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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21192 of 2019
and W.M.P.No.26746 of 2019

N.Karikalan

...Petitioner

vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Housing and Urban Development Dept.,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

3.The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

4.Mrs.B.Mala
Executive Engineer,
Kanchipuram Division,
Tamil Nadu Slum Clearance Board,
Kanchipuram - 631 502.

... Respondents

(R4 impleaded as per order of this Court
in W.M.P.No.26465 of 2019 dt. 20.11.2019)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the 2nd respondent in Resolution No.6.08/484 dated 19.03.2018 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to make correction of the petitioner date of birth in the Service Register as 27.07.1963 instead of 20.01.1962 by considering the petitioner representation dated 06.06.2019 and 20.11.2017.

For Petitioner

: Mr.R.Shanmuga Sundaram, SC
for Mr.R.Jayaprakash



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For Respondents : Mr.A.N.Thambi Durai for R1
Special Government Pleader
Mr.M.Rajasekar for R2 and R3

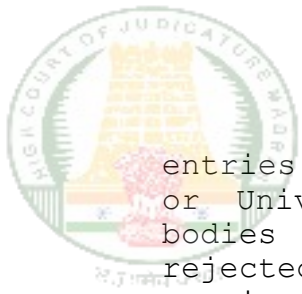
Mr.V.Chockalingam for R4

ORDER

The writ petition has been filed by the petitioner to quash the proceedings of the second respondent in Resolution No.6.08/484 dated 19.03.2018 as illegal, incompetent and ultravires and consequently direct the respondents to make correction of the petitioner date of birth in the Service Register as 27.07.1963 instead of 20.01.1962 by considering the petitioner representation dated 06.06.2019 and 20.11.2017.

2.The case of the petitioner is that the petitioner was joined in Tamil Nadu Slum Clearance Board as Assistant Engineer in the year 1985 and given his date of birth is 20.01.1962 and later realised that he might give inadvertently wrong date of birth. Thereafter, the petitioner filed a suit in O.S.No.382 of 1986, before the City Civil Court at Chennai to declare his date of birth as 27.07.1963 instead of 20.01.1962 by impleading the respective Educational Authorities are parties to the suit and the suit was decreed on 23.12.1987, declaring the petitioner date of birth as 27.07.1963. Immediately, thereafter, the petitioner made application on 25.07.2016 to the Tamil Nadu Slum Clearance Board, rejected the petitioner's claim as belated one since the application submitted after 5 years. Thereafter on 21.08.2017, the petitioner made second application for alteration of date of birth and impleading the petitioner filed objection before the Tamil Nadu Slum Clearance Board and the Tamil Nadu Slum Clearance Board by its resolution dated 17.03.2018 summarily rejected the claim for alteration of date of birth since the claim was belated one and not within 5 years after entered into the service as per Rule 38 of Tamil Nadu Slum Clearance Board Service Rules. Again, the petitioner filed third application for alteration of date of birth not within 5 years as mandatory in Rule 38 of Tamil Nadu Slum Clearance Board Service Rules. Challenging the same, the present writ petition has been before this Court.

3.The learned Senior Counsel appearing for the petitioner would submit that though initially two applications rejected on the ground of delay. However, the third application was entertained and the same was rejected by the impugned order dated 19.03.2018 on the ground as per Section 59(3) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 states that "Any application received after five years after entry into service or any application, which is not supported by



entries in Secondary School Leaving Certificate, School, College or University records, birth extract from records or local bodies or military discharge certificates, shall be summarily rejected." However, in the present case, the petitioner in the service of Tamil Nadu Slum Clearance Board. There is a separate Rule for Tamil Nadu Slum Clearance Board Service Rule 38 for alteration of date of birth as per clause 38(b) of the Tamil Nadu Slum Clearance Board and application for alteration of date of birth should not normally be accepted by the appointing Authority if it is made after 5 years the member entered into the service unless the application furnish the adequate reason for not making his application within a period of 5 years. However, the official respondent not considered the Rule 38(b) of the Tamil Nadu Slum Clearance Board and application was rejected by quoting the earlier 49 A(1) of the Tamil Nadu Subordinate Service Rules. Hence, this Court may set aside the impugned order and remand the matter back to the Authorities for fresh consideration as well as impleading the petitioner within a reasonable time and permit the petitioner to make all the necessary document to enable for the perusal of the Authority.

4.The learned counsel appearing for the respondents 2 and 3 accepted that in the impugned order wrongly quoted the provision for rejecting the petitioner's application.

5.Considering the facts and circumstances and on perusal of the records show that in the impugned order dated 19.03.2018 wrongly quoted Section 59(3) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016, for rejecting the petitioner's application. Rule 38(b) of the Tamil Nadu Slum Clearance Board Service Rule and Section 59(3) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 are different in nature wherein Section 59(3) of Tamil Nadu Government Servants (Conditions of Service) Act 2016 clearly states that any application received after five years after entry into service shall be summarily rejected whereas 38(b) of the Act states that should not be normally be accepted by the appointing Authority if it is made after 5 years the member entered into the service unless the application furnish the adequate reason for not making his application within a period of 5 years. Without considering the above said provision, quoting 59(3) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and passing the impugned order is a non-application of mind on the sole ground that the impugned order deserve to be set aside. However, relevant required Rule as per Tamil Nadu Slum Clearance Board is 38 (b) of the Tamil Nadu Slum Clearance Board. As per Rule, the petitioner got right to convince the Authority to produce the relevant documents. I am inclined to set aside the impugned order and remand the matter back to the Authorities for fresh consideration and the



petitioner is directed to produce all the documents within a period of one week from the date of receipt of a copy of this order. The impleading proposed fourth respondent permitted to make objection within a period of one week thereafter the respondent to pass orders within a period of four weeks after giving opportunity to the petitioner.

6. With the aforesaid direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

pam

To

1. The Principal Secretary,
Government of Tamil Nadu,
Housing and Urban Development Dept.,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

3. The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.

+1cc to Mr.V.Chockalingam, Advocate, SR.No.96778.

+1cc to Mr.M.Rajasekar, Advocate, SR.No.96715.

+1cc to Mr.R.Jayaprakash, Advocate, SR.No.96880.

+1cc to Government Pleader, SR.No.97111.

W.P.No.21192 of 2019
and W.M.P.No.26743 of 2019

(CO)
CSR(26/11/2019)