

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.14137 of 2019
and W.M.P.No.14196 of 2019

S.Shanthi .. Petitioner

-vs-

1.The Principal District Judge,
Salem.

2.The Chief Secretary to Government,
Personnel and Administrative Reforms (S)
Dept., Secretariat, Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent in A.No.../A/2019 dated 27.04.2019 and quash the same, consequentially issue direction directing the 1st respondent to restore the petitioner service with all backwages and attended benefits right from 27.04.2019.

For Petitioner : Mr.Marudhachalamurthy

For Respondents : Mr.V.Vijayashankar for R-1

: Ms.R.J.Radhika
Govt. Advocate for R-2

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ORDER

(Order of the Court was made by Subramonium Prasad, J.)

The writ petitioner has challenged the order dated 27.04.2019 passed by the learned Principal District Judge, Salem, discharging the petitioner from service.

2.The petitioner was appointed as a Senior Bailiff on compassionate basis on the death of her husband. The petitioner, at the time of appointment, produced her Secondary School Leaving Certificate, wherein her date of birth was recorded as 05.05.1967. After securing appointment, the petitioner submitted an application on 11.10.2018 with a photocopy of a birth certificate dated 07.03.2018 issued by the Salem Municipal Corporation, requesting to alter her date of birth in the service record as 09.04.1969 on that basis. This application for alteration of date of birth in the service record was rejected vide order dated 01.02.2019 for the simple reason that if 09.04.1969 was taken as the date of birth, the petitioner at the time of taking her 10th Std. examination would be 13 years and 10 months, which is below the minimum age limit fixed by the Education Department. While passing the said order, the learned Principal District Judge relied on a letter dated 18.07.2018 bearing No.14914/S2/2018-1, which was issued on the basis of a High Court judgment in W.P.No.17792 of 2004 dated 11.07.2017, wherein the Court has observed as follows:-

"The Chief Secretary to Government is directed to issue a circular to all the Government Department by enclosing a copy of this judgment and ensure that an employee seeking alteration of date of birth is eligible to take up SSLC examination date on his/her correct date of birth."

3.On the basis of the aforesaid Government letter, vide the impugned order, the petitioner was removed from service on the ground that if the date of birth given by her was 09.04.1969, she would not have completed 15 years of age on the date she took up the 10th Std. examination and therefore, she was not entitled to continue in service. It is this order which has been assailed in the instant writ petition.

4.Learned counsel for the petitioner states that the letter dated 18.07.2018 has not been appreciated by the learned Principal District Judge in the correct perspective. He would argue that what the letter states is that if the date of birth of the employee on the date on which the employee takes up his/her 10th Std. examination is such that because of which the employee would not have completed 15 years on the date he or she takes her 10th Std. examination, then the said employee cannot be permitted to continue in service. In the present case, the petitioner's date of birth as recorded in the 10th Std. certificate is 05.05.1967 and the petitioner had completed 15 years of age when she took up the 10th Std. examination in the year 1983. The petitioner had, therefore, completed 15 years of age on the date she took up the 10th Std. examination. The petitioner's date of birth had not been altered, as her application seeking change had already been rejected.

5.We find force in the submission raised by the learned counsel for the petitioner. The petitioner's date of birth as recorded in the 10th Std. certificate is 05.05.1967. She had therefore completed 15 years in the year 1983 when she took up the 10th Std. examination. The Government letter dated 18.07.2018 is clearly not applicable to the case of the petitioner. The entire problem arose in the instant case when the petitioner attempted to get her date of birth altered from 05.05.1967 to 09.04.1969 by producing a certificate issued by the Salem Municipal Corporation. The petitioner, therefore, voluntarily tried to pull a fast one by trying to get two years extra service by altering her date of birth. As you make your bed, so you must lie on it. The consequences are, if the staff be crooked, the shadow cannot be straight. The gamble with a second set of date of birth was like running after two hares with no hope to catch either. Since the petitioner has been appointed on compassionate basis, we are ignoring the conduct of the petitioner, who tried to get two years of extra service by producing a certificate which would have ultimately proved to her detriment. We caution the petitioner to be careful in future.

6.In view of the above, we set aside the order dated 27.04.2019 of the learned Principal District Judge, discharging the petitioner from service and reinstate her. However, we order that the petitioner would not be entitled to any backwages. The writ petition is allowed in part. No costs. Consequently, W.M.P.No.14196 of 2019 is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sra
To

1.The Principal District Judge,Salem.

2.The Chief Secretary to Government,
Personnel and Administrative Reforms (S)
Dept., Secretariat, Chennai 600 009.

Copy to :

The Registrar General
High Court,Madras.

+1cc to Mr.V.Vijayashankar , Advocate SR.No. 4212

+1cc to Mr.R.Marudhacilalmurthy , Advocate SR.No. 4403

+1 cc to Government Pleader Sr.No. 4398

W.P.No.14137 of 2019

A.SK(06/02/2020)