



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.1900 of 2014

and

M.P. (MD)Nos.1 of 2014 and 1 of 2015

C.Bai

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary to the Government,
Education Department,
Secretariat, Fort St.George, Chennai.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai - 600 006.

3.The District Collector,
Tuticorin District, Tuticorin.

4.The Chieft Educational Officer,
Tuticorin District, Tuticorin.

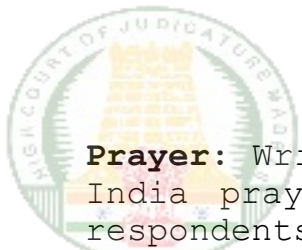
5.The District Educational Officer,
(Higher Secondary Schools),
Tuticorin District, Tuticorin.

6.The Correspondent,
T.D.T.A.Pulamadan Chettiar National
Higher Secondary School,
Sathankulam, Tuticorin District.

7.The Manager,
(Higher Secondary School),
Thoothukudi-Nazareth Diocese,
Thoothukudi.

... Respondents

(R7 impleaded vide order of this Court, dated 17.09.2019 in W.M.P. (MD)No.16449 of 2019).



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to correct the petitioner's date of birth as 14.09.1958 and his religion as a Christian in his service records as well as in the S.S.L.C. Book and other records and further permitting the petitioner to continue his service as Post Graduate Teacher till the academic year 2016-17 in the sixth respondent School and consequently, to direct all the respondents to pay all other monetary benefits including the salary arrears from 01.04.2014 to 31.05.2017 (38 months) with all increments allowances and other emoluments and full pension from 01.06.2017 as well as for future. (Prayer amended vide order of this Court, dated 17.09.2019 in W.M.P. (MD)No.16451 of 2019)

For Petitioner :Mr.M.P.Senthil

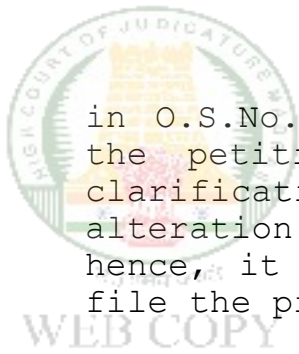
For R1 to R5 :Mr.N.Shanmugaselam, AGP

For R5 :Mr.T.A.Ebenezer

O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus, to direct the respondents to correct the petitioner's date of birth as 14.09.1958 and his religion as Christian in his Service Register as well as in the SSLC and other records and to permit the petitioner to continue in service as P.G. Teacher till, he attains the age of superannuation and pay all other monetary benefits.

2.The petitioner states that he was born on 14.09.1958 and that his date of birth and religion was wrongly mentioned in the school records. As per the school records, the petitioner's date of birth is 24.03.1956. The petitioner was appointed as P.G.Teacher in the sixth respondent School on 18.06.1996. It is stated that the petitioner realised the mistake regarding his date of birth and religion and hence, made a representation to the sixth respondent on 26.09.1996 to rectify his date of birth in his service register. Thereafter, a legal notice was also sent by the petitioner to the respondents 2, 3 and 6 on 23.02.1998. Since the respondents did not act on the representation of the petitioner, the petitioner filed a suit in O.S.No.311 of 1998 on the file of the Principal District Munsif Court, Tiruchendur, which was later transferred to District Munsif Court. Sathankulam and renumbered as O.S.No.47 of 2001. The suit is for a declaration in respect of the petitioner's date of birth as well as the petitioner's religion. The suit was decreed, by judgment and decree, dated 29.01.2010. It was, thereafter, on the basis of the Civil Court decree, the petitioner sent further representation on 02.08.2010 to the sixth respondent to change the date of birth as well as the religion as per the Civil Court decree



in O.S.No.47 of 2001. Again, several representations were made by the petitioner. Though the sixth respondent sought for some clarifications to consider the petitioner's application for alteration of date of birth, there was no further progress, and hence, it is stated by the petitioner that he was constrained to file the present writ petition.

