

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.16857 of 2018

DR.P.Dananjayan

...Petitioner

Vs

1. The Principal,
Pondicherry Engineering College,
Puducherry.
2. Union of India,
Rep. by Chief Secretary,
Union of Territory of Pondicherry,
Puducherry.
3. Secretary to Government (Education)
Cum Chairman,
Pondicherry Engineering College,
Puducherry.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for records relating to the order dated 08.05.2018 made in No.7553/DHTE/Estt/E4/2017-18/139 on the file of the 3rd respondent herein and to quash the same and further direct the respondents herein to correct the petitioner's date of birth as 21.07.1959 instead of 12.05.1957 in the service and the other records maintained by the 1st respondent.

For Petitioner : Mr.Al.Somayaji,
Senior Counsel
for Mr.T.Dhanyakumar

For Respondents : Mr.A.V.Ramalingam,
Addl.Govt. Pleader (P)

O R D E R

The order of rejection in relation to the claim of the writ petitioner for alteration of his date of birth in the service records is under challenge in the present writ petition.

2. The writ petitioner was initially appointed as lecturer on 02.05.1986 in Pondicherry Engineering College, Pondicherry and thereafter, promoted to the post of Assistant Professor with effect from 30.09.1992. Pursuant to the recruitment notification for appointment to the post of Professor, the writ petitioner participated in the process of selection and got selected and appointed as Professor, by way of direct recruitment by resigning the post of Assistant Professor on 26.07.1999. After joining in the post of Professor, the writ petitioner submitted an application seeking alteration of date of birth on 21.06.2004. The said application was not considered by the respondents.

3. The writ petitioner filed a Civil Suit which was ended not in his favour and thereafter approached the Central Administrative Tribunal. Tribunal directed him to approach the appropriate forum and thus the writ petitioner is constrained to move the writ petition in WP.No.41333 of 2006. This Court passed an order on 23.01.2018 directing the Competent Authorities to consider the representation of the writ petitioner dated 21.06.2004 in the light of the observations made in the order and pass a fresh order on merits and in accordance of law within a period of 4 weeks.

4. Pursuant to the said order of this Court in WP.No.41333 of 2006, the present impugned order has been issued. The learned Senior Counsel appearing on behalf of the writ petitioner made a submission that the application seeking alteration of date of birth was submitted well within the time limit prescribed under the rules. In fact, the application seeking alteration of date of birth is concerned, the date of appointment to be reckoned from 26.07.1999. The date on which the writ petitioner was appointed as a Professor by way of direct recruitment and by resigning his earlier position as Assistant Professor. Thus, the period of 5 years is to be reckoned only with effect from 26.07.1999.

5. This apart, the actual date of birth of the writ petitioner is 21.07.1959. However, it was erroneously entered as 12.05.1957 in the school records of the writ petitioner. Thus, the writ petitioner submitted an application before the Competent Authority for issuance of a fresh birth certificate and the said birth certificate was issued by the Registrar,

Mannadipet Commune Panchayat, on 08.08.2000. Enclosing the said certificate of birth issued under the provisions of the Registration of Births and Deaths Act 1969, the writ petitioner submitted an application on 12.06.2004. Thus for all purposes, the application was within a time limit of 5 years and therefore, the Authorities ought to have considered the application in favour of the writ petitioner.

6. The learned Senior Counsel contended that the revised birth certificate submitted by the writ petitioner was obtained under the Births and Deaths Act and therefore, the said certificate is to be considered as an authenticated one for the purpose of alteration the date of birth of the writ petitioner.

7. The learned Senior Counsel informed this Court that the writ petitioner is having 4 or 5 months of service and therefore, the writ petition is to be considered for his continuance based on the revised birth certificate produced which is the actual date of birth as per the writ petitioner.

8. The learned counsel appearing on behalf of the respondent disputed the contentions raised on behalf of the writ petitioner by stating that, the first appointment of the writ petitioner was to the post of lecturer on 02.05.1986 and he was promoted to the post of Assistant Professor on 30.09.1992. Thus, the writ petitioner is serving in the same first respondent institution namely Pondicherry Engineering College with effect from 02.05.1986 and therefore, the period of limitation for filing an application for alteration of date of birth is to be reckoned with the first date of appointment, i.e., 02.05.1986. If the said date is taken in to account, then the application submitted by the writ petitioner on 21.06.2004 was belated one.

9. It is further contended that the writ petitioner had the knowledge about the date of birth entered in the service records even at the time of his first appointment on 02.05.1986. The entry in the service records are made based on the educational certificate produced by the writ petitioner at the time of appointment. Thus, the writ petitioner was very much aware of these facts and having serving in the same institution namely first respondent for number of years, the application filed seeking alteration of date of birth during the year 2004, more specifically, after a lapse of 18 years from the date of first appointment cannot be entertained at all.

