

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.02.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.35792 of 2019
and WMP No.36686 of 2019

P.Muthiah
B.T.Assistant (Maths), Govt. High School,
Thethur, Trichy District ... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai 9.
2. The Principal Secretary & Commissioner
for Revenue Administration
Chepauk, Chennai 5.
3. The Director of School Education,
DPI Compound, College Road,
Chennai 6.
4. The Joint Director (School Education),
DPI Compound, College Road,
Chennai 6.
5. The Chief Educational Officer,
Karur Post and District.
6. The Chief Educational Officer,
Trichy.
7. The Head Master, Govt. High School,
Thethur Post, Trichy District.
8. The Head Master, Govt. High School,
G.Udaiyarpatty, Karur District. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the fourth respondent dated 12.02.2019 issued in Na Ka No.109695/C3/E2/2010 and quash the same and consequently to direct the second and fourth respondent to consider and dispose the application of the petitioner dated 09.06.2019 on merits within the stipulated time as per Sec. 49

(a) of Tamil Nadu State and Sub-ordinate Service Rules 1955 and in terms of final order dated 27.11.2018 passed by this Court in 12835 of 2018 and to grant all consequential service and monetary benefits to the petitioner from the date of his entitlement.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mrs. V.Annalakshmi
Government Advocate for RR1, 3 to 8

Mr.P.S.Sivashanmugasundaram
Special Govt. Pleader for R2

O R D E R

This Writ petition has been filed challenging the proceedings of the fourth respondent dated 12.02.2019 and for a consequential direction to the second and fourth respondents to dispose of the application given by the petitioner seeking for alteration of date of birth.

2. The case of the petitioner is that he was appointed as B.T.Assistant (Maths) by the proceedings of the fourth respondent. The petitioner submitted an application for alteration of date of birth through proper channel on 09.06.2010, well within the time prescribed by the Rules. The same was forwarded to the second respondent and the same was returned by the second respondent on the ground that no original seal was found in the application. After the same was returned, the fourth respondent did not take any action and kept the files in the office. Therefore, the petitioner filed WP No.4185 of 2018 seeking for appropriate directions. This Court by an order dated 26.02.2018, directed the fourth respondent to consider and pass appropriate orders on the application given by the petitioner within a period of four weeks and also further directed the report of the second respondent to be placed before the Competent Authority. Pursuant to the orders passed by this Court, the fourth respondent again rejected the application by proceedings dated 08.05.2018.

3. The petitioner again approached this Court and filed WP No.12835 of 2018 and this Court by an order dated 27.11.2018, quashed the proceedings of the fourth respondent. The relevant portions in the order are extracted hereunder:

"4. It is the claim of the department
<https://hcservices.ecourts.gov.in/hcservices> the original application did not contain the

office seal and, therefore, the application of the petitioner for correction of date of birth was rejected. Affixing of office seal is the responsibility of the concerned office and not the responsibility of the petitioner.

5. However, to ascertain the veracity of the submissions and the date of filing of the petition, this Court directed the respondents to produce the record. Pursuant to the order passed by this Court, the records were produced, relating to the various communications between the various respondents. A perusal of the file reveals that the main reason for rejection of the application stems from the non-affixature of seal in the original application submitted by the petitioner. Lapse on the part of the concerned authority in not affixing the seal on the original application cannot be put against the petitioner to defeat his legitimate claim. In such circumstances, the proceedings of the 4th respondent rejecting the claim of the petitioner is hereby liable to be set aside.

6. Accordingly, the impugned order passed by the 4th respondent is set aside. The writ petition is disposed of directing respondents 2 to 4 to process the application of the petitioner and pass final orders on the application of the petitioner dated 9.6.2010 on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order without insisting for office seal to be affixed on the original application of the petitioner. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs."

4. After the above orders were passed, the fourth respondent has again rejected the application made by the petitioner and aggrieved by the same, the present Writ Petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that under Rule 49(a) of the Tamil Nadu State and Sub-ordinate Service Rule, 1955, the fourth respondent can dispose of the application only after getting a report from the Revenue Department, who is the second respondent herein. However, the fourth respondent has proceeded to dispose of the application even without a report from the second respondent and the same is in violation of the Rules.

6. The learned counsel further submitted that due to the wrong date of birth that was entered, the petitioner was forced to retire from service on 31.05.2018. The learned counsel submitted that this Court specifically directed the fourth respondent to act in accordance with Rules and get the report from the second respondent and thereafter pass the orders and even without getting a report, the present impugned order has been passed by the fourth respondent.

7. The learned counsel therefore submitted that the impugned order passed by the fourth respondent requires interference of this Court and the second respondent has already completed the enquiry and therefore, the fourth respondent must be directed to get the report from the second respondent and thereafter pass necessary orders in the application filed by the petitioner.

8. Per contra, Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the fourth respondent will get the necessary report from the second respondent and thereafter will proceed to consider the application made by the petitioner and orders will be passed within a time stipulated by this Court.

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

10. On going through the records and after considering the submissions made on either side, it is seen that the fourth respondent has not acted in accordance with Rule 49(a) of the Tamil Nadu State and Subordinate Service Rule. The fourth respondent was supposed to get a report from the Revenue Department and based on the report, the fourth respondent ought to have considered the application made by the petitioner seeking for alteration of date of birth. This was indicated even in the earlier order passed by this Court. However, the fourth respondent has committed the same mistake and he has independently considered the application without the report of the second respondent. Therefore, the impugned order passed by the fourth respondent has to be interfered on this ground alone. It is brought to the notice of this Court that the second respondent has already conducted the enquiry and directions are issued by this Court to the second respondent who will forward the report to the fourth respondent and thereafter, the fourth respondent can pass appropriate orders on the application made by the petitioner.

Na.Ka.No.109695/C3/E2/2010 dated 12.02.2019 is hereby quashed. There shall be a direction to the second respondent to forward the report on the enquiry that was conducted by him based on the request made by the fourth respondent, within a period of four weeks from the date of receipt of copy of this order. On receipt of the report, the fourth respondent shall consider the application made by the petitioner along with the report given by the second respondent and shall pass appropriate orders within a period of four weeks thereafter.

12. In the result, this Writ Petition is allowed with the above directions. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
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Fort St. George, Chennai 9.
 2. The Principal Secretary & Commissioner
for Revenue Administration
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 3. The Director of School Education,
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Thethur Post, Trichy District.
 8. The Head Master, Govt. High School,
G.Udaiyarpatty, Karur District.
- +1cc to Mr.P.I.Thirumoorthy , Advocate SR.No. 11104
+1 cc to Government Pleader Sr.No. 11828

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