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IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	17.07.2019
Pronounced On	07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1302 of 2019
and
C.M.P.No.8865 of 2019

- 1.The Principal Secretary to Government,
Home Department, Secretariat,
Fort St. George, Chennai 600 009.
- 2.The Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.
- 3.The Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai 600 005.
- 4.The Director of School Education,
Directorate of School Education, DPI Complex,
College Road, Chennai 600 006.
- 5.The Revenue Divisional Officer,
Namakkal 637 001. ... Appellants/Respondents

vs

K.Chandrasekaran
Assistant Commissioner of Police (L&O),
SRMC Range, Greater Chennai Police. ... Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Latter Patent, to
set aside the order dated 04.01.2019 made in W.P.No.32142 of
2018 on file of this Court.



Prayer in WP No.32142 of 2018 : Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of mandamus directing the Respondents to alter the petitioners date of birth from 5.3.1961 to 21.9.1962 in the service register and all connected records as per the representation made by the petitioner

For Appellants : Mr.P.H.Aravindh Pandian
Additional Advocate General -II
Assisted by
Mr.V.Shanmuga Sundar,
Special Government Pleader

For Respondent : Mr.K.Sukumaran for
M/s.Saravabhauman Associates

J U D G E M E N T

C.SARAVANAN, J.

The present Writ Appeal is directed against order dated 04.01.2019 passed by the Learned Single Judge in W.P.No.32142 of 2018. By the impugned order the Learned Single Judge has allowed W.P.No.32142 of 2018 filed by the respondent for a mandamus to direct the appellants herein to alter the respondent's date of birth from 05.03.1961 to 21.09.1962 in the service register.

2.Pursuant to the impugned order, the respondent was allowed to continue in service. The respondent who was otherwise to retire from service on 31.3.2019 was allowed to be in service.

3.However, on 21.1.2019 the 5th appellant as the competent authority negatived the claim of the respondent that he was born on 21.09.1962.Under these circumstances, the present writ appeal was filed.

4.The operation of the impugned order passed by the learned single judge was stayed on 16.4.2019 until further orders with an observation that in case the present intra-court appeal is dismissed, the respondent would be entitled to the salary for the period in question.



5.The attempt of the respondent in the writ petition was to extend the date of superannuation from 31.03.2019 to 30.09.2020 by altering his date of birth in the service register from 05.03.1961 to 21.09.1962.

6.The respondent joined the Tamil Nadu Police Service as a Reserve Sub- Inspector pursuant to an appointment order dated 18.09.1987. Soon after his appointment, the respondent applied for alteration of his date of birth in the service register from 05.03.1961 to 21.09.1962. This application was in accordance with Rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules, 1955 as it stood during the relevant period.

7.The then Commissioner of Police by a Memo in RC.No.177/73191/R&T1/88 dated 16.06.1988 directed the respondent to apply to the Education Department to get the date of birth altered. The respondent was asked to approach the office of the Commissioner of Police thereafter.

8.By letter dated 17.10.1988, the 4th appellant Director of School Education informed the respondent that there was no rule/provision to make any changes in Secondary School Leaving Certificates. Under these circumstances, respondent filed O.S.No.1694 of 1989 before the City Civil Court, Chennai.

9.By a judgment and decree dated 30.10.1998, the said suit was dismissed by the City Civil Court, Chennai. Thereafter, the respondent preferred an appeal before the appellate court in A.S.No.159 of 1999. However, the appeal was dismissed for default on 28.11.2000. After dismissal of the suit, the respondent did not pursue further.

10.Meanwhile, the respondent was promoted as Inspector of Police on 17.01.2001 and thereafter as the Asst Commissioner of Police on 25.11.2013 and had served in various districts in Tamil Nadu.

11.On 05.08.2015, the respondent sent a fresh request for alteration of the age in the Service Register once again to the 1st Appellant as he was approaching the age of super annuation.



12.The respondent also managed to obtain a fresh Birth Certificate from the Department of Revenue Administration, Disaster Management and Mitigation on 02.12.2015 with an altered date of birth as 21.09.1962. The respondent also got his name inserted in the original birth certificate.

13.Fresh Birth certificate was issued by the Deputy Tahsildar. This was also forwarded to the appellant which led to intra-departmental communications being exchanged.

