

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.Nos.3870 and 3871 of 2014

K.Obaiah .. Petitioner in WP.3870/2014

M.Malakondaiya .. Petitioner in WP.3871/2014

Vs

The Thiruverkadu Municipality
Rep by its Commissioner
Thiruverkadu Municipality
Thiruverkadu 600 077

.. Respondent in both WPs.

Prayer in WP.3870/2014:- The Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the order dated 06.06.2013 in Na.Ka.No.374/2013/C1 issued by the respondent herein, quash the same and consequently direct the respondent herein to correct the entry of the petitioner's date of birth as 15.07.1957 instead of 15.07.1954 in his service records.

Prayer in W.P.3871/2014:- The Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the order dated 06.06.2013 in Na.Ka.No.375/2013/C1 issued by the respondent herein, quash the same and consequently direct the respondent herein to correct the entry of the petitioner's date of birth as 01.07.1958 instead of 01.07.1954 in his service records.

For Petitioners : Ms.M.Samantha

For Respondent : Mr.P.P.Shanmugasundaram

COMMON ORDER

The Petitioner in W.P.No.3870/2014 viz., K.Obaiah challenges the order dated 06.06.2013 in Na.Ka.No.374/2013/C1 issued by the respondent and seeks to quash the same and consequently to direct the respondent herein to correct the entry of his date of birth as 15.07.1957 instead of 15.07.1954 in his service records.

2. The Petitioner in W.P.3871/2014 viz., M.Malakondaiya challenges the order dated 06.06.2013 in Na.Ka.No.375/2013/C1 issued by the respondent herein and seeks to quash the same and consequently to direct the respondent herein to correct the entry of his date of birth as 01.07.1958 instead of 01.07.1954 in his service records.

3. For the sake of brevity, the parties would be referred to by their name viz., K.Obaiah (W.P.3870/2014) and M.Malakondaiya (W.P.3871/2014).

Common Facts:-

4. The Petitioners belong to 'Adi Andhra' community which falls under the category of Scheduled Caste, (ST) and their names have been sponsored by the Employment Exchange for consideration to the post of Sanitary workers. The Petitioners were appointed as Sanitary workers by resolution dated 30.06.1980 and 31.06.1980 respectively and formal appointment orders dated 01.07.1980 and dated 02.08.1980 were issued to them. Since the Petitioners did not have any educational qualification, the petitioners were asked to submit medical fitness certificates with age proof obtained from a Medical Officer not below the rank of Civil Assistant Surgeon. Accordingly, the Petitioners duly submitted the Medical Certificates issued by the competent authority as prescribed by the Respondent. The respondent had accepted the certificate, permitted the petitioners to join duty and entered the date of birth of the petitioners in the service records. For the sake of convenience, the details of the Petitioners' date of birth, as per the Medical Certificate are reproduced in the following tabular column.

Petitioners Name	Date of Birth as per Medical Certificate	Date of Issuance of Medical Certificate by the competent authority	Joining date in service	Entry in Service Register
K.Obaiah	15.07.1957	08.07.1980	01.07.1980	15.07.1954
M.Malakondaiya	01.07.1958	06.08.1980	07.08.1980	01.07.1954

As there is no correct date of birth available to the Petitioners, the respondent had notionally taken the date of birth as 15th July and 1st July for all purposes. However, the date of birth had been wrongly entered as 15.07.1954 instead of 15.07.1957 insofar as K.Obaiah is concerned and as 01.07.1954 in lieu of 01.07.1958 in the case of M.Malakondaiya.

5. According to the petitioners, in the year May 2013, they came to know of the fact that they are going to attain superannuation in July 2014 and June 2014 respectively. Therefore, the Petitioners submitted a representation dated 17.05.2013 to the respondent for alteration of their date of birth and their request was rejected on 06.06.2013 by the respondent and the said rejection is impugned in the present Writ Petitions.

6. According to the petitioners, even though the respondent has rejected the claim of the Petitioners for altering the date of birth in the service records by relying upon Rule 39(b) of the Tamil Nadu Municipal Service Rules 1970, as per Rule 30(2) of the Tamil Nadu Municipal (Non Centralised Regular) Public Health Establishment Regulations 1976, an application for alteration of date of birth shall be entertained, if it is made within 5 years of entry into service.

7. Per contra, the learned counsel for the respondent submits that Rule 30(2) of TN Municipal (Non Centralised Regular) Regulations, 1976, may not be applicable to the case of the petitioners as notional birth date has been taken into account for appointment to the post of Sanitary Worker, based on the medical certificate obtained by the petitioners.

