

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.P.T.ASHA

W.A.No.2261 of 2019

1.State of Tamil Nadu,
rep. By its Joint Secretary,
Department of School Education,
Fort St.George, Chennai 9

2.The Director of school Education,
College Road,
Chennai 600 006

...Appellants

Vs

Dr.As.S.Radhakrishnan

...Respondent

Writ Appeal filed against the order passed by this Court
dated 18.03.2019 in WP No.28565 of 2017.

Prayer in WP.No.28565 of 2017:

Writ Petition filed under Article 226 of the Constitution
of India, praying for a Writ of Certiorarified Mandamus to call
for the records relating to the impugned proceedings issued by
the 1st respondent secretary in letter No.13219/Pakal (1)/2016-17
dated 20/07/2017, quash the same and further direct the
respondents to alter the "Date of Birth" of the petitioner as
31/07/1962 instead of 31/07/1961 in the service Register as per
the Judgment and degree of the Principal District Munsif Judge,
Madurai in O.S.No. 363/1997 dated 01.08.2000.

For appellant : Mr.P.H.Aravind Pandian,
Additional Advocate General,
assisted by Mr.C.Munusamy, Spl.G.P.

For Respondents: Mr.Isaac Mohanlal, Senior Counsel,
for M/s.Isaac Chambers

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory :-

Whether a Government servant is entitled to change his date of birth in the service records on the strength of a civil court decree, which is in the nature of a direction to the Education Department to correct the date of birth in the SSLC Book, without complying with the mandatory procedure indicated in Rule 49 of the Tamil Nadu State and Subordinate Rules and presently Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is the core question that arises for consideration in this intra court appeal filed by the State.
Brief facts:-

2. The date of birth of the appellant was registered in the school records as 31 July 1961. The appellant filed a civil suit in O.S.No.363 of 1997 before the Principal District Munsif, Madurai, impleading the Director of School Education, Registrar Madurai Kamaraj University and the State of Tamil Nadu, represented by District Collector, Madurai, and Thiru.A.Sethuraman, who is none other than his father, praying for a decree of declaration and mandatory injunction, directing the Director of School Education to correct his age in the school certificate and for a consequential direction to the Registrar, Madurai Kamaraj University to effect necessary changes in the transfer certificate. The suit was decreed by judgment and decree dated 1 August 2000. The entry in the school certificate was corrected as 31 July 1962 pursuant to the Decree passed by the civil court.

3. Even during the currency of the suit, the appellant secured appointment as Executive Officer in the Hindu Religious and Charitable Department. The respondent joined service on 12 May 1999. The date of birth was shown in the application and the attestation form as 31 July 1961. Thereafter, he was appointed directly as District Educational Officer by order dated 13 September 2001.

4. The respondent made an application within five years of his initial entry for alteration of date of birth in accordance with Rule 49(b) of the Tamil Nadu State and Subordinate Rules. The application was submitted on 31 July 2002. The application was ultimately rejected by the Competent Authority by order dated 7 July 2005. The said order was challenged in W.P.No.34538 of 2005. The High Court after setting aside the order impugned in the writ petition, directed the respondent to make a fresh application enclosing the relevant documents. The appellants herein were directed to consider the matter and pass appropriate orders.

5. The respondent submitted a fresh application on 11 May 2016 for correction of his date of birth in the service records. The second appellant by communication dated 6 June 2016, directed the respondent to produce the original service register and other documents. Those documents were furnished by the respondent. The respondent cited the attention of the authorities that in view of the civil court decree, there was no need for furnishing any other documents.

6. The first appellant by its proceedings dated 20 July 2017, called upon the respondent to furnish further documents in accordance with Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The respondent challenged the said proceedings before the writ court in W.P.No.28565 of 2017.

7. The learned Single Judge was of the view that the civil court decree in O.S.No.363 of 1997 is conclusive proof with regard to the actual date of birth and as such, no other documents are necessary. The writ petition was accordingly allowed. The said order is under challenge in this intra court appeal.