14.By a letter dated 21.07.2016, the Commissioner of Police forwarded the request of the respondent to the 2nd appellant stating that the connected files of the respondent was not traceable due to efflux of time.

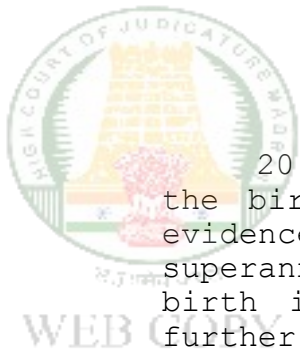
15.By a communication dated 13.10.2016 the 2nd appellant forwarded a copy of the Birth Certificate obtained by the respondent to the 3rd appellant and requested to verify the genuineness of the Birth Certificate and to send a report.

16.By a letter dated 23.01.2017 the 3rd appellant alluded the Section 59 (3) of Tamil Nadu Civil Service Act, 2016 and requested the 2nd appellant to send the documents to the concerned District Revenue Divisional Officer for verification.

17.On 11.04.2017, the respondent once again sent a communication to the appellants tracing the entire history and requested for alteration of the date of birth in his service register

18.By a letter dated 31.05.2017 the 2nd appellant asked the 3rd appellant to verify the genuineness of the Birth Certificate furnished by the respondent.

19.Thereafter, the respondent filed the W.P.No.32142 of 2018 for the above relief in November, 2018. By the impugned order, the Learned Single Judge allowed the writ petition and has concluded that once the registration department has issued the birth certificate with the correct date, the appellants should alter the date of birth in the service register.



20.The Learned Single Judge observed that certified copy of the birth extract is a public document and was admissible in evidence. Since the respondent was nearing the age of superannuation and had applied for alteration of the date of birth in time, it was not open for the appellants to delay further stating that an enquiry was still pending.

21.The Learned Single Judge observed that when an employee is expected to be prompt and was moving authorities for altering the date of birth, equally the employer is also expected to be prompt in disposing the application.

22.The Learned Single Judge further observed that there was no explanation for the delay on the part of the appellants and therefore allowed the writ petition.

23.The learned single Judge has further observed that the District Divisional Officer, Namakkal had submitted a report therefore it was not clear as to what else was required to be verified.

24.Thus, the respondent who would have otherwise retired on 31.03.2019 as per the date of birth in the service register was allowed to continue in service as no other adverse proceedings were pending against the respondent and since no stay was granted while condoning the delay in filing the present writ appeal.

25.It further noted that the original Birth Register of Avalnaickanpatti Village, Namakkal Taluk, was altered and the name of the respondent was inserted at Sl.No.18 in 2015 without any signature.

26.Heard Mr.Arvinth Pandian, the learned Additional Advocate General-II for the appellants and Mr.K.Sukumaran for the respondent.

27.As mentioned above, after the writ petition was allowed, the 5th respondent by a communication dated 21.1.2019 addressed to the Director-General of Police, negated the claim of the respondent.



28.It was observed that the Sub Collector had opined that if respondent's date of birth was assumed to be 21.09.1962, his age would have been 3 years 10 months 10 days only as on 31.07.1966 and could not have been admitted in the first standard.

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29.It further noted that the Sub Collector, Namakkal had further stated that the Chief Educational officer, Namakkal, in her letter No.7424/2017/A5 dated 10.10.2017, had stated that students writing 11th std SSLC should have completed 15 years of age and 10th std SSLC. Thus, the claim of the respondent that he was born on 21.9.1962 was made out to be improbable.

30.The learned Additional Advocate General-II submitted that the Learned Single Judge erred in granting the relief to the respondent inasmuch as there was enormous delay on the part of the respondent in approaching the Department for correction in the Service Register.

31.It was further submitted that though the respondent had approached the authorities soon after entering service to alter the date of birth in the service register, the respondent did not take effective steps and proceeded to file a civil suit which was rightly dismissed.

32.It was further submitted that the respondent also preferred 1st appeal by way of A.S.No. 159 of 1999 before the IV Additional City Civil Court, Chennai and it allowed to be dismissed for default on 28.11.2000 when indeed he should have approached the concerned Revenue department for correcting the date of birth to facilitate the appellant Department to alter the date in birth of the service register.

33.It was further submitted that, the respondent did not take any steps for next 15 years and approached the appellants only on 5.8.2015 with his request for alteration in the date of birth in the service register which was belated.