8. The sum and substance of the contention of the learned counsel for the respondent is that it is true that the

petitioners joined service on 01.07.1980 and 07.08.1980 respectively and they also produced medical certificates, which were accepted by the respondents. It is further contended that when the date of birth of the petitioners stood entered in the service records, the same was duly acknowledged by the petitioners by affixing their thumb impression on it and in such circumstances, after serving for decades, it is not open to the petitioners to challenge the same. The respondent relied on Rule 39(e) of the Tamil Nadu Municipal Service Rules, 1970, which reads as follows:-

" (e) The procedure laid down in sub-rules (a) to (d) shall be followed also in case where alteration of date of birth is proposed suo motu by the Head of Office on the basis of medical opinion, in the absence of any other authoritative records. "

9. It is further submitted by the learned counsel for the respondent that in the event of this court granting relief to the petitioners, it will remain precedent for other similarly placed employees to approach this court for the very same relief. Therefore, the respondent strongly opposed to the prayer sought for by the petitioners and prayed to dismiss the writ petitions.

10. There is no dispute as regards the facts of the case that the petitioners have been selected to the post of Sanitary Worker and there is no educational qualification prescribed for the said post since there was no birth certificate available to the petitioners, as per the directions of the respondent, the petitioners had produced the medical certificate of Doctor, which has been duly accepted by the respondent. However, while entering the date of birth as 15.07.1957 for K.Obaiah, it had been wrongly entered as 15.07.1954 and similar is the case of M.Malakondaiya as his date of birth had been wrongly entered as 01.07.1954 instead of 01.07.1958.

11. A reading of Rule 39(e) of Tamil Nadu Municipal Service Rules, 1970, which is extracted above will squarely apply to the facts of the case on hand and the said Rule has to be read in conjunction with Rule 39(d), which reads as follows:-

" In considering the question of permitting an alteration in the date of birth as entered in the official records, even when such entry is proved to have been due to a bona fide mistake, the Government or the appointing authority shall take into consideration the circumstances whether the

applicant would normally be eligible for appointment to the post at the time of entry into service had his age been correctly stated and what would have been its effect on the service, and Government may permit the alteration subject to such conditions as they may deem fit to impose."

12. However, it is the contention of the counsel for the respondent that even if necessary documents are produced for alteration and even if the claim is bona fide, the attempt made by the employees for such correction in the date of birth in the eleventh hour of their retirement, will give wrong signal to other persons, to claim similar service benefits.

13. It is pertinent to mention here that when an employee seeks for alteration of his date of birth in the service records on the basis of substantive documents, the authority concerned has to ascertain as to whether the employee, in the event of such correction, had attained his eligibility to join his basic schooling (I Standard) and in case of any discrepancy / deviation, then the entire qualification possessed thereafter would attain nullity, including the public appointment. It is agreed that no employee, by mere alteration of his date of birth, can demand exchequer's money without actually working with the employer, but insofar as the case of the petitioners is concerned, they will not get any benefit out of the birth certificate, as no minimum educational qualification is prescribed for their post and their date of birth has been entered in the Service Register on the basis of the documents and medical certificate. Once the respondent had taken into account the approximate age of the respective petitioners as 23 and 22 years, the date of birth of the petitioners should actually be entered into the Service Register of the petitioners as 15.07.1957 and 01.07.1958 respectively by any means and not otherwise. Further, mere obtaining thumb impression from the petitioners alone cannot be presumed that they had accepted all the terms, including the date of birth mentioned therein, as admittedly they are illiterate and were appointed as Sanitary Workers and the said post does not require any minimum educational qualification.

14. In fine, it is apparent that the facts of the present case on hand clearly make out a case in favour of the petitioners so as to grant the relief as prayed for by them and the respondent is directed to alter the date of birth of the petitioners as follows:-

Petitioners Name	Date of Birth to be altered as per Medical Certificate
K.Obaiah	15.07.1957
M.Malakondaiya	01.07.1958

15. The submissions put forth by the counsel for the Petitioners would go to show that the Petitioners/employees had already attained the age of superannuation. The wages for the remaining years upto the age of superannuation as per the Service Rules governing the cadre of the Petitioners herein in the Respondent Municipality, shall be paid by taking into account the above altered date of birth, within 45 days from the date of receipt of a copy of this order, failing which, the backwages will carry 15% interest per annum from the date of filing of these Writ Petitions and the interest will be recovered from the personal funds of the officials, who are responsible for making the payment.

16. With the above observations and directions, both these Writ Petitions stand allowed. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

The Commissioner
Thiruverkadu Municipality
Thiruverkadu 600 077

+1cc to Government Pleader sr.48670
+2cc to Mr.K.Elango, Advocate sr.47626, 47625

WP.3870 and 3871 of 2014

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