

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.23566 OF 2013

P.Rajasekaran

.. Petitioner

- Vs -

1. The Secretary to Government,
Home (Police II) Department,
Fort. St. George, Chennai 600 009.
2. The Principal Commissioner &
Commissioner of Revenue Administration
Chepauk, Chennai 5.
3. The Director General of Police,
Dr Radhakrishnan Salai,
Mylpore, Chennai 4.
4. The Revenue Divisional Officer,
Thanjavur.
5. The District Collector,
Thanjavur.
6. The Superintendent of Police,
Cuddalore.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the respondents to alter the date of birth of the petitioner as 18.1.1957 instead of 16.8.1955 in his service register and permit the petitioner to continue in service till he reaches the age of 58 and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani, SC
for M/S.M.Muthappan

For Respondents: Mr.S.Thangavel, Spl.G.P.

ORDER

The present petition has been filed for a direction to the respondents to alter the date of birth of the petitioner as 18.1.1957 instead of 16.8.1955 in his service register and permit the petitioner to continue in service till he reaches the age of 58 years and grant him all consequential service and monetary benefits.

2. The case of the petitioner is that he entered into service as Gr-II Police Constable in the District Armed Reserve, Cuddalore District through direct recruitment on 15.05.1980. After serving for few years, the petitioner participated in the selection for appointment to the post of Sub Inspector of Police conducted in the year 1984 under the 20% quota for departmental candidates.

2.1. It is the averment of the petitioner that the petitioner's original date of birth is 18.01.1957. However, due to the illiteracy of the parents of the petitioner, his date of birth has been wrongly entered in the school records and also in his SSLC mark sheet as 16.08.1955. After joining the service as Police Constable, the petitioner noticed the error in the date of birth entered in the school certificate, which was given as a document relating to date of birth at the time of joining the service and, therefore, the petitioner submitted a representation dated 13.11.1984, specifically mentioning that his date of birth was wrongly mentioned in the SSLC certificate book, which has been entered in the service register and requested that necessary enquires may kindly be made through the revenue authorities as contemplated under service rules and necessary alteration of his birth date be made in the service register. The petitioner filed the above representation along with all the necessary documents within the prescribed period of five years from the date of his appointment.

2.2. It is the further averment of the petitioner that though he made a representation to alter his date of birth as 18.07.1957 instead of 16.08.1955 as entered in his service register, which was forwarded to the competent authorities, however, no orders were passed till date by the respondents. In fact, the petitioner filed application under the RTI Act to know about the status of his representation made as early as in the year 1984 for which also there was no response. The grievance of the petitioner is that though he is due to reach his superannuation on 31.08.2013, on the basis of the wrong entry of date of birth, which has not been corrected based on his representation, which has been filed within the prescribed time, the present petition has been filed.

3. Learned counsel appearing for the petitioner, while reiterating the points raised in the grounds, submitted that the application for alteration of date of birth has been filed within the prescribed time as mandated u/s 49 (A) on which no action has been taken by the respondents. The inaction on the part of the respondents cannot be put against the petitioner to his detriment and, therefore, he should be granted all the benefits to which he is duly entitled to considering his application and altering his date of birth in the service records.

4. Per contra, learned Special Government Pleader appearing for the respondents submit that though the petitioner has submitted his application well within the prescribed time of five years from the date of his appointment, however, diligent efforts have not been made by the petitioner to pursue the said request except the initial representation for alteration of date of birth on 13.11.1984. Almost for three decades the petitioner has kept silent without pursuing the matter diligently and at the fag end of his career, just a fortnight before the date of his superannuation, he has come before this Court by filing the present writ petition. It is the vehement submission of the learned Special Government Pleader that the above act of the petitioner clearly demonstrates the laches and, therefore, this petition deserves to be dismissed on the ground of delay and laches in approaching this Court. He further submits that the initial entry made in the service book, while the petitioner was appointed as police constable, his date of birth was entered in the service book on the basis of the declaration made by him. It is the further submission of the learned Special Government Pleader that the petitioner has given a declaration in the application form, while entering the service, declaring his date of birth on the basis of the school records. Though the petitioner has produced documents relating to his siblings, that will not in any way be beneficial to fix the date of birth of the petitioner. In the absence of proper proof showing his date of birth, alteration of the date of birth in the service records having not been carried out cannot be said to be bad and, therefore, the petition deserves to be dismissed.

5. This Court paid its undivided attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

6. The facts in issue are not in dispute. The factum of the petitioner filing the representation within the prescribed time as mandated u/s 49 (A) is not in dispute. A perusal of the typed set of documents reveal that the petitioner was appointed on 15.5.1980 and he has given the representation for alteration of date of birth on 13.11.1984. The said application is well

within the time prescribed for requisition of alteration of date of birth. However, the curious thing to be noted in the present case here is that except for the certain birth certificates, alleged to be that of his siblings, no other documentary proof to establish the date of birth of the petitioner has been placed before the respondents. Further, it is to be pointed out that while the representation at the earliest point of time has been filed on 13.11.1984, however, the birth extract of the siblings of the petitioner has been filed on 20.7.99 and 21.7.99. A perusal of the birth extracts of the siblings of the petitioner reveals that the said birth extracts were obtained only in March, 1999, which is almost after fifteen years from the date of submission of the application for alteration of date of birth. Further, a perusal of the birth extracts annexed in the typed set of documents does not reveal the name of the child, rather it merely reveals that it pertains to male and female children. This Court is at a loss to understand as to the basis on which these documents could be relied on to establish the date of birth of the petitioner. In the absence of the name of the child in the birth extract, mere submission of the same after a decade and half from the date of filing the application for alteration of date of birth would in no way advance the case of the petitioner.