10. This Court is of an opinion that, the order impugned passed by the respondent states that the Suit filed by the writ petitioner in OS.No.595 of 2002 on the file of 3rd Additional Muncif Court, Pondicherry seeking direction to the Principal, Pondicherry Engineering College to correct the date of birth was

dismissed by the Court on 06.11.2003. The appeal filed in AS.No.76 of 2005 on the file of the Principal Sub Judge, Pondicherry was also dismissed. Thereafter, the writ petitioner had filed OA Diary Nos.4199 of 2004 and 4111 of 2004, seeking correction of date of birth before the Central Administrative Tribunal, Madras Bench and the said original application was also dismissed on 08.02.2005. Subsequently, the writ petitioner filed WP.No.41333 of 2006 on 27.06.2006 and this Court directed the Authorities to consider the representation submitted by the writ petitioner and pass orders on merits and in accordance with law.

11. Under these circumstances, the respondents had considered the contentions raised by the writ petitioner and passed an impugned order in proceeding dated 08.05.2018. In respect of the merits, the impugned order states that, an alteration of the date of birth of a Government servant can be made with the sanction of a Ministry or Department of the Central Government, or the Controller and Auditor-General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union territory under which the Government servant is serving if-

a) A request in this regard is made within five years of his entry into Government service;

b) It is clearly established that a genuine bonafide mistake had occurred; and

c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

12. As per the Service records of the writ petitioner, it was ascertained that he had been appointed as lecturer on direct recruitment in the Pondicherry Engineering College with effect from 02.05.1986. He was appointed as Assistant Professor with effect from 30.09.1992 on adhoc basis by direct recruitment and subsequently appointed as Professor on direct recruitment with effect from 28.06.1999. At present, the writ petitioner is assigned the additional duty as Principal-in-Charge of the Pondicherry Engineering College.

13. As per the service record, the date of birth was entered as 12.05.1957, based on the school records submitted by the writ petitioner at the time of joining the service as lecturer. The date of birth entered as per the school Transfer Certificate issued by the Head Master, Government High School, Sithalampattu, Villupuram District, Tamil Nadu, which was duly authenticated by the writ petitioner himself as a proof for

correct entry of his date of birth in the service book on 28.05.1987. In the details of the family submitted by the writ petitioner on 03.03.2004, he himself mentioned his date of birth as 12.05.1957 and not 21.05.1959 as claimed by the writ petitioner as of now.

14. Citing all these facts and circumstances, the claim of the writ petitioner was rejected by stating that it is a belated claim and this apart, the writ petitioner has admitted the fact regarding the date of birth entered in to the service records and after this length of time the claim of alteration of date of birth cannot be considered.

15. Let us now consider the revised certificate of birth obtained by the writ petitioner which was issued on 08.08.2000, the said revised birth certificate is enclosed with page no.9 of the type set of papers filed along with the writ petition. The said birth certificate was issued by the Registrar on 08.08.2000. It is to be noted that the revised birth certificate was obtained by the writ petitioner after a lapse of about 43 years from the date of his birth. What prompted the writ petitioner to get the revised date of birth after a lapse of 43 years are not made clear.

16. Such attitude of the college teachers for the purpose of gaining more services at the fag end of their retirement can never be encouraged by the Constitutional Courts. Admittedly, the writ petitioner entered in to the service of the first respondent / Pondicherry Engineering College on 02.05.1986. He is left over his right in respect of his claim of alteration of date of birth during the relevant point of time. The revised birth certificate itself was obtained by him on 08.08.2000. The manner in which the enquiry conducted by the Competent Authorities who issue the birth certificate are also not available before this Court. Such certificate of birth issued after a lapse of 43 years from the date of birth of a person, cannot be trusted in a routine manner, unless the same is substantiated with other proofs or contentions. This apart, the writ petitioner himself admitted the date of birth at the time of entry into service and allowed the date of birth to continue till 21.06.2004 when he submitted the first application seeking alteration of date of birth.

17. This apart, the writ petitioner right from his initial school education, i.e., SSLC, the date of birth was maintained as 12.05.1957 even at the time of filling up of application for appearing in the SSLC examination, the writ petitioner as well his parents entered his date of birth as 12.05.1957. It is same date of birth he studied Higher Secondary Course, Degree course, Master Degree course, and got appointment in the first

respondent, Engineering College and throughout he is maintaining the same date of birth of 12.05.1957 and ultimately, only during the year 2004, he submitted an application seeking alteration of his date of birth.

18. Parliament enacted the Registration of Births and Deaths Act 1969, with the view to maintain accurate country wide registration data for purposes of National Planning Organizing Public Health and Medical activities and various other Socio Economic Welfare measures.

