

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/12/2019

CORAM

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
a n d

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.3798 of 2019

S. Indumathi

..Appellant

Vs

1. The Chief Secretary to Government
Secretariat, Fort St. George
Chennai 600 009.

2. The Higher Education Department
Secretariat, Fort St. George
Chennai 600 009.

3. The School Education Department
Secretariat, Fort St. George
Chennai 600 009.

4. The Directorate of School Education
17 College Road
Thousand Lights
Chennai 600 008.

5. The Principal
Holy Angels Anglo Indian
Higher Secondary School
Sir Thyagaraya Road
T. Nagar
Chennai 600 017.

..Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent against the order, dated 11/7/2018, passed in W.P.No.16510 of 2018.

Prayer in WP.No.16510 of 2018 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents herein to make the correction as to the date of the petitioner's birth as 17.07.1997 instead of 17.05.1997 in 10th and +2 mark sheets as per her representation dated 20.04.2018.

For petitioner ... Mr. V.Viswanathan

For respondents ... Mr.C.Munusamy
Special Government Pleader
(Education)
for R.R.1 to 4.

J U D G M E N T

Subramonium Prasad,J

Order, dated 11/7/2018, passed in W.P.No.16510 of 2018 has been assailed in the instant writ appeal.

2. Facts in brief are as follows:-

Appellant states that she was born, on 17/7/1997, in Madurai. She completed her X and XIII standards. Her Date of Birth is mentioned as 17/5/1997 in School certificates instead of her actual Date of Birth i.e., 17/7/1997. Hence, the petitioner gave a representation, dated 20/4/2018, requesting alteration of her Date of Birth, but it was not replied to, which led the petitioner to file writ petition No.16510 of 2018, to direct the respondents, to correct the date of the petitioner's birth to 17/7/1997 instead of 17/5/1997, in 10th and +2 mark sheets.

3. Learned Single Judge, vide, order, dated 11/7/2018, rejected the writ petition, placing reliance on Rule 5 of the Tamil Nadu Secondary Education Certification Rules, which reads as under:-

"5. Entries in regard to name, date of birth, etc., and Schools attended - Entries Nos.1 to 8 on page 1 of the Secondary School Leaving Certificate should be filled in as a rule at the commencement of the IX Standard course or as soon as the certificate is provided.

It sometimes becomes necessary to alter the name of the pupil, or of the father or guardian, as entered in the certificate. In such cases, heads of schools may, for valid reasons make the necessary alteration. Applications for such changes must not, however, be entertained after a pupil has completed his school course and appeared for the SSLC Public Examination.

When the Secondary School Leaving Certificate is opened on behalf of the pupil, care should be taken to ascertain the correct date of birth and enter that date in the Secondary School Leaving Certificate. If the date of birth proposed to be entered in the Secondary School Leaving Certificate does not differ from the date entered already in the admission register of the School, no evidence need be demanded from the parent or guardian of the pupil, but a declaration to the effect that the date of birth entered in the school register is the correct date of birth of the pupil and that no alteration of that date will be demanded in future on the plea that the correct date was not given at the time of admission should be invariably taken from the parent or guardian and filed in the School.

In all cases, where the date proposed to be entered in the Secondary School Leaving Certificate differs from the one already entered in the School admission register, the parent or guardian should be required to produce either a certified birth extract from the Register of Births and Deaths maintained by a public authority or a Baptism certificate (in the case of Christian pupils only) for the correct date. A declaration to the effect that the certificate produced relates to the pupil in question and to none else should also be taken. In cases where birth extracts cannot be produced for valid reasons a declaration made before the head of the school or any evidence that he or she may regard as satisfactory may be accepted.

The approval of the Inspecting Officer should be taken by heads of institutions only in cases where the date of birth claimed on behalf of the pupil at the time of opening of the Secondary School Leaving Certificate differs from the date originally entered in the admission regarding the correct age and also correctness of particulars under items 1 to 6 of the first page should be made and signed by the parent or where there is no parent alive, by the guardian in the presence of the headmaster. In cases where the parent or the guardian as the case may be could not come to the school, his declaration in the form should be obtained and pasted in the SSLC Book.

