



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.4395 of 2014

G.Akilandam

.. Petitioner

Vs.

1.The Government of Tamilnadu

Rep. by its Principal Secretary,
Social Welfare and Nutritious Meal Programme,
Fort St. George, Chennai.

2.The Principal Accountant General

(Accounts and Entitlement)
Tamilnadu, No.361, Anna Salai,
Chennai - 600 018.

3.The Personal Assistant to

District Collector,
Noon Meal Scheme,
Panagal Building,
Thanjavur District.

4.The Commissioner,

Boodalur Panchayat Union,
Thanjavur District.

5.The Additional Director,

Local Fund Audit,
Thanjavur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus to direct the respondents herein to disburse the arrears of salary for the period from July 2010 to June 2012 by treating the same as service period and disburse the pensionary benefits of the petitioner by considering her representation dated 29.04.2013 and 11.01.2014, within the time stipulated by this Court.

For Petitioner : Mr.P.Kalaiyarasi Bharathi

For Respondents : Mr.M.Jeyakumar for RR1,3,4& 5
Additional Government Pleader
Mr.P.Gunasekaran for R2



ORDER

This writ petition is filed by petitioner who is a retired employee for issuance of writ of Mandamus directing the respondents to disburse the arrears of salary for the period from July 2010 to June 2012 by treating the same as service period and disburse the pensionary benefits of the petitioner by considering the representations, dated 29.04.2013 to 11.01.2013.

2.The petitioner was appointed in the Noon meal scheme as a cook in Sellappanpatti Panchayat Primary School, which comes under the fourth respondent. It is stated that due date of her retirement is 30.06.2012. However, it is stated as if the respondent have compelled her to go on retirement on 02.06.2010 itself without any order. The petitioner admitted that at the time of appointment the petitioner was examined by Medical Board and determined her date of birth based on the doctor's opinion. The respondent produced before this Court the service record of the petitioner indicating that the date of birth of petitioner was incorporated in the service register as 04.09.1954. However the entry in Service Register further indicates that the petitioner's age was assessed on 10.12.1998, as 47 years. Date of birth was entered in the service record, based on the Medical Certificate produced by the petitioner herself at the time of joining. However, the date of birth was recorded quite contrary to the medical certificate. After retirement, based on the date of birth entered in the service register, the petitioner has filed the above writ petition for disbursement of salary by treating her date of birth as 04.09.1954, which does not tally with the record produced by the petitioner herself at the time of joining.

3.Learned Additional Government Pleader relied upon the judgment of Division Bench of this Court in the case of A.Santhanam Vs. The Chairman, Tamil Nadu Distribution Generation Corporation Limited and four others. dated 09.01.2019 in W.A.(MD).No.127 of 1998, when a different situation was considered by the Honourable Division Bench. It has been held that the applicant should give the representation to change his date of birth within a period of five years of entry into service and that he application is liable to be rejected on the sole ground that it has been filed beyond the period of five years. In this case the petitioner's date of birth was entered on the basis of medical certificate of the petitioner herself. The mistake or error in the date of entry is obvious. In the counter affidavit it is stated that the mistake was found only in an audit objection. The respondents ought to have been vigilant. The petitioner cannot ignore the medical certificate at the time of entry in service. The petitioner has no birth certificate and hence the date of birth can be only on the basis of the Birth Certificate or Medical Certificate. It is only for the said reason, the official date of birth entered in the service book cannot be altered



after five years from the date of entry in service. However, in this case a genuine mistake has happened and due to audit objection it has to be rectified.

4. The learned Additional Government Pleader relied upon yet another judgment of the Division Bench in the case of **Government of Tamilnadu Vs. J. Ramasamy and another**, reported in **2002 (2) CTC 577**. This judgment was also followed by the earlier Division Bench referred supra. The relevant portions are extracted hereunder.

"7. In this case, the facts stare one in the eye. The official gave his date of birth as 19.04.1942 when he joined service and when he was to retire after his date of superannuation was computed with reference to the birth date given by him, he sought change in the birth date itself. He was certainly a person who had failed to make an application within five years after his entering service with regard to any correction that may have been warranted in his date of birth. He was clearly disentitled from making such application after the end of the five year period.

8. The Tribunal has chosen to regard Sub Clause (c) of Rule 49 as an exception to Rule 49(b). That view of the Tribunal is patently incorrect. Sub Clause (c) refers to applications which are to be summarily rejected. It also refers to applications which are not supported by S.S.L.C., School, College or University records, birth extract from records of local bodies or military discharge certificates. All such applications are also to be summarily rejected. Sub Clause (c), therefore, deals with the applications which are to be summarily rejected. It does not deal with extending the period of limitation. Application which is filed within the period of limitation should be supported by any one of the documents mentioned in Sub Clause (c). Failure to furnish such documents in support of the application would result in the summary rejection of such application. Applications filed after the period of five years from the date of entry into the service are to be rejected on the sole ground that they have been filed beyond a period of five years. No other reason need be given.

9. The misreading of the Rule by the Tribunal has prompted it to treat the application filed thirty four years after the official had entered



into service as a valid application. Surprisingly, it has gone further and has chosen to hold an enquiry into that application and has made an order altering the date of birth. This was clearly an impermissible exercise which the Tribunal should not have indulged in. Counsel for the official submitted that the Tribunal has powers to call for the records. That power is not meant to be used in a case where its use was not appropriate. Claims such as the one made before the Tribunal which should not have been entertained at all, cannot be given life by summoning documents from the custody of other Government Departments, then hold that contents of those documents justify the claim, and thereafter proceed to alter the date of birth, even when the very application seeking such alteration had been lawfully rejected by the Government in exercise of statutory power properly vested in it. Even if the State had erred in rejecting the application, the Tribunal could only have directed it to entertain the application and hold an enquiry, and no more."

5. However, the above judgment has no application in the present case, when the petitioner was compelled to retire ignoring the date of birth entered in Service register on the ground that the entry was just an inadvertent error. Having regard to the nature of document which was relied upon by the petitioner, to fix her date of birth, she cannot plead that there is no error. If there are no records available at the time of entry in service, the petitioner or any one before entering into service may get a medical opinion so as to approximately fix the date of birth. When the certificate produced by the petitioner was accepted, it is not known how a different date could be entered. However, an admitted mistake or error cannot be taken advantage of by any one. Hence, the petition is liable to be dismissed.

6. The learned counsel for the petitioner submitted that the petitioner was in service for some time for a period of one year after the date of attaining superannuation based on the entry in the service book. It is admitted that salary for the petitioner was also paid. Hence, the counsel for the petitioner requested the Court to direct the respondent not to recover any amount. The petitioner is only a cook and she was appointed to the post because she was a widow.

7. Considering the facts and circumstances of the case, respondents are directed not to recover any amount and the petitioner may be given the other benefits as per law, considering



her date of retirement as the date on which she was not allowed to work.

8. With the above directions, this writ petition is dismissed.
No costs.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
Social Welfare and Nutritious Meal Programme,
Fort St. George, Chennai.
2. The Principal Accountant General (Accounts and Entitlement)
Tamilnadu, No.361, Anna Salai, Chennai - 600 018.
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4. The Commissioner, Boodalur Panchayat Union, Thanjavur District.
5. The Additional Director, Local Fund Audit, Thanjavur District.

+1 CC to M/s. Special Govt. Pleader (SR-97271[F] dated 11/11/2019)

+1 CC to M/s. P. KALAYARASI BHARATHI, Advocate (SR-97400[F] 11/11/2019)

W.P. (MD) .No.4395 of 2014.
08.11.2019

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