

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.14645 of 2020

D.Santhoshkumar

...Petitioner

Vs.

1 The Director of School Education
No.17, DPI Campus, College Road
Nungambakkam, Chennai 600 034

2 The District Education Officer
Villupuram District
Moovendar Nagar
Villupuram 605 602

3 The Head Master
Government Higher Secondary School
Pudukuppam, Tindivanam
Villupuram District 605 501.

...Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents herein to dispose of the petitioner's representation dated 19.03.2020 and 07.09.2020 and consequently, direct the 2nd respondent to carry out necessary alteration in the date of birth as per the original birth certificate of the petitioner within a time frame as fixed by this Hon'ble Court.

For Petitioner : Mr.R.Abdul Mubeen
for Mr.K.Ezhumalai

For Respondents: Ms.P.Kavitha
Government Advocate

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the respondents to consider the representation made by the petitioner on 19.03.2020 and 07.09.2020, wherein the petitioner has requested the second

respondent to carry out necessary correction in the date of birth as per the original birth certificate and issue fresh X standard and XII Standard mark sheets.

2. The case of the petitioner is that he was born on 28.04.2020. In order to substantiate the said claim, a birth certificate has been filed, which was issued by the concerned authority belonging to the Pondicherry Municipality. The petitioner completed X standard in the year 2014 and XII standard in the year 2017 in the third respondent school. When the petitioner verified the school certificates, he found that his date of birth has been wrongly entered as 28.04.1999. The petitioner, therefore, made a representation before the respondents on 19.03.2020 requesting for incorporating the correct date of birth in the mark sheets and other certificates. Since the same was not considered, this Writ Petition has been filed before this Court seeking for appropriate directions.

3. The learned counsel submitted that the issue involved in the present Writ Petition is squarely covered by the earlier orders passed by this Court in W.P.No.23716 of 2014 dated 03.03.2015 and W.P.No.6026 of 2020 dated 10.03.2020. The learned counsel by relying upon these two orders submitted that the respondents will have to carry out necessary changes in the certificates relying upon the birth certificate of the petitioner and the petitioner must be issued fresh certificates by incorporating the correct date of birth.

4. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the representation made by the petitioner is under consideration. The learned counsel further submitted that as a first step, the respondents will have to satisfy themselves with regard to the genuineness of the birth certificate submitted by the petitioner. Steps have already been taken to verify the genuineness of the certificate submitted by the petitioner. The learned counsel further submitted that once the genuineness of the certificate is satisfied, the representation made by the petitioner will be considered strictly in accordance with law.

5. This Court has carefully considered the submissions made on either side and perused the materials available on record.

6. As rightly contended by the learned Government Advocate, the respondents will have to necessarily test the genuineness of the birth certificate submitted by the petitioner. This is the preliminary test that is required even to consider the representation made by the petitioner. Once the respondents are satisfied with the genuineness of the birth

certificate submitted by the petitioner, thereafter they have to proceed further in line with the directions issued in the earlier orders passed by this Court, which has been referred supra.

7. The relevant portions in the order passed by this Court in W.P.No.6026 of 2020 dated 10.03.2020 is extracted hereunder:-

"3.When the matter was taken up for admission, this Court questioned the learned counsel for the petitioner as to how the respondents can make such corrections after the course is completed. In reply to the same, the learned counsel brought to the notice of this Court a series of judgments passed by this Court on the same issue, wherein, this Court had directed the correction of date of birth. The learned counsel specifically relied upon the judgment of this Court in W.P.No.23716 of 2014 dated 03.03.2015. The relevant portions in the judgment are extracted hereunder: 5.The very same issue came up for consideration before this Court in W.P.(MD) No.9340 of 2009 dated 18.09.2012. An identical prayer was made to rectify the date of birth in the petitioner's service records. The respondent Government took a stand that in view of Rule 5 of the Tamil Nadu Secondary School Certificate Rules, the request for correction of date of birth cannot be considered after the pupil have left the school. This Court after elaborately considered the Government Orders and taking note of other decisions on the point, allowed the Writ Petition and directed the respondent to consider the birth extracts and other records of the petitioner while considering his representation and making necessary changes in the date of birth as in the Secondary Grade School Leaving Certificate and Higher Secondary Grade School Leaving Certificate and other certificates. The petitioner therein was given liberty to make representation to the respondents along with the copy of the order. At this stage it would be beneficial to refer to the operative portion of the order.

"27.The Tamil Nadu Registration of Births and Deaths Rules, 2000 have come into force with effect from 01.01.2000. Rule 11, deals with the correction or cancellation of entry in the register of births and deaths under Section 15 and that the same is extracted hereunder:

"11.Correction or cancellation of

entry in the register of births and deaths under Section 15:(1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall in the case of local authorities specified in column (1) of the Table below, send an extract of the entry showing the error and how it has been corrected to the officer specified in column (2) thereof.

Local Authorities

(1) Officers

(2)	Village Panchayat	Panchayat	Village Panchayat
	President	Town	Panchayat
	Executive Officer	Cantonment	Executive Officer
	Municipality		Commissioner
	Corporation	Commissioner	Neyveli Lignite Corporation
	Chief Health Officer	(2)	In the case referred to in sub-rule(1), if the register is not in his possession, the Registrar shall make a report to the officer specified in the Table in sub-rule (1) and call for the relevant register and after enquiring into the matter, if he is satisfied that such error has been made make necessary correction.