These statements should be filed in the School for further reference. If this is done, there will be no need for making any alteration therein later. In any event, alterations in the date of birth of pupils will not ordinarily be sanctioned after they reach Standard X. The inspecting Officers are, however competent to allow change of date of birth of pupils in S.S.L.C's for valid reasons supported by satisfactory documentary evidence during their high school course with reference to paragraph 5 above. Subject to these conditions, Inspecting Officers may sanction alterations in the date of birth but must do so only after satisfying themselves by requiring the production of clearest evidence that the date as already entered in the certificate is incorrect and that one proposed to be inserted is correct. Applications for alterations in the date of birth will not be entertained after a pupil has completed his school course and appeared for the SSLC Public Examination.

It is obviously of extreme importance that the owner of a School leaving certificate should be able to prove his ownership at any time if called upon to do so. This fact should be impressed upon pupils."

4. Learned Single Judge also placed reliance on another judgment of this Court, dated 11/7/2018, made in W.P.No.10641 of 2016, wherein a similar prayer had been rejected, relying on the above mentioned Rules.

5. The learned Single Judge further held that Rule 5 of the Tamil Nadu Secondary Education Certification Rules, quoted supra is in conflict with the provisions of Registration of Births and Deaths Act, 1969 and the Tamil Nadu Registration Act, Rules 2000 and since the Registration of Births and Death Act, is the Central legislation, it will prevail over rule 5 of the Secondary School Leaving Certificate Scheme, and held as follows:

"29. Subsidiary Rule 5 of the Secondary School Leaving Certificate Scheme, relied on by the respondents to contend that the application for alteration in the date of birth will not be entertained after a pupil had completed his course or appeared for the SSLC public examination also is much earlier to the advent of the Registration of Births and Deaths Act, 1969 and the rules framed

thereunder. Needless to say that the provisions of any Central Act, will prevail over the State Act or the rules or regulations, framed by the latter, on the same subject. When the statutory provisions stated supra, enable the competent authorities under the Registration of Births and Deaths Act, 1969, to make correction or cancellation as the case may be, the contention of the respondents that no alteration is permissible in the school records, after the student leaves the secondary education cannot be countenanced."

6. The appellant thereafter, filed a Review Application being R.A.No.116 of 2019, which was rejected by an order, dated 13/6/2019. In the Review Application, the learned Single Judge, relied on Article 53 A of the Code of Regulations for Anglo Indian Schools, Tamil Nadu, which reads as under:-

"53 A. The Headmaster/Headmistress of every Anglo-Indian School shall obtain a certificate from the parent or guardian of every pupil in standard IX as to the accuracy or otherwise of the age as entered in the register of admissions and withdrawals. This should be done by the month of March of the year concerned. If the age entered in the register is accepted as correct, the certificate should be filed in the School office and a report to the effect submitted to the Inspector of Anglo-Indian Schools by the first week of April of the year concerned. If parent or guardian does not accept the age entered in the register as correct, the date of birth shown in the register may be altered if and after valid evidence is produced. Such alteration shall only be done with the sanction of the Inspector of Anglo-Indian Schools and shall be effected before the pupil goes to Standard X. Clearest possible evidence of the correct date of birth such as the Baptism certificate in the case of a Christian pupil or the extract from the register of births together with a declaration that the extract relates to the pupil in question and to no one else, should be insisted upon before alterations are permitted. Request for alteration of date of birth should not be entertained after a pupil completes High School education and his/her results are declared except when an obviously absurd entry has to be corrected or when a civil

Court directs correction in any individual case. In these cases, the corrections should be made only under the Director's orders and should be attested by the Inspector of Anglo-Indian Schools."

7. Even as per these Rules, the appellant could not have corrected her Date of Birth, after completion of XII Standard. Order passed in the writ petition is the subject matter of challenge in this writ appeal.

8. Heard Mr.V.Viswanathan, learned counsel for the appellant and Mr.C.Munusamy, learned Special Government Pleader (Education) for the respondents 1 to 4.