7. Further, it is to be pointed out that after submitting the application for alteration of date of birth in the year 1984, the petitioner kept silent and has come before this Court only before a fortnight before his date of superannuation. There is no explanation in the affidavit filed by the petitioner to explain the reason for the enormous delay in approaching this Court at the fag end of his tenure. The delay in filing the petition seeking the relief stares on the face of the record and the laches in the petitioner not producing the requisite materials to establish his case for alteration of date of birth only leads this Court to hold that the relief sought for by the petitioner cannot be granted.

8. Merely because the petitioner has filed his application for alteration of date of birth well within the prescribed time mandated u/s 49 (A) alone would not suffice to hold that the petitioner is entitled to the prayer sought for. The petitioner has to show his bona fides in prosecuting his case diligently and in the case on hand, the delay, which has been stated above, clearly goes to show that the petitioner was not only lethargic in not prosecuting his representation, but has also come before this Court belatedly without any explanation for such an act. Such being the case, this Court is of the considered view that the relief sought for by the petitioner cannot be acceded to.

9. However, one thing that needs to be pointed out here is that the respondents too have accepted that the application has been filed by the petitioner for alteration of date of birth in May, 1984. However, the reason for not passing any order on the said application of the petitioner by the respondents till the date of his superannuation stares writ large on the face of the respondents, which only goes to show that all is not well with the respondents. To put it evenly, once a representation for a relief is filed, the respondents are duty bound to act on the same and pass an order on the same in accordance with law and it is not open to them to sit over the matter for a length of time and, thereafter, come before this Court and claim of delay on the part of the person, who has sought the relief. This Court, in the fervent hope, that such act would not be carried on by the respondents in future, refrains from further amplifying this matter.

10. For the reasons aforesaid, this Court is of the considered opinion that the relief sought for by the petitioner cannot be granted and, accordingly, the writ petition fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Secretary to Government,
Home (Police II) Department,
Fort. St. George, Chennai 600 009.
2. The Principal Commissioner &
Commissioner of Revenue Administration
Chepauk, Chennai 5.
3. The Director General of Police,
Dr Radhakrishnan Salai,
Mylpore, Chennai 4.

4.The Revenue Divisional Officer,
Thanjavur.

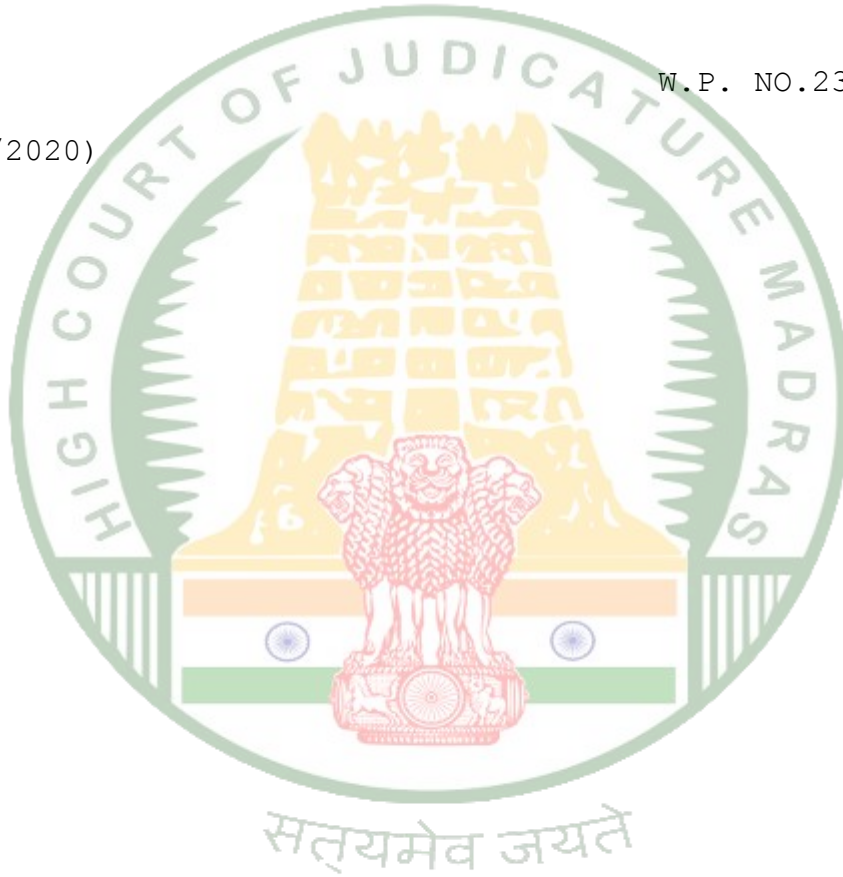
5.The District Collector,
Thanjavur.

6.The Superintendent of Police,
Cuddalore.

+1 cc to M/s.M.Muthappan, Advocate Sr.No. 32315
+1 cc to The Government Pleader, Sr.No. 32663

W.P. NO.23566 OF 2013

PPA (CO)
RMP (04/11/2020)



WEB COPY