34.It was therefore submitted that the learned single judge erred in granting relief to the respondent. In any event, the competent authority namely the 5th appellant has now by an order dated 21.1.2019 negatived the claim of the respondent for alteration in the date of birth. If aggrieved, the respondent has to challenge the order dated 21.1.2019 of the 5th appellant.



35.Learned counsel for the appellants relied on the following decisions:-

- i. R.K.Jangra vs State of Punjab and Others (2009) 5 SCC 703.
- ii. K.C.Kalaikovan vs The Commissioner, Revenue Administration and Ors passed in W.P.No.6143 of 2008 by this Court.
- iii. V.Ranganathan vs The Director, Directorate of School Education and Another passed by the division bench of this Court in W.P.No.21325 of 2018.
- iv. State of Tamilnadu vs T.V.Venugopalan (1994) 6 SCC 302.
- v. R.Ramasubramani vs Central Administrative Tribunal 2013 (7) MLJ 513.
- vi. Secretary and Commissioner, Home Departement and Others vs R.Kirubakaran 1994 Supp (1) SCC 155.
- vii. R.Santhosh Kumar vs The state of Tamilnadu and Others passed dated 11.07.2017 in W.P.No.17792 by this Court.

36.Countering the arguments of the learned Advocate General, the Learned Counsel for the Respondent Mr.K.Sukumaran for Sarvabhuman Associates, Advocates stated that the order dated 21.1.2019 of the 1st respondent is subsequent to the order of the Learned Single Judge.

37.It was further stated that the respondent was appointed on 18.9.1987 and had filed an application within one year from date of his joining the request to alter the date of birth in the service register which was in terms of the Rule 49 (b) of the Tamil Nadu Subordinate Police Service Rules, 1955.

38.The then Commissioner of Police misguided the respondent by directing the respondent to approach the education department and thereby forcing the respondent to embark on a remedy before the wrong forum.

39.Therefore, the respondent is not guilty of laches as the application was filed immediately in terms of the Tamil Nadu Subordinate Police Service Rules, 1955.

40.Learned counsel for the respondent further submitted that



even as per the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the respondent's application was in time and therefore the order passed by the learned single judge requires no interference.

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41. It was further submitted that respondent was also allowed to continue in service beyond 31.3.2019 after the impugned order was passed and therefore merely because the 5th respondent had post facto passed an order subsequently on 21.1.2019, by itself will not justify termination from service.

42. Further, the respondent was forced to file a writ of mandamus as verification of the certificate was not completed even till November, 2018 and post facto verification cannot a valid reason to interfere with the impugned order of the learned single judge.

43. In this connection learned counsel for the respondent refers to the decision of the courts in the following cases:-

- i. Gulab Bai (Deceased) and Others vs Manphool Bai AIR 1962 SC 214.
- ii. Bhagwan Dayal (Deceased and thereafter his heirs and legal representatives Bansgoal Dubey and Another vs MST Reoti Devi (Deceased) and after her death, MST Dayavati, Her Daughter AIR 1962 SC 287.
- iii. Oriental Bank of Commerce Ltd vs Harcharn Das Loomba AIR 1963 SC 1707.
- iv. Shivashankar Prasad Shah and Others vs Baikunth Nath Singh and Others 1969 (1) SCC 718.
- v. Union of India vs Harnam Singh (1993) 2 SCC 162.
- vi. Secretary and Commissioner, Home Department and Others vs R. Kirubakaran 1994 Supp 91) SCC 155.
- vii. State of Punjab vs Mohinder Singh (2005) 3 SCC 702.
- viii. A. Akthar Hussain vs K. Pappireddiyar & Others 2016.2.L.W.389.

44. We have considered the rival submissions advanced on behalf of the appellants and the respondent. We have also perused the records and the case laws of submitted on either side.



46. The respondent complicated the issue further by approaching civil court and thereafter preferred a 1st Appeal in A.S.No.159 of 2000 before the District Judge which also was dismissed for default.

48. The first 13 years were wasted before the wrong forum partly on account of the wrong advice given by the then Commissioner of Police and the next 15 years in silence accepting the fate without pursuing the remedy.

50. The writ petition that was filed by the respondent in the November 2018 just few months from the date of superannuation on 31.3.2019 to alter date of birth entered in the service register from 05.03.1961 to 21.09.1962.

