

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.12354 of 2016
(heard through VC)

M.Rajalakshmi

...Petitioner

Vs

1. Union of India
Rep. by the Secretary to Government
Department of Revenue and Disaster Management
Govt. of Union Territory of Puducherry
Puducherry
2. The Deputy Collector
(Revenue cum Sub Division Magistrate)
Karaikal
3. The Tahsildar
Karaikal
4. The Director of School Education
Directorate of School Education
Govt. of Union Territory of Puducherry
Puducherry

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records relating to impugned orders passed by the 2nd respondent dated 29.02.2016, Ref. Nil., and by the 3rd respondent dated 14.01.2016 vide Order No.03/TOK/B2/KKL/2016, quash the same and consequently direct the 2nd and 3rd respondents to issue Nativity/Residence Certificate to the petitioner.

For Petitioner : Ms.Gopika Nambiar
for M/s.Kamala Kumar

For Respondents : Mrs.V.Usha
Addl. Govt. Pleader (Pondicherry)
* * *

O R D E R

The petitioner has sought for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned orders passed by the 2nd respondent in Order No.12637/DRDM/SCR/KKL/2016 dated 29.02.2016 and by the 3rd respondent dated 14.01.2016 vide Order No.03/TOK/B2/KKL/2016, quash the same and consequently for a direction to the respondents 2 and 3 to issue Nativity/Resident Certificate to the petitioner.

2. The petitioner, who has been selected for the post of Primary School Teacher by the fourth respondent, has applied for Nativity/Resident Certificate, to be produced before the fourth respondent. The said application for Nativity/Resident Certificate was rejected on the ground that the petitioner cannot be termed as a resident of Pondicherry (now it is Puducherry), as she does not come under the conditions prescribed in the Government Order.

3. The petitioner has applied for the Primary School Teacher post as per Notification dated 25.09.2015 and was selected under OBC category. Those who were provisionally selected for the said post, were called for certificate verification before the fourth respondent. During certificate verification, among the several certificates in original to be produced, Nativity/Resident certificate issued by an officer of the Department of Revenue and Disaster Management not below the rank of Deputy Tahsildar, also has to be furnished.

4. The petitioner, as per the schedule, was called for certificate verification on 19.12.2015. As per the prospectus, the Nativity/Resident Certificate ought to have been produced by the petitioner, but the third respondent, namely the Tahsildar, Karaikal, had refused to give Nativity/Resident certificate stating that the petitioner was not residing in the address given for the period of five years continuously. Hence the petitioner had sought for further time for the production of the same, which was prejudicial and the rejection order dated 23.10.2015 was challenged by the petitioner before this court in W.P. No.35520/2015. This court had directed the third respondent to consider her request afresh after verification of the documents submitted by the petitioner, by order dated 03.12.2015.

5. After the receipt of the order of this court, the third respondent once again conducted an enquiry during which, the petitioner produced all the documents and explained her nativity. Even then, the third respondent rejected the application for issuance of Nativity Certificate. As appellate

remedy is provided before the second respondent against the order of the third respondent, the petitioner preferred an appeal on 14.01.2016. The petitioner also appeared before the second respondent, namely the Deputy Collector (Revenue cum Sub Division Magistrate), Karaikal and produced all the documents, in proof of her residence on 11.02.2016. However, the second respondent also dismissed her appeal on the ground that the parents of the petitioner are living in Tamil Nadu and that the petitioner was married to one Ramesh Kumar, who is a native of Tamil Nadu. Though the petitioner is admittedly born on 30.08.1987 at Karaikal, Nativity Certificate was refused to her.

6. A counter affidavit is filed by the Tahsildar, Karaikal denying all the averments stated in the affidavit.

7. The question that arises for consideration in this writ petition is, whether the petitioner is eligible to get Nativity/Resident Certificate?

8. The learned Additional Government Pleader (Puducherry) appearing for the respondents, has produced G.O. Ms. No.48 Revenue Department, Pondicherry dated 12.12.2002. As per the said Government Order, the status of nativity in respect any applicant, can be decided either by birth or by continuous residence. Though the petitioner is admittedly born within the Union Territory of Pondicherry, she has claimed nativity by continuous residence. To get the nativity certificate by continuous residence, the applicant should have been residing continuously for five years in the Union Territory of Pondicherry, prior to the date of application.

9. The petitioner had made her application for Nativity Certificate on 15.10.2015, which means she should have had a continuous residence for five years preceding the said date i.e. from 15.10.2010 to 15.10.2015, to establish her continuous residence in the Union Territory of Pondicherry. As the petitioner had applied for Nativity Certificate under the category of continuous residence, she had produced the following documents:

(i) S.S.L.C. Mark Sheet dated 30.05.2003 and the Higher Secondary Course certificate dated 18.05.2005, which would go to show that she has studied and passed out of the schools in Karaikal.

