



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD)No.13078 of 2019

and

W.M.P. (MD)No.9757 & 9758 of 2019

WEB COPY

Dr.C.Arul Theresa,
Assistant Professor,
Government Arts and Science College,
Veerapandi,
Theni District.

... Petitioner

/vs./

1.The Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St.George,
Chennai - 9.

2.The Director of Collegiate Education,
Office of the Director of Collegiate Education,
9th Floor, EVK Sampath Buildings,
College Road, Chennai - 600 006.

3.The Principal,
Government Arts and Science College,
Veerapandi - 625534, Theni District.

4.The Director of School Education,
DPI Compound, College Road,
Egmore, Chennai - 600 006.

... Respondents

[R-4 is impleaded vide order dated 30.07.2019, made in W.M.P. (MD) No.13340 of 2019 in W.P. (MD)No.13078 of 2019]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein in his proceedings in Na.Ka.No.21/A/2019, dated 31.05.2019 and quash the same and consequently direct the respondents herein to permit the petitioner to work as per amended date of birth ie., 24.01.1962 as per S.S.L.C., Certificate.

For Petitioner : Ms.K.Hema Karthikeyan

For Respondents : Mr.M.Karuppasamy
Government Advocate



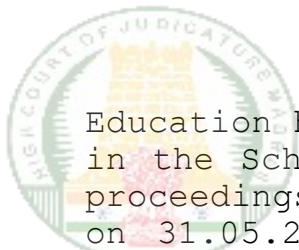
ORDER

The petitioner, who possesses P.G., degree in M.A., (English), M.Phil in Madurai Kamaraj University and Doctorate (Ph.D) in Annai Theresa Women's University, Kodaikanal, was appointed as 'Assistant Professor' in the third respondent College on 24.02.2011. According to the petitioner, her correct date of birth as referred in the birth certificate issued by the Department of Municipal Administration & Water Supply, is 24.01.1962. Since her date of birth was mistakenly entered in the School records as 25.01.1961 instead of 24.01.1962, she had given a request for alteration on 02.12.2015. By proceedings of the Director of School Education, dated 24.05.2019, the petitioner's date of birth was altered from 25.01.1961 to 24.01.1962 in her School records. Since the petitioner was due to retire on 31.05.2019, she had immediately given a representation on 27.05.2019 to the Directorate of College Education to have her date of birth rectified as per the amended SSLC mark sheet. However, without reference to the same, the impugned order dated 31.05.2019 came to be passed relieving the petitioner and retiring with effect from 31.05.2019.

2. The learned counsel for the petitioner would submit that since the birth certificate of the petitioner, which was registered on 07.02.1962 with registration No.82/1962/01, issued by the Government of TamilNadu evidences that her date of birth was 24.01.1962, which has been correctly taken into account by the School Education Department and the date of birth in the School records was also rectified as '24.01.1962' from 25.01.1961, the petitioner would be entitled to continue her employment till 31.05.2020 in view of her original date of birth.

3. The learned Government Advocate would place reliance on the statement made in the counter affidavit and submit that the petitioner had not approached the authorities at the earliest point of time and therefore, she is not entitled to the relief which she seeks for. According to the learned Government Advocate, rectification of the School records alone would not be sufficient and the change in the school records was brought to their notice only after 24.05.2019 and therefore, they had also written a letter to the Director of School Education seeking for clarifications through their letter dated 29.10.2018.

4. The registration of the petitioner's date of birth, as per the birth certificate maintained by the Department of Municipal Administration & Water Supply, Government of Tamilnadu, evidences the petitioner's date of birth as 24.01.1962. The said birth has been registered wayback on 07.02.1962 itself and this fact is not disputed. Apparently, by taking note of the Government certificate as well as other supporting documents, the Department of School



Education had thought it fit to alter the petitioner's date of birth in the School records from 25.01.1961 to 24.01.1962, through their proceedings dated 24.05.2019. Since the petitioner was due to retire on 31.05.2019 as per the old date of birth, she had immediately approached the Directorate of College Education on 27.05.2019 itself, (ie.), just after three days after the School records were altered by the Department of School Education. The counter affidavit evidences that the petitioner's representation was acted upon only on 29.10.2019, which is after more than five months, by which time, the petitioner had reached the age of superannuation as per her old date of birth. Had the Department of College Education acted in time, it would have saved the petitioner from being retained in the post and her service records could have also been altered on par with the School records.