19. Under Section 3(1) of the Central Government under Section 3(1), the Central Government has been authorized to appoint a person as Registrar General of India. Under Section 4, the respective State Governments are entitled to appoint a Chief Registrar for every State. Under Section 6, the State Government was empowered to appoint a District Registrar for each revenue district and such number of Additional District Registrars, as it thinks fit who shall, also discharge such functions as District Registrars, subject to the general control and direction of the District Registrar. Under Section 7 of the Act, the State Government may appoint a Registrar for each local area comprising the area within the jurisdiction of a Municipality, Panchayat or other local Authority or any other area, or a combination of any two or more of them.

20. Under Sub-section (2) of Section 7, every Registrar shall, without fee or reward, enter in the register maintained for the purpose all information given to him under Section 8 or Section 9 and shall also take steps to inform himself carefully of every birth and of every death which takes place in his jurisdiction and to ascertain and register the particulars required to be registered in the register.

21. Under Section 8(1), it shall be the duty of the persons specified therein to give or cause to be given, either orally or in writing, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under Sub-section (1) of Section 16.

22. Under Section 10, duty has been cause on certain persons, specified therein to notify compulsorily births and deaths. Under Section 12, the extracts of registration entries are liable to be furnished to a person, furnishing information under Section 8 or Section 9.

23. Under Section 13(1), any information relating to any birth or death tender to the Registrar after the expiry of the

period specified therefore, but within 30 days from the occurrence, shall be registered on payment, of such late fee as may be prescribed. Sub-section (2) of Section 13 makes it obligatory that any delayed information relating to birth or death furnished to the Registrar after 30 days but within one year of its occurrence, shall be registered only with the written permission of the prescribed Authority and on payment of prescribed fee and production of an affidavit made before a notary public, or any other Officer authorized in this behalf by the State Government.

24. Sub-section (3) of Section 13, further makes it clear that any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by the Magistrate of the first class or a Presidency Magistrate, after verifying the correctness of the birth or death and on the payment of the prescribed fee. Thus, under Sub-section (3) of Section 13, if any information relating to the birth of a person to be recorded after the expiry of one year from the date of occurrence of such birth, such informations shall be registered only based upon an order made by a Magistrate.

25. In the instant case, the writ petitioner appears to have submitted his application in the year 2000, before the Registrar, Mannadipet Commune Panchayat, seeking registration of date of birth as 21.07.1959 and he also entered the information in the register maintained and also furnished the extract there of on 08.08.2000. As this Court notice, the application for registration of date of birth of the writ petitioner has been made 43 years after the occurrence of his birth. There is no record to vouch the fact that, any Magistrate has issued any such order to enable the Registrar to enter the information so furnished in the records of register maintained.

26. Thus, this Court is of an opinion that, the birth extract produced by the writ petitioner from the Office of the Registrar, Mannadipet Commune Panchayat, can be of no avail. It is pertinent to note that, if at all the original date of birth is entered as 21.07.1959 in the original birth register and if the date was entered during the relevant point of time when the writ petitioner born, then the circumstances for delay is to be considered. The writ petitioner admitted the date of birth as 12.05.1957 right from his issuance of his SSLC certificate and till the year 2004.

27. This being the factum, this Court is of an opinion that, the revised certificate now produced by the writ petitioner during the year 2004 and the certificate dated 08.08.2000 cannot be considered for the purpose of granting

alteration of date of birth to the writ petitioner.

28. The Hon'ble Supreme Court of India in the case of Life Insurance Corporation of India and Others Vs. R.Basavaraju @ Basappa, reported in (2016) 15 SCC 781 held as follows:-

"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, 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 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."

29. It is reiterated by the Hon'ble Supreme Court of India that, the 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 and the same cannot be changed. Not only that, this Court also held that, claim for change in date of birth cannot be entertained at the fag end of retirement. Now the writ petitioner is aged about 59 years, at the time of filing of the writ petition on 04.06.2018, hardly he may be serving for another 3 to 4 months. This being the factum, the correction of date of birth at this juncture cannot be considered by this Court, in view of the principles settled by the Hon'ble Supreme Court of India in the case cited supra.

30. The Apex Court considered the point raised from the Hannam Singh case which was decided during the year 1994. In the case of Secretary and Commissioner, Home Department and Others Vs. R.kirubakaran reported in (1994) Supp (1) SCC 155, the Hon'ble Supreme Court of India observes that, 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. The Supreme Court of India made an observation that

"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.

31. For all these reasons, this Court is of an opinion that, the writ petitioner for purposes entered in to the services of the first respondent on 02.05.1986 and he has not submitted the application seeking alteration of date of birth within 5 years, from the date of his first appointment and therefore, the subsequent direct recruitment cannot be construed as a first appointment for the purpose of entertaining the application seeking alteration of date of birth of the writ petitioner. This apart, the writ petitioner is due to retired from service within a period of 3 or 4 months and under these circumstances, it is not preferable to alter the date of birth.