52. Thus, in the peculiar facts of the case, the competent authority was directed to consider the representation in the light of documents and materials produced. However, this is not so in the present case.

<https://hcservices.ecourts.gov.in/hcservices/>



Tamil Nadu Police Subordinate Service Rules, 1955 as it stood during the material period or the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is available only where there is no dispute regarding the actual date of birth but a mistake is made in the service register of an employee by the authorities. The rights have to be exercised within the time stipulated therein.

54.The entries made in the service register based on the documents produced by an employee at the time of the appointment and recruitment cannot altered unless application are filed in time together with such supporting documents before the competent authority to enable latter to make alterations in the service register.

55.Only, where there is a mismatch between actual date of birth reflected in the certificate produced by such an employee at the time of appointment and in the service register, an employee can file an application to alter the date of birth in the service register within the period prescribed.

56.In the present case, though the respondent had made an attempt to alter the date of birth in the service register within one year from date of joining service/appointment, he had no documents to substantiate that he was indeed born only on 21.9.1962 and not on 5.3.1961.

57.The birth certificate dated 25.9.1987 produced by him produced by him in 1988 also merely declared the date of birth as 21.9.1962. However, authorities could not have relied on the same as it had no other the particulars.

58.Had the respondent taken steps to get the certificates altered then and there, perhaps the respondent would have been justified in approaching the Court way in 1990. However, he neither got the dates corrected by the competent authority nor approached the department with the correct particulars in time.

59.Subsequent alteration in the birth register on 02.12.2015 and production of fresh birth certificate on 02.12.2015 are belated. This on the verge his superannuation. In our view, the respondent was guilty of laches.



60. In any event, this certificate was subject to verification and scrutiny. The Sub -Collector Namakkal was asked to verify the genuineness of the claim in the birth certificate dated 02.12.2015 produced by the respondent.

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61. By communications dated 07.12.2018 and 19.12.2018, Sub -Collector Namakkal has raised a reasonable doubt regarding the genuineness of the claim of the respondent that he was born on 21.09.1962.

62. It has been opined that, if the respondent was born on 21.09.1962 as was claimed by the respondent, he would have been merely aged 3 years, and months and 10 days and therefore could not have been admitted to the 1st standard.

63. Further, fact of the matter is that though the respondent had managed to get the birth certificate altered on 02.12.2015, post facto, the competent authority namely the 5th appellant vide order dated 21.01.2019 has rejected corrections/ change in the date of birth of the respondent from 5.3.1961 to 21.9.1962 of the respondent.

64. Thus, the alteration in the birth register appears to be without any basis. Therefore, alteration in the date of birth certificate on 02.12.2015 cannot be relied upon any longer particularly in the light of post facto report dated 21.01.2019 of the competent authority questioning the genuineness of the claim of the respondent regarding the date of birth. This post facto report dated 21.01.2019 has presented as a fait accompli. It has also not been challenged so far.

65. Therefore, we are of the view that the impugned order of the Learned Single Judge cannot be sustained in the light of the above development.

66. Therefore, we are constrained to interfere with the impugned order of the learned single Judge. We are therefore allowing the present Writ Appeal by setting aside the impugned order of the learned single judge.

67. At the same time it is noticed that the respondent was allowed to continue in service beyond the date of superannuation between 01.04.2019 to 31.05.2019 in view of the impugned order.



68. Therefore, appellants are directed to extend all retirement and terminal benefits to the respondent till 31.05.2019 and regularise the pension payable to the petitioner within a period of four weeks from date of receipt of a copy of this order in case same has not been done so far.

69. The above Writ Appeal stands allowed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

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To

1. The Principal Secretary,
Home Department, Secretariat,
Fort St. George, Chennai 600 009.
2. The Director General of Police,
Post Box No. 601, Dr. Radhakrishnan Salai,
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3. The Commissioner of Revenue Administration,
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4. The Director of School Education,
Directorate of School Education, DPI Complex,
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5. The Revenue Divisional Officer,
Namakkal 637 001.

+2cc to Mr. M/s. Saravabhauman Associates, Advocate SR.No. 67529

W.A.No. 1302 of 2019
and
C.M.P.No. 8865 of 2019

NMI (CO)

GMV (09/09/2019)