(3) Any such correction as mentioned in sub rule(2) shall be countersigned by the officer specified in the Table in sub-rule (1) in this behalf when the register is received from the Registrar.

(4) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under Section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons

having knowledge of the facts of the case.

(5) Notwithstanding anything contained in sub-rules (1) and (4), the Registrar shall make a report of any correction of the kind referred to therein giving necessary details to the officer specified in the Table in sub-rule(1)

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under Section 25 and on hearing from him take necessary action in the matter.

(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9".

28. Reading of the statutory provisions makes it clear that the Act provides for correction or cancellation of entry in the register of births and deaths. The decision relied on by the respondents in their counter affidavit rendered in W.P.No.4244 of 1965, dated 26.10.1965 and reported in 1966 MLJ 80, is prior to the introduction of Registration of Births and Deaths Act, 1969 and the rules framed thereunder.

29. Subsidiary Rule 5 of the Secondary School Leaving Certificate scheme, relied on by the respondents to contend that the application for alteration in the date of birth will not be entertained after a pupil had completed his course or appeared for the S.S.L.C public examination also is much earlier to the advent of the Registration of Births and Deaths Act, 1969 and the rules framed thereunder. Needless to say that the provisions of any Central Act, will prevail over the State Act or the rules or regulations, framed by the latter, on the same subject. When the statutory provisions stated

supra, enable the competent authorities under the Registration of Births and Deaths Act, 1969, to make correction or cancellation as the case may be, the contention of the respondents that no alteration is permissible in the school records, after the student leaves the secondary education cannot be countenanced.

30. As stated supra, as per the birth certificate issued by the Sub Registrar, Thiruvattar enclosed in the typed set of papers, the name of the child entered in the said certificate is S.Rajesh Kumar. The date of birth has been shown as 19.01.1975. When the statute provides for correction or cancellation of an entry in the register of births and deaths maintained by the Sub Registrar after coming into force of the Act, the said certificate can be relied on for making necessary changes in public records which includes the records maintained in the office of the Director of Government Examinations, Chennai. The contention of the respondents that the said correction can be made only before the student leaves the school and not later, cannot be accepted for the reason that any entry in the birth certificate by virtue of registration or alteration or cancellation by the competent authority under the Registration of Births and Deaths Act, 1969, has to be given effect to otherwise, the purpose for registration or alteration or modification would be defeated. There cannot be different entries in the public records maintained by different authorities, one under the Registration of Births and Deaths Act, 1969 and the other by the educational authorities. The date of birth as entered in the birth extract has to be entered in all the public records uniformly, unless and until any statutory rules, restrict such entry, like in the case of a Government servant, governed by the Tamil Nadu State and Subordinate Services Rules. In the light of the above discussion, this Court is not inclined to accept the objections of the educational authorities made on the basis of the Subsidiary rules framed before the introduction of the Central Act, 1969.

31. In the light of the decision made in W.P.No.9800 of 2009, dated 21.10.2009 in R.Deepak Vs.The Chairman Tamil Nadu Uniform Service Recruitment Board, Chennai and two

others, the certificate issued by the competent authority under Registration of Births and Deaths Act, 1969, and other supporting documents relied on by the present writ petitioner has to be considered.

32. For the foregoing reasons, the writ petition is allowed. There shall be a direction to the respondents to consider the birth extract and other evidence produced by the petitioner while considering his representation, dated 03.09.2009 and make necessary changes, in the date of birth as 19.01.1975 in the Secondary School Leaving Certificate and the Higher Secondary Course and other certificates. The petitioner is at liberty to make a representation to the respondents along with a copy of this order and that he shall produce the original certificates for making necessary corrections. No costs.

6. The decision referred supra is squarely applicable to the facts of the case on hand and in the instant case, the only ground for rejection is that the petitioner cannot seek for alteration of School Certificates after he has completed the studies. Since similar issue has already been decided by this Court, this Writ Petition has to be necessarily allowed.

4. The learned Government Advocate appearing on behalf of the respondents submitted that Rule 5 of the Tamil Nadu Secondary School Certificate Rules prohibits such alteration of date of birth after the candidate leaves the school and therefore, it will be beyond the jurisdiction of the respondents to make such corrections in the School Leaving Certificate.

5. The objections that have been raised by the learned Government Advocate, have been answered in the judgment that has been cited supra. Apart from the above judgment, this Court is taking a very consistent view that, after coming into the force of the Tamil Nadu Registration of Births and Deaths Rules, 2000 w.e.f. 01.01.2000, such corrections can be carried out in the school records when they are found to be in variance with the birth certificate issued by the competent authority. "

8. In view of the above discussion, there shall be a

direction to the second respondent to complete the preliminary enquiry and submit a report before the first respondent within a period of four weeks from the date of receipt of a copy of this order. The first respondent, on receipt of the report from the second respondent, shall take necessary action in line with the earlier directions issued by this Court, within a period of six weeks thereafter.

9. This Writ Petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra

To

1 The Director of School Education
No.17, DPI Campus, College Road
Nungambakkam, Chennai 600 034

2 The District Education Officer
Villupuram District
Moovendar Nagar
Villupuram 605 602

+lcc to Mr.K.Ezhumalai, Advocate, S.R.No.35105
+lcc to the Government Pleader, S.R.No.35213

W.P.No.14645 of 2020

SRA(CO)
CS/18/11/2020