

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.24333 of 2018

P.Soundararajan

..Petitioner

Vs.

1.The Additional Registrar of Co-operative Societies,
Chennai Region, Chennai-600 018.

2.The Deputy Registrar of Co-operative Societies(Credit),
Chennai-600 108.

3.The Registrar of Co-operative Societies,
No.170, EVR Periyar Salai,
Kilpauk, Chennai-600 010.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the first respondent's orders made in Rc.No.6984/2015/A1(2) dated 30.06.2017 and Rc.No.6984/2015/A1(3) dated 30.06.2017, and to quash the same.

For Petitioner .. M/s.L.Chandrakumar

For Respondents.. Mr.S.T.S.Moorthy, learned AAG

Assisted by

Mr.L.P.Shanmugasundaram, Spl.GP.

ORDER

This writ petition has been filed seeking for issuance of a Certiorari to call for the records relating to the first respondent's orders made in Rc.No.6984/2015/A1(2) dated 30.06.2017 and Rc.No.6984/2015/A1(3) dated 30.06.2017 respectively and to quash the same.

2. The case of the petitioner is that he was initially appointed as temporary Junior Inspector of Co-operative Societies and on being successful in the Special Qualifying Examination, he was regularized as Junior Inspector of Co-operative Societies with effect from 16.10.1989. Subsequently, the petitioner was promoted as Co-operative Sub-Registrar. According to the petitioner, his date of birth has been wrongly entered in the service record as 05.06.1959 as against the

correct date of birth being 25.07.1961.

3. According to the petitioner, he has made an application before the Judicial Magistrate, Tirunelveli and sought for a direction to register the correct date of birth along with supportive materials, the Judicial Magistrate after adjudication as per law directed for issuance of necessary birth certificate to the competent authority. However, the request for genuine alteration of date of birth sought for by the petitioner was rejected on 24.06.2017 and the same has been challenged in W.P.No.16441 of 2017.

4. However, today when the matter is taken up for hearing, learned counsel appearing for the petitioner has made an endorsement in the petition, seeking permission of this Court to withdraw the said writ petition. In view of the endorsement now made, the said WP.No.16441 of 2017 is dismissed as withdrawn. No costs.

5. While matter stood thus, on 30.06.2017, the first respondent had issued an order of suspension retaining the services of the petitioner beyond the date of his superannuation i.e., on 30.06.2017 by considering his date of birth as 05.06.1959. According to the suspension order, the petitioner has attempted to submit false documents and furnished false information before the Judicial Magistrate Court No.IV in CrI.MP.No.4224 of 2016 to obtain Court's direction to register his date of birth as 25.07.1961 by cheating the Government and the Criminal Court in order to get benefits illegally.

6. In response to the notice served in the writ petition, Mr.S.T.S.Moorthy, learned Additional Advocate General assisted by Mr.L.P.Shanmugasundaram, learned Special Government Pleader have entered appearance for the respondents. A detailed counter affidavit has also been filed.

7. Mr.L.Chandrakumar, learned counsel for the petitioner would submit that subsequent to the order of suspension, the first respondent had addressed a letter to the third respondent on 27.07.2018, stating that there were no available supporting materials to prosecute the petitioner criminally, in view of existence of several lapses and lacunae and hence, the criminal action was decided to be dropped. In view of the criminal action being dropped, the first respondent vide his communication dated 27.07.2018, has recommended that the petitioner may be permitted to retire with effect from 30.06.2017. Therefore, the learned counsel would submit that as regards the alteration of date of birth issue is concerned, the writ petition filed by the petitioner challenging the rejection order is now withdrawn and the petitioner may be permitted to

retire from service on his attaining the actual age of superannuation i.e. on 30.06.2017.

8. At this, Mr.S.T.S.Moorthy, learned Additional Advocate General appearing for the respondents would submit that the petitioner had suppressed the material information to this Court and in fact, when the writ petition was filed challenging the order of rejection, requesting change of date of birth, the petitioner in fact has already approached the Civil Court for declaration of date of birth and without disclosing the said fact in the affidavit, he had filed the present writ petition. In any event, adjudication of the present writ petition is concerned, filing of civil case is not material and particularly, in view of the fact that the writ petition challenging the change of date of birth has been now withdrawn unconditionally. More over, in the counter affidavit, the present position has been explained in paragraph no.17, which is extracted hereunder:

'17.As regards the averments contained in paragraph.6 of the affidavit, it is humbly submitted that initiation of criminal action against the petitioner was recommended only by the Commissioner of Revenue Administration vide his Lr.No.RA3(3)/20921/2017 of 24.06.2017 addressed to the Additional Registrar of Cooperative Societies, Chennai Region. It is submitted that as per the letter of Commissioner of Revenue Administration, a Criminal complaint was filed by the Deputy Registrar(Credit) to the Central Crime Branch, Chennai, vide Lr.Rc.No.2363/2017/SF1 of 09.02.2018. It is submitted that the Inspector of Police, Central Crime Branch, prevention of Bogus documents Wing, Vepery, Chennai-600 007 in his letter No.C.No.3137/CCB/COP/V/2017 of 03.03.2018 addressed to the Deputy Registrar (Credit) has informed that after due enquiry it was decided that no criminal action could be pursued against the petitioner under Section 195 Cr.PC and that for these reasons no case was registered and that further investigation by the Police Department was closed. It is humbly submitted that all the above facts have been reported to the Commissioner of Revenue Administration who has suggested for initiation of Criminal Proceedings and orders are solicited from him for allowing the petitioner to retire from Government Service on 30.06.2017 i.e., the

date of his superannuation as per the original date of birth of the petitioner, viz., 05.06.1959 vide letter Rc.30091/2016/DA2, dated 06.08.2018 of the Registrar of Co-operative Societies. It is submitted that the Orders of the Commissioner of Revenue Administration are awaited.'