32. The learned Senior Counsel made a submission that the impugned order is running counter to the order passed by this Court in WP.No.41333 of 2006 dated 23.01.2018. The learned Senior Counsel mainly relied upon paragraph No.15 of the judgement which reads as under:-

"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 of 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 on probation, consequent to his resignation, and it is not promotion 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."

33. On a perusal of the said portion of the judgement, this Court elaborated the meaning of the word probation and further reiterated that, the probation cannotes the period of trial. Therefore, the direct recruitment to the post of Professor alone is to be taken in to account for the purpose of reckoning the limitation period of 5 years.

34. This Court is of the considered opinion that, such a probation period may be relevant for the purpose of assessing the performance of the candidate in the post of Professor and therefore, such a probation cannot be construed as a point for limitation as far as the application seeking alteration of date of birth is concerned. Because, the writ petitioner was already in service in the same college namely, the Pondicherry Engineering College, right from 02.05.1986. Thus, this Court cannot come to the conclusion that the writ petitioner was not aware of the date of birth entered into his service records. Even at the time of submitting application for the direct recruitment to the post of Professor, the writ petitioner accepted the date of birth as 12.05.1957 as per the school records and as per the service records already maintained by the first respondent institutions. Considering the facts and circumstances, this Court has to provide a constructive interpretation for the purpose of entertaining the application seeking the alteration of date of birth and the point of limitation to be reckoned.

35. In the present case, though the appointment to the post of Professor is a direct recruitment, the same cannot be considered as a first appointment as the first appointment of the writ petitioner was made in the post of lecturer on 02.05.1986, in the very same institution namely the Pondicherry Engineering College, Puduchery. Accordingly, the writ petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

Pkn

To

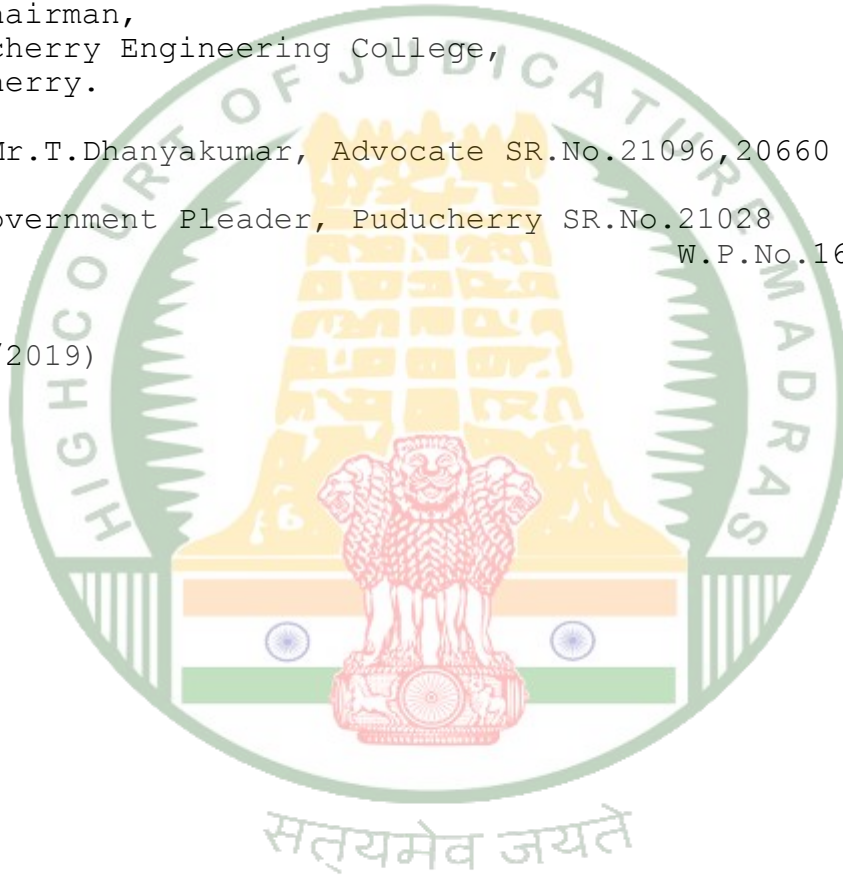
1. The Principal,
Pondicherry Engineering College,
Puducherry.
2. The Chief Secretary,
Union of India,
Union of Territory of Pondicherry,
Puducherry.
3. Secretary to Government (Education)
Cum Chairman,
Pondicherry Engineering College,
Puducherry.

+2ccs to Mr.T.Dhanyakumar, Advocate SR.No.21096,20660

+1cc to Government Pleader, Puducherry SR.No.21028

W.P.No.16857 of 2018

VD(CO)
GMY(02/04/2019)



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