Mr.A.Rajaperumal, Additional
Government Pleader

सत्यमेव जयते
ORDER

The order of rejection dated 03.11.2012 rejecting the claim of the writ petitioner to alteration the date of birth in her service records is under challenge in the present writ petition.

2. The writ petitioner was appointed as BT Assistant in C.S.I.Rajagopal Higher Secondary School, Royapuram, Chennai. Her appointment was duly approved in proceedings dated 26.03.2011.

3. The grievance of the petitioner is that her date of birth was erroneously entered as 28.05.1965 instead of

08.12.1965 in her service records. The learned counsel for the writ petitioner states that the writ petitioner has submitted an application seeking alteration of date of birth within a period of 5 years as contemplated under the Service Rules and there is no delay on the part of the writ petitioner in submitting the application. However, the application of the writ petitioner was rejected by the respondents in proceeding dated 03.11.2012 stating that the date of birth was entered in her service records as 28.05.1965 based on the school records produced by the writ petitioner at the time of appointment. Thus, the same cannot be changed at this length of time.

4. This Court is of the considered opinion that the writ petitioner born in the year 1965 and regularly appointed in the Education Department on 26.03.2011. The reliance placed by the writ petitioner for alteration of date of birth, is her birth certificate issued by the Commissioner, Vellore Municipal on 28.12.2012.

5. The writ petitioner has not taken any effort to change her date of birth either in the school records or in other connected records. Contrarily, she has obtained the birth certificate from the Corporation on 28.12.2012 after a lapse of about 47 years from the date of her actual birth. It is the growing trend amongst the employees during their fag end of services, get birth certificate from such Municipality Corporation and Panchayat Union and by producing the same seeking alteration of date of birth in their service records after a lapse of many years. Such a practice of submitting an application seeking alteration of date of birth cannot be entertained at all. If at all, the date of birth was erroneously entered in the school records, the same must be properly corrected within a reasonable period of time by following the procedures contemplated under the Births and Deaths Act and thereafter submitting a application to the authorities for alteration.

6. The birth certificate produced by the writ petitioner, which was obtained during the year 2012 after a lapse of about 47 years from the date of birth of the petitioner cannot be relied upon after this length of time for the purpose of altering the date of birth in her service records. The procedures are contemplated under the Births and Deaths Act for the purpose of changing the date of birth. However, there is no proof to show that the writ petitioner has obtained the certificate by following the procedures contemplated under the Births and Deaths Act.

7. Even recently, the Supreme Court of India in the case of Life Insurance Corporation of India and others vs. R.Basavaraju

reported in 2016 15 SCC 781 held that alteration of date of birth cannot be granted during the fag end of the career of the employees. The relevant paragraphs are 5 to 11 are extracted hereunder:

"5. The law with regard to correction of date of birth has been time and again discussed by this Court and held that once the date of birth is entered in the service record, as per the educational certificates and accepted by the employee, the same cannot be changed. Not only that, this Court has also held that a claim for change in date of birth cannot be entertained at the fag end of retirement.

6. It has not been disputed by the respondent that at the time of appointment his date of birth was recorded in the service record as 3-2- 1943 and the said date of birth was duly acknowledged and accepted by the respondent. It was only after appointment, he asked the appellant to change his date of birth, which was not accepted by the appellant Corporation.

7. This Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294] , elaborately dealt with such a demand made by the employee with regard to alteration in the date of birth. This Court observed: (SCC p. 307, para 7) "7. As held by this Court in Harnam case [Union of India v. Harnam Singh, (1993) 2 SCC 162 : 1993 SCC (L&S) 375 :

(1993) 24 ATC 92] , Rule 49 is to be harmoniously interpreted. The application for correction of the date of birth of an in-service employee should be made within five years from the date when the Rules had come into force i.e. 1961. If no application is made, after expiry of five years, the government employee loses his right to make an application for correction of his date of birth. It is seen that the respondent entered into the service on 12-1-1952, and only when he was due for superannuation at the age of 58 years on 31- 8-1991, he made the application exactly one year before his superannuation. The Government rejected his claim before he attained the age of superannuation on 30-8-1991. When questioned, the Tribunal, for incorrect reasons, set aside the order and remitted

the matter for reconsideration. The Government considered various facts and circumstances in GOMs No. 271 and rejected the claim on 31-3-1993. The evidence is not unimpeachable or irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a court of appeal. This Court has, repeatedly, been holding that the inordinate delay in making the application is itself a ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, <http://www.judis.nic.in> question them and remain in office till the period claimed for, gets expired. This case is one such stark instance. Accordingly, in our view, the Tribunal has grossly erred in showing overindulgence in granting the reliefs even trenching beyond its powers of allowing him to remain in office for two years after his date of superannuation even as per his own case and given all conceivable directions beneficial to the employee. It is, therefore, a case of the grossest error of law committed by the Tribunal which cannot be countenanced and cannot be sustained on any ground. The appeal is accordingly allowed with costs quantified as Rs 3000."