9. From the above, it could be seen that the department has taken a decision not to proceed against the petitioner criminally, since there was no supportive materials to prosecute the petitioner. More over, the learned Additional Advocate General has also submitted that in view of the action taken by the department not to proceed against him criminally, no further purpose would be served to keep the petitioner under continued suspension beyond the date of his actual superannuation i.e., on 30.06.2017.

10. In view of the submission made by the learned counsel for the respective parties and also the communication dated 27.07.2018 of the first respondent addressed to the third respondent, wherein, it has been clearly observed that the petitioner may be allowed to retire from service with effect from 30.06.2017, this Court does not think any legal impediment to allow the writ petition once it has come to know that there are no supportive materials to proceed against the petitioner criminally, the same facts would also hold good to proceed against the petitioner departmentally and when this position has been accepted by the first respondent himself, no useful purpose can be served if suspension of the petitioner is to be continued any further.

11. In view of the above, the writ petition has to be necessarily allowed and therefore, the same is allowed. The impugned suspension orders of the first respondent made in Rc.No.6984/2015/A1(2) dated 30.06.2017 and Rc.No.6984/2015/A1(3) dated 30.06.2017 respectively are hereby set aside and the petitioner is deemed to have retired from service with effect from 30.06.2017. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. It is also clarified that the petitioner is entitled to all consequential benefits as admissible. No costs.

-s/d-

Assistant Registrar(CS-I)

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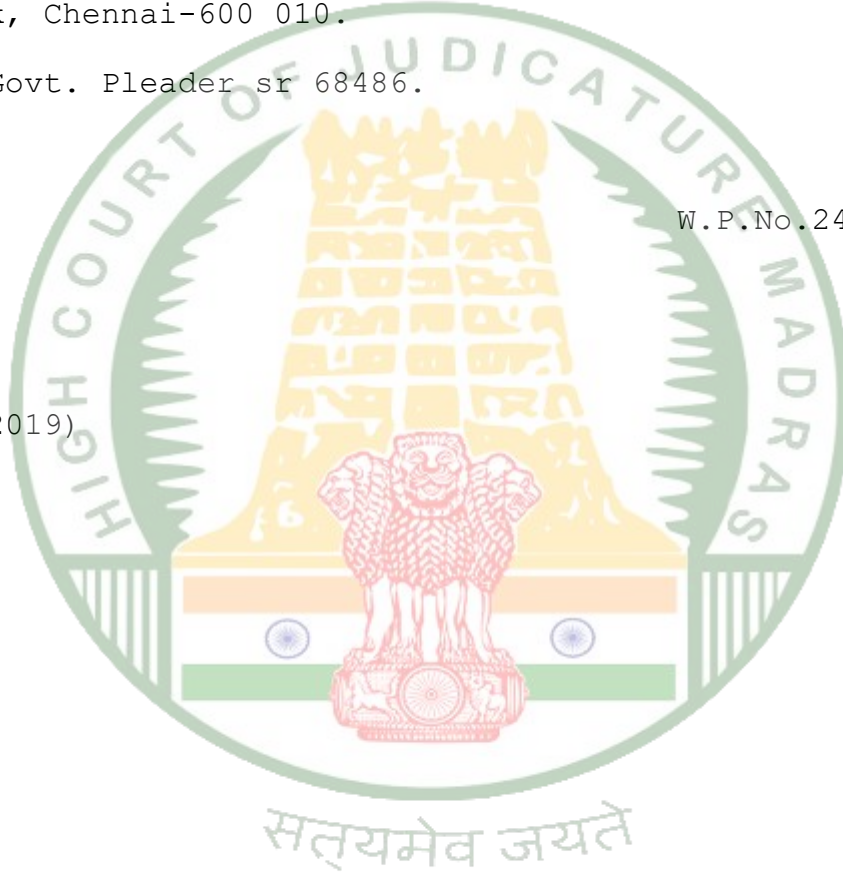
Sub-Assistant Registrar

To

- 1.The Additional Registrar of Co-operative Societies,
Chennai Region, Chennai-600 018.
 - 2.The Deputy Registrar of Co-operative Societies(Credit),
Chennai-600 108.
 - 3.The Registrar of Co-operative Societies,
No.170, EVR Periyar Salai,
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- +1 CC to Govt. Pleader sr 68486.

W.P.No.24333 of 2018

SP(29/08/2019)



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