3.The learned Counsel for the petitioner conceded the legal position that the Civil Court has no jurisdiction to entertain a suit regarding alteration of date of birth as it fall within the exclusive jurisdiction of Administrative Tribunal. Since the suit was filed in 1998, when the State Administrative Tribunal was functioning under the Administrative Tribunal Act, the Civil Court's decree is without jurisdiction and hence invalid. The Honourable Supreme Court has ruled that a suit for correction of date of birth in the service register is a matter concerning members of Service and in view of Section 28 of Administrative Tribunals Act, 1985, the Civil Court has no jurisdiction to entertain a suit.

4.This principle was reiterated by the Honourable Division Bench of this Court in the Case of ***Sivakalai Muthu vs State of Tamil Nadu***, reported in **2008 4 MLJ 495**, wherein, the Honourable Division Bench has further held that a decree passed by a Civil Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever, it is sought to be enforced or relied upon, even at the stage of execution or in collateral proceedings. Since the petitioner has filed the application shortly after his appointment, the learned Counsel for the petitioner submitted that the application has to be decided on merits and the respondents have failed to consider the application submitted by the petitioner on merits, despite relevant records had been produced by the petitioner before the respondents.

5.Rule 49 of Tamil Nadu State and Subordinate Services rules has now been incorporated under Section 59 of Tamil Nadu Government Servants (Conditions of Service) Act 2016. Rule 49 of Tamil Nadu State and Subordinate Service Rules, reads as follows:

"49. Alteration of date of birth --(a) 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 Tamil Nadu Public Service 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 Tamil Nadu Public Service



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 Tamil Nadu Public Service 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.

(b) 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-rule (a).

(c) 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 of local bodies or military discharge certificates, shall be summarily rejected.

*Proviso- [Omitted in G.O.Ms.No.388, P & AR (Per.S), dt.27-12-95, w.e.f.3-8-94]

(d) In considering the question of permitting an alteration on the date of birth as entered in the official records even when such entry is proved to have been due to a bonafide mistake, the Government or the appointing authority shall take into consideration the circumstance 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 his service and the service conditions of other officers in the service and may permit the alteration subject to such condition as they or it may deem fit to impose:

Provided that the Tamil Nadu Public Service Commission shall be consulted in the case of an applicant who has been initially recruited through the Tamil Nadu Public Service Commission, if it is proposed to accept his request for alteration of date of birth.

(e) The Procedure laid down in sub-rule (a) shall be followed in all cases 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.

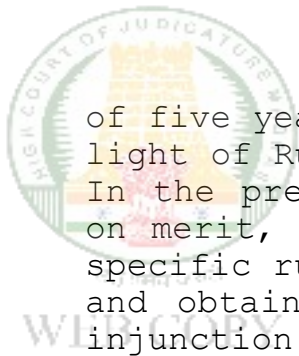
Explanation - For the purpose of this sub-rule "authoritative records" are the secondary school leaving certificate or University, College, or School records or Discharge Certificate of Army.

(f) The decision of the Tamil Nadu Public Service Commission, the appointing authority or the Government, as the case may be, shall be final.

6. From the above rule, an application to change/alter the date of birth of an employee can be submitted to the appointing authority with necessary evidence, on which, the employee relying and explaining how the mistake had occurred. Such application, thereafter, forwarded to the Commissioner of Revenue Administration for report, after inspection by an Officer, not below the rank of Deputy Collector and on receipt of report, the appointing authority has to take a decision, whether the alteration of date of birth can be permitted or not. Rule 49(C) mandates that such application has to be filed within five years of entry into service. When Statute prescribes a procedure for considering the application relating to change of date of birth, the respondents have to deal with the application in the manner known to law. It is not brought forth that, the alteration of date of birth is impermissible in this case, in view of any specific rule or other impediments with reference to the petitioner's claim.

