

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.01.2019

CORAM:
THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.32142 of 2018
& WMP No.37400 of 2018

K.Chandrasekaran

... Petitioner

versus

1. The Principal Secretary to Government,
Home Department, Secretariat,
Fort St. George, Chennai 600 009
2. The Director General of Police,
Post Box No.601, Dr. Radhakrishnan Salai,
Mylapore, Chennai 600 004
3. The Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai 600 005
4. The Director of School Education,
Directorate of School Education, DPI Complex,
College Road, Chennai 600 006
5. The Revenue Divisional Officer,
Namakkal 637 001

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus directing the respondents to alter the petitioner's date of birth from 05.03.1961 to 21.09.1962 in the Service Register and all connected records, as per the representations made by the petitioner.

For Petitioner	:	Mr. Naveen Kumar Murthi
For R-1 to R-3 & R-5	:	Mr. A.N.Thambidurai, Spl.G.P.,
For R-4	:	Mrs. P.Kavitha, Govt. Advocate.
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O R D E R

The petitioner herein, who is incessantly fighting with the authorities for three decades, seeking alteration of his date of birth, having not been successful in coming out of the perplexing and complex web of the bureaucracy, has approached this Court, by filing this writ petition.

2. This writ of mandamus has been filed seeking directions to the respondents to alter the petitioner's date of birth from 05.03.1961 to 21.09.1962 (one year, six months and 16 days - difference between the two dates) in the Service Register and all other connected records, in terms of the representations made by the petitioner.

Facts in brief:-

3. The petitioner is presently functioning as Assistant Commissioner of Police (SRMC Range), Iyyapanthangal, Porur, Chennai. The petitioner was appointed as Reserve Sub-Inspector of Police, on 18.09.1997. The petitioner's date of birth has been wrongly furnished by the petitioner's father as 05.03.1961 at the time of admitting the petitioner into school and the same mistake was inadvertently carried forward in further school records and subsequent service records.

3.1. As furnishing of proof for date of birth was not mandatory for admission in the school at that point of time, there was no requirement to furnish any certificate by the petitioner's father. The petitioner's actual date of birth was 21.09.1962.

3.2. Immediately on joining the police service, on 18.09.1987, the petitioner had submitted a detailed representation seeking alteration of date of birth, on 20.04.1988, to the Commissioner of Police. As per the service rules, the application seeking alteration of date of birth should be submitted within a period of five years, but the petitioner has submitted the same, within a period of one year from the date of entry into the service.

3.3. The said petition was returned with a direction to make the application to the Educational Department to get the date of birth altered in the school certificates and thereafter, to the Police Department. Accordingly, the petitioner approached the Director of School Education on 06.10.1988 with a request to alter his date of birth. The Director of School Education returned the same stating that there is no rule / position available for the alteration of date of birth of a candidate, who had passed the SSLC examination and thus directed the petitioner to approach the concerned Department, following Rule 49(b) of the Tamil Nadu State and Subordinate Service Rules. The petitioner had already invoked the provision and finding no other remedy, he approached the Civil Court in O.S.No.1694 of 1989 on the file of the City Civil Court, Chennai. The said suit was dismissed for the failure to implead the Commissioner of Police. Thereafter, appeal was filed, but it was not pursued.

3.4. In the meantime, the petitioner was promoted as Inspector of Police on 25.11.2013 and then as Assistant Commissioner of Police. The petitioner made a representation on 05.08.2015, requesting the Home Secretary, Government of Tamil

Nadu, to pass appropriate orders on his request for change of birth certificate. The birth certificate was issued by the Sub-Registrar's Office, Senthamangalam, Namakkal District, indicating the correct date of birth of the petitioner. The Revenue Divisional Officer, Namakkal, was required to conduct an enquiry into the request of the petitioner and was directed to file a report. The Revenue Divisional Officer ought to have submitted a report to the Principal Secretary, Commissioner of Revenue Administration. But, even thereafter, no substantial action is taken. The petitioner is repeatedly sending representations and as the same were not considered, this writ petition has been filed.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would point out that: a) the request of the petitioner should have been considered when it is not barred by time, having been claimed within five years from the date of his appointment; b) the birth certificate has been issued by the Office of the Sub-Registrar, i.e., it has emanated from proper custody and therefore, much weight should have been attached to the documents produced; c) in the case reported in 2009 (5) SCC 703 (R.K.Jangra v. State of Punjab and others), the Hon'ble Apex Court directed the authorities to consider the claim of alteration of date of birth, where the High Court directed the petitioner to approach the Civil Court; d) in the case of request made by one M.P.Rajendran, who is the batch-met of the petitioner and who wanted alteration in the date of birth, it was considered and the benefit was extended and on similar lines, the request of this petitioner also to be considered.

6. The letter addressed by the Additional Chief Secretary, Commissioner of Revenue Administration to the learned Special Government Pleader, dated 09.12.2018, is produced before this Court today. The said letter is treated as counter to this petition and the arguments of the learned Special Government Pleader appearing for the respondents were also heard.