(ii) The petitioner also had registered for employment and her employment Registration Card has been produced. The petitioner seems to have registered on 11.7.2005 in the office of the Sub-Employment Exchange, Karaikal and the same has been periodically renewed and the last of such renewal was done on July 2017. Earlier she had renewed her registration on 27.03.2008, 14.2.2011, 03.07.2014 and 23.10.2015. In fact, the

Registration Card specifically mentions that, if any information/particulars furnished by the applicant turns out to be false subsequently, his/her registration is liable to be cancelled. Therefore, unless the petitioner had a continuous residence within the Union Territory of Pondicherry, from the date of registration, namely 11.07.2005, the renewal of the registration on subsequent years would not have been done.

(iii) That apart, the petitioner also has produced her Family Card containing her name in Sl.No.6, which card bears the address as "7/2, Subbaraya Mudaliar Street, Karaikal".

(iv) The next document filed by the petitioner is the Voter's Identity Card, which was issued to her on 17.07.2012, which is also within the said period of five years.

(v) Aadhar Card issued to the petitioner was also on 13.01.2015, which is prior to the date of her application for Nativity Certificate.

(vi) The petitioner had also filed an additional typed set of papers wherein, she has enclosed the Health Card issued to her, at the time of her pregnancy, which was registered in the year 2011. All the above said documents produced by the petitioner relate to the relevant period between 2010 and 2015.

10. The respondents had rejected her application on the ground that she was married to a resident of Tamil Nadu in the year 2010 and presumed to have shifted her residence to Tamil Nadu. According to the petitioner, the respondents have not conducted proper enquiry nor they have considered the statements and documents in their proper perspective. The petitioner states that, even prior to her marriage with her husband, he had been employed in Dubai and he continues to work there. The petitioner had never lived with her in-laws, as her husband was away in Dubai. Therefore, it is only the presumption that after the marriage, the petitioner could have shifted to her husband's residence. As the petitioner is claiming her Nativity/Resident Certificate, based on the continuous stay in the Union Territory of Pondicherry for five years and not on the ground as nativity by birth, the residence of the parents is in Tamil Nadu, has no significance.

11. Even the Enquiry Report submitted by the Village Administrative Officer dated 28.12.2015 has recorded a finding that the petitioner underwent her schooling and college education only at Karaikal. However, the Village Administrative Officer had stated that, after her marriage in 2010, she had left for Sirkali in Tamil Nadu and she has shifted back to Karaikal only in the month of June 2015 by deleting her husband's name from the family card in Tamil Nadu. Merely because the petitioner got married to a resident of Tamil Nadu, it does not automatically take away her right of residence in Karaikal when she had produced all the documents issued by the

Government of Puducherry, to establish her continuous residence and address in Puducherry.

12. The impugned order dated 29.02.2016 issued by the second respondent has specifically stated that the petitioner was born in Karaikal hospital, whereas her parents were the residents of Sirkali, Tamil Nadu. She studied in Karaikal under the care of her maternal uncle whose current address has been mentioned by her as 7/2, Subbaraya Mudhaliyar Street, Karaikal. The ration card produced by her belongs to Tmt.Ramayi Ammal, grandmother of the petitioner wherein, her name finds a place. Merely because her parents are residing in Tamil Nadu and she is married to a person in Tamil Nadu, the second respondent had presumed that she would have shifted her residence to Tamil Nadu and denied Nativity Certificate to the petitioner. When the government order specifically states that, an applicant should have been residing continuously for five years in the Union Territory prior to the date of application, it does not specify, one has to live with the parents or live on his/her own, etc. For the reason that the petitioner had mentioned her caretaker's name in the Voter ID card, it does not take away the fact that she was not residing in Pondicherry.

13. G.O. Ms. No.48 of Revenue Department, Pondicherry dated 12.02.2002, in fact speaks about nativity by birth wherein, an applicant whoever is born in Union Territory of Pondicherry and ordinarily residing between the period prior to the date of application, is entitled for nativity certificate. The said GO also states that the temporary absence of any person will not be a bar when the said person has got clear intention of residing there permanently for the purpose of obtaining nativity certificate.

14. While so, when the petitioner has established beyond doubt that she has been living in Pondicherry continuously for more than five years prior to the date of her application, which was also substantiated by documents, the second and third respondents have passed the impugned orders, merely on presumptions and surmises, without considering the documents in their proper perspective. In such circumstances, the petitioner having established beyond doubt that she is entitled for Nativity/Residential certificate as per G.O. Ms. No.48 dated 12.12.2002, she is entitled to be issued a certificate of residence by the respondents.

15. In the light of the above discussion, the orders passed by the third respondent in No.03/TOK/B2/2016 dated 14.01.2016, which was upheld by the second respondent in No.12637/DRDM/SCR/KKL/2016 on 29.02.2016, are set aside and the third respondent is directed to issue Nativity Certificate to

the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

16. With the above direction, the writ petition is allowed.
No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Union of India
Department of Revenue and Disaster Management
Govt. of Union Territory of Puducherry
Puducherry
2. The Deputy Collector
(Revenue cum Sub Division Magistrate)
Karaikal
3. The Tahsildar
Karaikal
4. The Director of School Education
Directorate of School Education
Govt. of Union Territory of Puducherry
Puducherry

+1cc to Mr.R.Saravanan, Advocate in Sr.30871

+1cc to the Government Pleader in Sr.30671

सत्यमेव जयते

W.P.No.12354 of 2016

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