

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P. No.27983 of 2019

and

W.M.P. Nos. 27583 & 27586 of 2019

Rajamannan

... Petitioner

Vs.

1. The Registrar,
Annamalai University,
Annamalainagar - 608 002.
Tamil Nadu, India.

2. The Finance Committee,
Annamalai University,
Annamalainagar - 608 002.
Tamil Nadu, India.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned university Order No. 250/2017 © dated 15.03.2017 passed by the First Respondent and the consequent Office Memorandum No.C-C2/1996-94/2018/ dated 09.03.2018 issued by the First Respondent to the Petitioner and quash the same.

For Petitioner : Mr. Naveen Kumar Murthi

For Respondents : Mr. K. Ramesh Kumar
Standing Counsel
for Annamalai University

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ORDER

This Writ Petition has been filed by the Petitioner seeking for the issuance of Writ of Certiorarified Mandamus calling for the records of the impugned university Order No.250/2017 © dated 15.03.2017 passed by the First Respondent and the consequent Office Memorandum No.C-C2/1996-94/2018/ dated 09.03.2018 issued by the First Respondent to the Petitioner and quash the same.

2. The case of the Petitioner is that he was initially appointed as Lecturer in Physics in the First Respondent-Annamalai University on 07.01.1994 and subsequently he was promoted as Professor in Physics Department and since his date of birth has been wrongly recorded in his SSLC Mark sheet, he requested the concerned authorities for alteration of his date of birth along with the relevant records to support his correct date of birth.

3. According to the Petitioner his date of birth is 07.02.1963 whereas, it has been wrongly mentioned as 01.10.1961 in his SSLC Certificate. Thereafter, it appears that the Petitioner filed a Civil Suit in O.S. No. 542 of 2004 before the District Munsif Court, Panruti for declaration that the Petitioner's date of birth is 07.02.1963 and also for mandatory injunction to correct the date of birth in his school records. Thereafter, the said suit was decreed declaring the date of birth of the Petitioner as 07.02.1963 by Judgment dated 16.06.22005. Thereafter based on the Judgment and decree of the Civil Court, the Petitioner requested the First Respondent to alter his date of birth. However, by order dated 15.03.2017, the First Respondent rejected the claim of the Petitioner for alteration of his date of birth. Aggrieved by the same, the Petitioner has come forward with the present writ petition challenging the rejection order dated 15.03.2017.

4. The learned counsel appearing for the Petitioner would submit that the correct date of birth of the Petitioner is 07.02.1963, however by inadvertence, it has been wrongly mentioned in SSLC Certificate as 01.10.1961 and therefore, it requires to be rectified. The learned counsel would also point out that though the Petitioner made representation along with relevant records to the authorities for correction of his date of birth, there was no action on their part which prompted the Petitioner to file a suit before the Civil Court which by a Judgment dated 16.06.2005 declared the Petitioner's date of birth as 07.02.1963 and even despite of the same, the First Respondent without considering the relevant records and Judgment of the Civil Court, has erroneously rejected the claim of the Petitioner and his date of birth has not been rectified with correct date of birth. Hence the learned counsel would implore this Court to allow the writ petition as prayed for.

5. It is not dispute that the Petitioner has been working for the past more than 25 years and only in the year 2004 he started claiming that his date of birth has

been wrongly mentioned in the SSLC Certificate and he also filed a suit in O.S. No, 542 of 2004 before the District Munsif Court, Panruti and obtained judgment in and by which, the date of birth was declared as 07.02.1963. However, in this regard it is pertinent to note that the Judgment passed by the Civil Court is ex parte one and merely based on the statement given by the Petitioner as PW.1, ex parte Judgment has been delivered by the Civil Court. Moreover, as per Rule (5) of the Secondary School Leave Certificate Rules, any correction in the date of birth name or initial has to be made before completing the SSLC Examination. Therefore the Respondents have no jurisdiction to make correction in the SSLC Certificate and based on which, in the service register of the Petitioner. Though the Petitioner contends that he was born on 07.02.1963 and it has been wrongly mentioned as 01.10.1961 at the time of admission in the school merely based on the statement of the Petitioner, the Civil Court has delivered the Judgment declaring the Petitioner date of birth as 07.02.1963. No enquiry has been conducted nor issues has been adjudicated upon after going through the relevant documents and records by the Civil Court and the only evidence available before the Civil Court was the statement made by the Petitioner in the form of evidence. In fact, the Civil Court has no jurisdiction to declare the date of birth of the persons and to direct the authorities to issue such certificates and if that is going to be encouraged, any body can approach the Civil Court and correct the date of birth according to his convenience. Therefore, such practice should not be encouraged. Moreover, the Petitioner has not made representation within the time limit as per Rule 49 of the Tamil Nadu Subordinate Service Rules. In this regard, it is relevant to refer the decision of the Honourable Apex Court reported in 1994 Suppl.(1) SCC 155 (Secretary and Commissioner, Home Department and others Vs R.Kirubakaran), wherein the Honourable Apex Court explained about the chain of reactions and its consequences about the alteration of date of birth of serving Government servants. Paragraph 7 of the said judgement is extracted as follows:

" 7. An application for correction of the date of birth should not be dealt with by 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 their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important 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, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, 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 filed within the time, which can be held to be reasonable. 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 the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates

of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."

6. Therefore, for the forgoing reasons this Court does not find any merits to entertain the present writ petition and the Petitioner having enjoyed the benefits of the SSLC certificate all along based on the existing date of birth namely on 01.10.1961, it is not open to the Petitioner to seek change of his date of birth. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Annamalai University,
Annamalainagar - 608 002.
Tamil Nadu, India.

2. The Finance Committee,
Annamalai University,
Annamalainagar - 608 002.
Tamil Nadu, India.

+1cc to M/s.S.Varsha , Advocate SR.No. 92778

W.P. No. 27983 of 2019

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A.SK (04/12/2019)