7. The first contention of the learned Special Government Pleader is that when already the jurisdiction of the Civil Court was invoked by the petitioner, this writ petition is not maintainable.

7.1. No doubt, the petitioner has approached the Civil Court, but the proceedings of the Civil Court would not amount to res judicata, since the order passed by the Civil Court was not on merits. It is was dismissed on a technical ground of non-impleadment of parties.

7.2. Moreover, the appropriate remedy open to the petitioner is to file a writ petition and not a civil suit.

8. The learned Special Government Pleader relied upon Section 59 (2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads thus:-

"(2) After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-section (1)."

8.1. In the alteration / correction in the date of birth, the procedure to be followed was laid down in Section 59 (1) of the said Act, and it is extracted for easy reference:-

"59. (1) If, at the time of appointment, a candidate claims that his date of birth is different from that entered in his S.S.L.C. or Matriculation Register or school records, he shall make an application to the Commission in cases where the appointment is made in consultation with the Commission and, in other cases, to the appointing authority stating the evidence on which he relies and explaining how the mistake occurred. The application shall be forwarded to the Commissioner of Revenue Administration for report after investigation by an officer not below the rank of a Deputy Collector and, on receipt of the report, the Commission or the appointing authority, as the case may be, shall decide whether the alteration of date of birth may be permitted or the application may be rejected: Provided that in case of a candidate who was born outside the State of Tamil Nadu, the investigation through the Commissioner of Revenue Administration shall be dispensed with and the Commission or the appointing authority, as the case may be, shall examine and scrutinize the records that may be produced by the candidate and shall decide whether the alteration of date of birth may be permitted or the application may be rejected."

8.2. As per Rule 59 (1) of the Act, the petitioner is expected to state the evidence on which the claim is made, explaining how the mistake had occurred earlier.

8.3. Admittedly this requirement has been complied with in this case. The petitioner has explained stating that at the time of admission into the school, as there was no requirement for production of records at that point of time, the petitioner's father, inadvertently, has given a wrong date. But it is stated that the petitioner is armed with the birth

certificate issued by the Registration Department. As per the procedure, the application has to be sent for investigation by an Officer not below the rank of Deputy Collector and on receipt of the report, the appointing authority has to decide whether to accept the application or to reject the application.

8.4. In paragraph 6 of the letter, it is stated that the Government in their letter dated 31.05.2017 has forwarded the application of the petitioner, dated 05.08.2015, seeking alteration of date of birth. On 14.07.2017 the application of the petitioner along with the connected documents have been forwarded to Revenue Divisional Officer, Namakkal, for enquiry and report. The Revenue Divisional Officer has sent the enquiry report, on 10.10.2017.

9. The learned Special Government Pleader appearing for the respondents would contend that the Revenue Divisional Officer, Namakkal, has been requested to send specific remarks along with the original birth register pertaining to the individual and the above report is awaited.

9.1. The learned counsel appearing for the petitioner would submit that when the application of the petitioner seeking alteration of the date of birth has been submitted even on 20.04.1988, the respondents have only forwarded the application, in the year 2015 (05.08.2015); the reason for inaction from the year 1988 to 2015 is not explained on the side of the respondents.

9.2. It is also contended that when the Revenue Divisional Officer, Namakkal, has submitted the report, what is the further specific remark needed is not explained by the respondents.

10. When the birth certificate has been issued by the Registration Department, it is not known what is the cause for seeking production of original birth register. The certified copy of the birth extract is a public document which is admissible in evidence. When it is claimed by the petitioner that he is nearing super-annuation and when he has applied for the alteration of the date of birth in time and he has been repeatedly reminding and persuading the respondents to attend to his request, it is not open to the respondents to state that the enquiry is still pending. It is also relevant to point out that the enquiry report of the Tahsildar has already been received by the respondents.

11. No reason has been pointed out as to why the extract of the birth certificate issued by the Registration Department should not be accepted. When the employee is expected to be prompt in moving the authorities seeking alteration in the date of birth, equally the employer is also expected to be prompt in the disposal of the applications. There is no explanation for the long kumbakarna sleep on the part of the respondents. When the documents do not show that the alteration in the date of

birth is unwarranted or mistaken or it is asked for with any hidden agenda, then the Court has to set right the mistake.

12. Under the stated circumstances, the respondents 1 and 2 are directed to alter the petitioner's date of birth from 05.03.1961 to 21.09.1962 in the Service Register and all connected records, in tune with the representation made by the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

13. This writ petition is ordered accordingly. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

1. The Principal Secretary to Government,
Home Department, Secretariat,
Fort St. George, Chennai 600 009
2. The Director General of Police,
Post Box No.601, Dr. Radhakrishnan Salai,
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3. The Commissioner of Revenue Administration,
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4. The Director of School Education,
Directorate of School Education, DPI Complex,
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5. The Revenue Divisional Officer, Namakkal 637 001.

+2ccs to the Government Pleader, S.R.No.1906, 1426

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BR(CO)

rrs 11/01/2019