7. The learned Counsel for the respondents relied upon a communication of Director of School Education, dated 01.09.1998 addressed to the petitioner's Advocate in response to the petitioner's notice. In the said communication, it is stated that the application submitted by the petitioner cannot be entertained, after the student has completed the SSLC course and appeared for SSCL board examination, quoting subsidiary Rule 5 of SSLC Scheme. The learned Special Government Pleader submitted that in view of the order of Director of School Education rejecting the petitioner's application way back in 1998, the issue has now become final and hence, the petitioner cannot now reopen the same after this length of time by this Writ Petition. The learned Special Government Pleader also submitted that the direction sought for in this Writ Petition is also for change of date of birth in SSLC book and that the same is impermissible in law. However, the learned Special Government Pleader has not produced the subsidiary Rule of SSLC scheme before this Court.

8. It is also to be seen that the rejection is not in tune with Rule 49 of Tamil Nadu State and Subordinate Services Rules, which specifically prescribe a procedure to deal with such application. When an application is submitted by an employee in Government service regarding change of date of birth within the time



of five years from the date of entry, it has to be considered in the light of Rule 49 of Tamil Nadu State and Subordinate Services Rules. In the present case, the petitioner's application was not rejected on merit, but for a reason which cannot be countenanced in view of specific rule. Thereafter, the petitioner has moved the Civil Court and obtained a decree for declaration and consequential mandatory injunction. It was, thereafter, on the basis of the Civil Court decree, the petitioner made several representation to pursue his application regarding change of date of birth. However, the respondents have not considered the application, which was filed well within time. Even though the respondents acknowledged the receipt of application at the appropriate time, the application was not forwarded to the concerned authority, as it is contemplated under Rule 49 of Rules.

9. Though the Civil Court decree is a nullity, the time taken by the petitioner to pursue his remedy before the Civil Court can be excluded and this Court is of the view that no motive can be attributed for the delay in approaching the Court, after making the application pursuant to the decree of Civil Court. Hence, this Court is not inclined to reject the petitioner's claim on the ground of delay or laches or on the ground that the petitioner's application had already been considered by the Director of School Education, vide his communication, dated 01.09.1998, sent to the petitioner's Advocate.

10. This Court *prime facie* satisfied that the petitioner has sufficient documentary evidence to show that his date of birth has been wrongly recorded in the school records. In this case, the petitioner has produced the marriage certificate, dated 14.09.1958 issued in favour of the petitioner's parents. When the marriage of the petitioner's parents was in September'1957, the petitioner's date of birth cannot be presumed to be on 24.03.1956, six months prior to the marriage itself. Hence, the petitioner's application can be considered by verifying the genuineness of the certificate produced by the petitioner.

11. Considering the facts and circumstances, this Court is not in favour of giving a positive direction to the respondents to alter/change the date of birth in the service register as well as the SSLC Book. However, the Writ Petition is allowed and the sixth respondent shall forward the application along with a fresh representation and documents forthwith to the fourth respondent, who shall consider the application on merits following Rule 49 of Tamil Nadu State and Subordinate Services Rules, and pass appropriate orders. Such exercise shall be done within a period of six months from the date of receipt of a copy of this order. The petitioner may also ensure cooperation with the sixth respondent in reconstructing the papers, if the sixth respondent is unable to trace the records / representation submitted earlier by the sixth respondent. This Writ Petition is disposed



of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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To

1.The Secretary to Government,
Education Department,
Secretariat, Fort St.George, Chennai.

2.The Director of School Education,
College Road, Nungambakkam,
Chennai - 600 006.

3.The District Collector,
Tuticorin District, Tuticorin.

4.The Chieft Educational Officer,
Tuticorin District, Tuticorin.

5.The District Educational Officer,
(Higher Secondary Schools),
Tuticorin District, Tuticorin.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-99142[F] dated 18/11/2019)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-99305[F] dated 19/11/2019)

+1 CC to M/s.SPL GP (SR-99962[F] dated 20/11/2019)

W.P. (MD) No.1900 of 2014

18.11.2019

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