Submissions:-

8. The learned Additional Advocate General contended that the civil court decree is not binding on the Competent Authority constituted in exercise of the power conferred under Section 59 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The learned Additional Advocate General further contended that the respondent was asked to produce documents for taking a decision to change his date of birth in service records. However, he failed to produce the required documents and took a definite stand that in view of the civil court decree, no such documents are necessary for correcting the date of birth. The learned Additional Advocate General contended that the statute made it very clear that the Government has to take a decision and authenticated records should be produced to change the entry. The learned Additional Advocate General placed reliance on the following two judgments in support of his contention :-

(i) M.Rajasekar vs. State of Tamil Nadu
rep. By Secretary to gov, Cooperation, Food
and Consumer Protection Department, and
another, (2009 SCC Online Mad 519)

(ii) M.Ramasubramani vs. Central
Administrative Tribunal, Madras Bench,
Chennai, and others, (2013(7) MLJ 513)

9. The learned Senior counsel for the respondent contended that even before joining the service, the respondent filed a civil suit for alteration of his date of birth in the

educational records. The Director of School Education and the District Collector were parties to the civil suit. The educational authorities corrected the date of birth pursuant to the civil suit decree. In view of the correction of entry in the educational records, consequent to the civil court decree, dated 1 August 2000, there is no need for further proof to be produced by the respondent for alteration of date of birth in the service records. The learned Senior counsel further contended that the birth certificate produced by the respondent very clearly shows that the date of birth was correctly recorded as 31 July 1962. Therefore, it is very clear that wrong entry was made in the service records indicating the date of birth as 31 July 1961. The learned Senior counsel placed reliance on a judgment of the Andhra Pradesh High Court, in N.Sanyasi Rao vs. High Court of Andhra Pradesh, rep. By its Registrar (Administration), 2002(2) LLN 941.

Discussion:-

10. The respondent, even before his entry into the Government service, filed a civil suit in O.S.No.363/1997 for a decree of declaration and mandatory injunction, directing the School Education Department to correct his date of birth as 31 July 1962 in the place of 31 July 1961. Even before taking up the civil suit for adjudication, the respondent secured employment as Executive Officer in the Hindu Religious and Charitable Endowments Department. He joined the State service on 12 May 1999. Even in the application and the related attestation form, the respondent declared his date of birth as 31 July 1961. The service register produced before us also shows that the date of birth of the respondent was shown as 31 July 1961. The service register contain a clear declaration made by the respondent that the date of birth and the other particulars are correct to the best of his knowledge. The service register was prepared by updating the entries as on 12 February 2001. By the time the service register was made ready and the respondent affixed his signature, there was a decree on O.S.No.363/1997. In spite of the said decree, the respondent has declared his date of birth as 31 July 1961. The respondent has no answer to the question as to why his date of birth was wrongly declared as 31 July 1961, even after obtaining a decree on 1.8.2000.

11. The respondent was subsequently appointed as District Educational Officer by order dated 13 September 2001. Even before the appointing authority, the respondent declared his date of birth as 31 July 1961. It is to be mentioned here that the respondent obtained a civil court decree on 1 August 2000 well before his appointment in the Education Department as District Elementary Officer on 13 September 2001. However, for reasons best known, the respondent still maintained his date of birth as 31 July 1961.

12. The respondent after his appointment as District Educational Officer submitted application for correction of his date of birth in the service register on 31 July 2002. The said application was ultimately rejected on the ground that it was made belatedly. The order was rightly set aside by the writ court.

13. The learned Single Judge while setting aside the order, rejected the request made by the respondent for correction of his date of birth in the service records, and directed him to make a fresh application for the said purpose. The respondent was therefore obliged to make a fresh application to the Competent Authority to effect changes in the service records under Rule 49(1) of the Tamil Nadu State and Subordinate Service Rules. The corresponding provision is Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. It is a matter of record that pursuant to the direction given by the learned Single Judge, application was submitted by the respondent on 11 May 2016, for correction of his date of birth.