5. The stand taken by the Government in the counter affidavit that the petitioner had waited till the last fag end of her retirement for seeking alteration cannot be accepted for the reason that she had joined in service on 24.02.2011 and within a period of five years, she had made an application to the respondents seeking for alteration of her date of birth and when the application was not acted upon, the petitioner had filed W.P.(MD)No.25076 of 2018 and this Court, by order dated 20.12.2018 had observed as follows:

'The grievance of the petitioner is that her request for change of date of birth based on a birth certificate has been pending for more than two years

2.From the communication dated 26.11.2018 issued by the Principal, Government Art and Science college, Veerapandi, Theni District, it is seen that the proposal is pending before the first respondent. In view of the same, the first respondent is directed to consider the claim of the petitioner for change of date of birth, within a period of six weeks from the date of receipt of a copy of this order. In case, the Director of Collegiate Education, namely, first respondent decides that the request of the petitioner can be accepted, he shall forward the same to the Director of School Education, namely second respondent immediately. On receipt of the same, the second respondent will dispose of the application for correction of the Secondary School Leaving certificate, within a period of six weeks from the date of receipt of the proceedings from the first respondent. If any charges are payable for carry out the correction, the petitioner shall pay the same.'

6. While passing the above order, this Court had also taken into account the fact that the proposal was pending before the



Directorate of College Education and accordingly, directed them to forward the request to the School Education Department. Though the said order came to be passed on 20.12.2018, the Directorate of College Education had chosen to approach the Directorate of School Education only on 29.10.2019. When the petitioner had made a request within a period of five years to the authorities to have her date of birth rectified and such a step taken by the petitioner has also been ratified through orders of this Court, the respondents are not justified in taking the stand that the petitioner had approached this Court belatedly. Therefore, there is no illegality on the part of the petitioner in having made the application seeking for rectification of her date of birth within five years and as a matter of fact, the same is also permissible as per the regulations.

7. Since the request before the first respondent herein was pending even prior to the petitioner reaching her age of superannuation as per her old date of birth, it can only be held that the petitioner was denied with employment after 31.05.2019 and therefore, the impugned order passed by the third respondent cannot be sustained.

8. Likewise, the lapse on the part of the respondents in acting on the request of the petitioner to have her date of birth altered in her service records should not be put against the petitioner and therefore, she would be entitled for all the monetary and service benefits from 31.05.2019 to 31.05.2020, which would be her date of superannuation as per her rectified date of birth namely 24.01.1962. It is needless to point out that the petitioner would be entitled to continue to act as 'Assistant Professor' till 31.05.2020.

9. For all the foregoing reasons, the impugned order of the 3rd respondent herein in his proceedings in Na.Ka.No.21/A/2019, dated 31.05.2019 stands quashed. Consequently, the respondents herein shall alter the petitioner's date of birth from 25.01.1961 to 24.01.1962 in the petitioner's service records and consequently permit her to continue as 'Assistant Professor' in the third respondent College till 31.05.2020 and also disburse the unpaid salaries from 31.05.2019. Such disbursal shall be made atleast within a period of eight (8) weeks from the date of receipt of a copy of this order. This Writ Petition stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Cr1.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Secretary to Government, State of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St.George, Chennai - 9.

2.The Director of Collegiate Education,
Office of the Director of Collegiate Education,
9th Floor, EVK Sampath Buildings,
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3.The Principal, Government Arts and Science College,
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4.The Director of School Education,
DPI Compound, College Road,
Egmore, Chennai - 600 006.

+1 CC to M/s.SPL.GP (SR-2135[F] dated 21/01/2020)

+1 CC to M/s.K.HEMAKARTHIK, Advocate (SR-2209[F] dated 21/01/2020)

SMA/03/02/2020/5P/7C

Order made in
W.P.(MD)No.13078 of 2019
Dated:20.01.2020