9. Learned counsel for the appellant placed reliance on an order, dated 18/9/2012, made in W.P.(MD) No.9340 of 2009, wherein the learned Single Judge of this Court placed reliance on the Registration of Births and Deaths Act, 1969. Learned Single Judge held that under Sections 14 and 15 of the Registration of Births and Deaths Act, 1969, Date of Birth entered in the register is to be considered, as Date of Birth of the child for all purposes.

10. Learned counsel for the petitioner also placed reliance on another order of this Court dated 3/3/2015 made in W.P.No.23716 of 2014, wherein the learned Single Judge had followed the order, dated 18/9/2012, made in W.P.(MD) No.9340 of 2009.

11. Learned counsel for the petitioner also placed reliance on a Division Bench judgment of Kerala High Court in Subin Mohammed Vs. 1. Union of India, represented by Secretary, Ministry of Human Resources Development, Shastri Bhavan, New Delhi and three others {2015 SCC On line Kerala 34544}, wherein the Hon'ble Division Bench of Kerala High Court, observed as under:-

"39. Next question is whether the writ Court should exercise the power to direct correction of the entries in the mark sheet taking into account the entry in the birth certificate maintained by the statutory authority. It is a well settled principle of law that writ of mandamus can be issued only if an aggrieved party has an enforceable legal right under a statute or rule. A mandamus cannot be issued to an authority to do something. [Renu V. District & Sessions Judge (2014 15 SCC 731)]. The writ

petitioner must establish a legal right in himself and a corresponding legal duty in the State [Food Corpn of India Vs. Ashis Kumar Ganguly (2009) 7 SCC 734]. Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ in the nature of mandamus. [State of M.P. Vs. Sanjay Kumar Pathak (2008) 1 SCC 456]. In Rajasthan State Industrial Development & Investment Corpn. V. Diamond & Gem Development Corpn. Ltd [(2013) 5 SCC 470], it is held as under:

"The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the Court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the Court must exercise discretion, taking into consideration a wide variety of circumstances, *inter alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the Court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the Court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition

must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the Court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand."

However, the learned Division Bench of the Kerala High Court in Subin Mohammed Vs. Union of India (supra), found that though a writ of mandamus cannot be issued in a strict sense, since the Date of Birth would result in serious hardship to the petitioner, they entertained the writ petition. Division Bench observed as under:-

"42. It is contended that the future prospects of the petitioners to study or get employment abroad, will be substantially affected if the entry of date of birth in the mark sheet does not tally with that in the birth certificate. Though a writ of mandamus cannot be issued in the strict sense, we are of the view that, failure to exercise jurisdiction may put the petitioners to serious hardship. Hence, to render justice, it is always open for the Court to pass appropriate orders, taking into account the facts and circumstances of each case. However, if disputed questions of fact arises, it will not be appropriate for this Court to entertain the matter."

12. Appellant herein has stated that there is a discrepancy in the Date of Birth recorded in the passport and in her school certificate. It has been contended before us that the discrepancy is affecting her admission in a course, outside the Country and that the correction of Date of Birth is exactly two months. If any corrections are made, it will not cause

prejudice to anybody. It is also stated that the admission to a course which she has got abroad will get affected due to this discrepancy.

13. We, at the moment are not entering into the issue as to whether the order, dated 18/9/2012, passed by the learned Single Judge in W.P.(MD) No.9340 of 2009, followed in W.P.No.23716 of 2014, is correct or not.

14. In view of the fact that the career of the appellant has bright prospects, and that she might have lose her seat because of the discrepancy in the date of birth, we permit the correction of date of birth to 17/7/1997 in the peculiar facts of this case only and for the said purpose only. This case shall not be cited as a precedent for any other case.

15. With the above direction, instant writ petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government
Secretariat, Fort St. George, Chennai 600 009.
2. The Higher Education Department
Secretariat, Fort St. George, Chennai 600 009.
3. The School Education Department
Secretariat, Fort St. George, Chennai 600 009.
4. The Directorate of School Education
17 College Road, Thousand Lights, Chennai 600 008.

+1 cc to M/s.V.Viswanathan, Advocate Sr.No.102314

+2 cc to M/s.Father Xavier Associates, Sr.No.102941(12.02.2020)

AKM/10.01.2020/9P-7C /

AKM/12.02.2020

Judgment made in
W.A.No.3798 of 2019