14. Even though a direction was issued to the respondent to produce documents for taking action to alter the date of birth, the fact remains that the entire documents were not given. The respondent maintained that in view of the civil court decree, no further proof is necessary to substantiate his date of birth.

15. The core question is as to whether the appellants were correct in calling upon the respondent to produce documents to decide the question relating to correction of his date of birth in accordance with Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and as to whether the civil court decree alone would govern the situation.

16. The respondent filed a civil suit in O.S.No.363 of 1997 for the grant of a decree of declaration and mandatory injunction. It is true that the District Collector was also a party to the suit. The civil court passed a decree directing the Director of School Education, to correct the date of birth of the respondent as 31 July 1962 in the SSLC Book. Similarly, a mandatory injunction was issued to the Registrar, Madurai Kamaraj University to correct the entry relating to the date of birth in the transfer certificate issued by the said University.

17. The suit was not one for declaration. The Competent Authority exercising power under Rule 49(1) of the Tamil Nadu State and Subordinate Service Rules, was not a party to the civil suit. The suit was filed under Section 34 of the Specific Relief Act. The decree passed by the civil court in such a suit is not in rem. It is a decree in personam. The decree would bind

only the defendants in the civil suit.

18. The legal position of a declaratory decree is indicated in Section 35 of the Specific Relief Act. The provision reads thus:-

35. Effect of declaration.-

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees.

19. Since the competent authority exercising jurisdiction under Rule 49(1) of the Tamil Nadu State and Subordinate Service Rules was not a party to the civil suit, the respondent cannot be heard to say that the entry relating to the date of birth should be corrected by the said authority on the basis of the civil court decree.

20. The Tamil Nadu State and Subordinate Service Rules contain a specific provision for alteration of date of birth. The case of the respondent would come within the meaning of Rule 49 (a) as even at that point of time, there was a claim made by him that his date of birth was different from that entered in the school records. However, no such claim was made before the appointing authority. It was after joining the service, the respondent made an application for correction of the birth entry in the service records.

21. Since the application was not initially given and it was submitted only after joining the service as District Educational Officer, the authorities considered it under rule 49 (b) of the Tamil Nadu State and Subordinate Service Rules. There is a procedure prescribed in clause (d) of Rule 49 of the Service Rules as to how application for correction of date of birth should be considered. It was only for the purpose of exercising the statutory function that the authorities called upon the respondent to submit the documents.

22. The respondent without furnishing the required documents, maintained before the authorities that he is not bound to comply with the direction in view of the civil court decree.

23. The learned Senior counsel for the respondent contended that the authorities directed the respondent to produce string of documents. According to the learned Senior counsel, it would be humanly impossible for the respondent to produce some of the documents.

24. It is true that the Competent Authority called upon the respondent to produce several documents for deciding the question. In case some of the documents are not available, the respondent could have very well approached the authorities and explained the factual position. The respondent initially subjected to the jurisdiction of the authority, pursuant to the direction issued by the writ court in W.P.No.34538 of 2005. Subsequently, when direction was given to produce documents, the respondent retracted and submitted that the civil court decree alone would suffice for correction of date of birth in the official records.

25. The Hon'ble Supreme Court in State of Gujarat -vs- Vali Mohmed Dosabhai Sindhi reported in (2006) 6 SCC 537, made it very clear that correction of date of birth in the service records is a serious issue and it could be done only after following the prescribed procedure.

The Hon'ble Supreme Court said :

12. An application for correction of the date of birth should not be dealt with by the courts, the Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such

claim only plausible. Before any such direction is issued or declaration made, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book."

26. The challenge in the writ petition in W.P.No.28565 of 2017 was to the notice calling upon the respondent to produce documents. No adverse order was passed against the respondent so as to give him cause of action to file a writ petition. The communication calling upon the respondent to produce documents would not qualify to be an adverse order for the purpose of challenging it before the Court of law, for exercising the power of judicial review.