8. In Home Deptt. v. R. Kirubakaran [Home Deptt. v. R. Kirubakaran, 1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] , this Court again observed: (SCC p. 157, para 5) "4. Normally, in public service, with entering into the service, even the date of exit, which is said as date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the

relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement and for calculating the date of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their dates of birth recorded in the service records, by either invoking the jurisdiction of the High Courts under Article 226 of the Constitution or by filing applications before the Administrative Tribunals concerned, for adjudication as to whether the dates of birth recorded were correct or not."

9. As noticed above, the respondent filed a suit for declaration with regard to his date of birth without impleading the appellant, who is the http://www.judis.nic.in employer, and has obtained the decree against the persons, who have no concern with the date of birth of the respondent. It goes without saying that the said decree obtained by the respondent is not binding on the appellant being not a party to the suit.

10. In our considered opinion, the impugned order [R. Basavaraju v. LIC, Writ Appeal No. 909 of 2006, decided on 29-11-2011 (KAR)] is wholly illegal and without any basis, which cannot be sustained in law.

11. For the reasons aforesaid, this appeal is allowed, the impugned order [R. Basavaraju v. LIC, Writ Appeal No. 909 of 2006, decided on 29-11-2011 (KAR)] passed by the High Court is set aside. It is held that the respondent shall superannuate on the basis of his date of birth i.e. 3-2-1943 recorded in the service record."

8. In view of the facts and circumstances, the claim set out in the writ petition seeking alteration of date of birth cannot be granted at this length of time and the original date entered in the service records of the writ petitioner is to be maintained for the purpose of fixing the date of the retirement of writ petitioner and accordingly, there is no infirmity in the impugned order passed by the respondents.

9. With these observations, the writ petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CJ Conf)

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Sub Assistant Registrar

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To

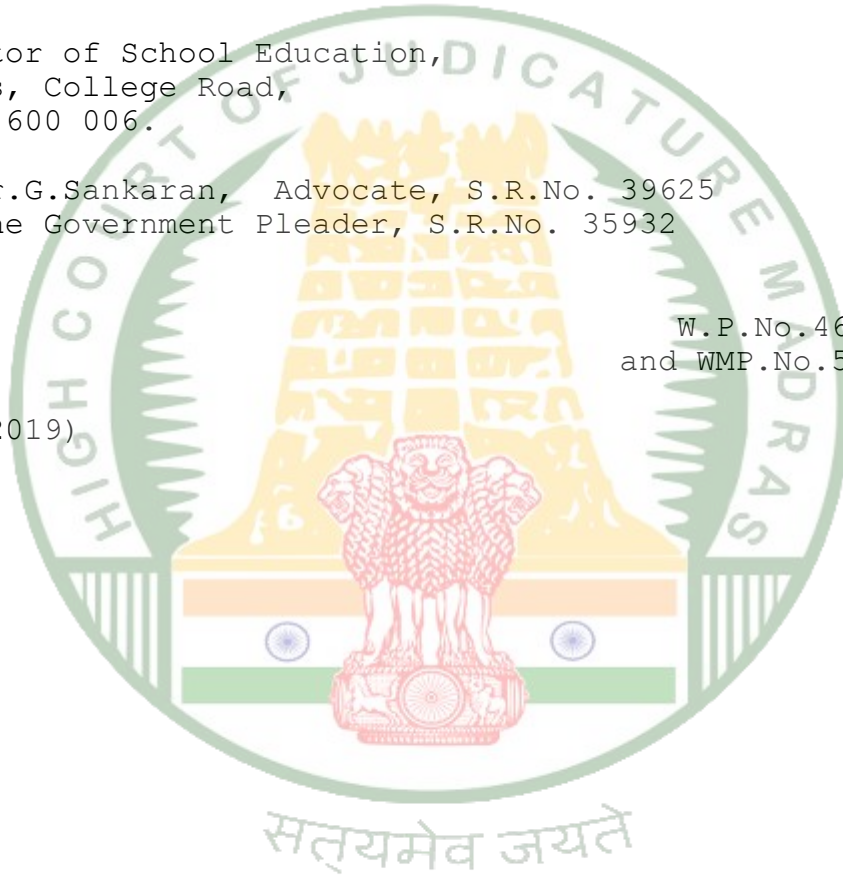
The Director of School Education,
DPI Campus, College Road,
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+1cc to Mr.G.Sankaran, Advocate, S.R.No. 39625

+1cc to the Government Pleader, S.R.No. 35932

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AD(CO)
GN(03/06/2019)



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