27. The respondent is bound to comply with the statutory requirement provided under Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

28. Before the writ court in W.P.No.34538 of 2005, the respondent took up a contention that in view of the civil court decree, his date of birth should be corrected as 31 July 1962. The learned Single Judge quashed the order dated 7 July 2005, rejecting the request for correction of date of birth on the ground that it was submitted belatedly. The learned Single Judge without issuing the consequential direction for the change of date of birth, issued a direction to the respondent to make a fresh application, enclosing all the relevant documents for deciding the question of correction of his date of birth in the service records. In view of the order in W.P.No.34538 of 2005, respondent cannot be heard to say that he would not subject himself to the jurisdiction of the Competent Authority.

29. The civil court decree would not give a special right to the respondent for correction of his date of birth. It is true that the respondent obtained a copy of the birth certificate, which shows his date of birth as 31 July 1962. The

respondent made a claim that the date of birth should be corrected on the basis of the birth certificate and the civil court decree. The birth certificate, in case the birth was registered immediately after the child's birth, is a material piece of evidence to decide the question raised by the respondent. The authority invoking jurisdiction under Section 59 (1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 is expected to consider all the documents and to arrive at a decision as to whether the entry relating to the birth should be changed. Since it is a statutory mandate, it cannot be said that in view of the civil court decree, process could not be undertaken by the authorities to decide the date of birth for the purpose of change in the service records.

30. The changes made in the SSLC book or in the transfer certificate pursuant to the civil court decree would not amount to an adjudication of the issue relating to correction of date of birth in the service records as provided under Section 59(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

31. The learned Single Judge opined that the judgment and decree dated 1 August 2000 which has become final constituted sufficient evidence and as such, the appellants herein have no other alternative than to change the date of birth as 31 July 1962. We are not in a position to support the said view for the simple reason that a civil court decree directing the defendants therein to correct the date of birth in the educational records would not amount to an order within the meaning of Section 59(1) of the Act.

32. There is a machinery provided under Section 59(1) of the Act for making changes in the service records. There is no question of civil court taking over the function of the said authority constituted under the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 for correction of date of birth in the service records.

33. We set aside the finding given by the learned Single Judge to the effect that the Civil Court decree relating to date of birth is conclusive in nature and no further proof is necessary for rectification of birth entry in the service records. We make it clear that insofar as the Government servants are concerned, date of birth could be corrected only in accordance with the procedure contemplated under Section 59(1) of the Tamil Nadu Act 14/2016.

Disposition :-

34. The order dated 18 March 2019 is set aside. The writ petition in W.P.No.28565 of 2017 is dismissed. In view of the order dated 26 April 2016 in W.P.No.34538/2005, we permit the

respondent to produce the required documents indicated in the communication dated 20 July 2017 before the Competent Authority for deciding the application for correction of date of birth in the service records. In case any of such documents are not available, it is open to the respondent to submit a representation to the Competent Authority. In case of compliance of the direction as contained in the letter dated 20 July 2017, on or before 30 August 2019, the application shall be considered and disposed of by the Competent Authority on merits. Such exercise shall be completed within a period of two months from the date of receipt of documents indicated above. No costs.

35. We make it clear that in case the date of birth is ultimately corrected in the service records as 31 July 1962, necessary consequential orders should be passed by the authority concerned, permitting the respondent to work till he attain the age of superannuation or in case of delay in concluding the proceedings to grant him all the service benefits, as per the amended entry relating to his birth.

36. The intra court appeal filed by the State is allowed. No costs. Consequently, C.M.P.No.14958 of 2019 is closed.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai - 600 009.

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

+1cc to M/s.Isaac Chamber, Advocate, S.R.No.65657
+1cc to the Government Pleader, S.R.No.95944

W.A.No.2261 of 2019

AD(CO)

RRS (20/08/2019)