

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.825 of 2021
and
W.M.P.No.890 of 2021
(Heard through VC)

P.Gnanasambandam ... Petitioner

-vs-

- 1.The Director of School Education,
Chennai - 600 006.
- 2.The Chief Educational Officer,
Thiruvannamalai.
- 3.The District Educational Officer,
Thiruvannamalai.
- 4.The Head Master,
Government Boys Higher Secondary School,
Desur,
Thiruvannamalai District. .. Respondents

Prayer:Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari Mandamus calling for the records of the 2nd respondent in O.Mu.No.10614/B4/05 dated 14/12/2005 to quash the same and to issue consequential directions to the respondents to consider the claim of the petitioner for alteration of his date of birth as 07/06/1964 instated of 02/06/1961 in the service records and permit him to continue in service upto August 2022 as B.T. Assistant, with continuity of service and back wages.

For Petitioner : Mr.Balan Haridoss
For Mr.J.Muthukumaran

For Respondents : Mr.P.Raja
Government Advocate

O R D E R

The petitioner has come forward with the present writ petition challenging the order passed by the second respondent in O.Mu.No.10614/B4/05 dated 14.12.2005 and for consequential directions.

2. The facts leading to filing of this writ petition are as follows:

2.1. The petitioner joined service as Secondary Grade Teacher on 20.12.2000. Since, his date of birth had been wrongly entered as 02.06.1961 in his service records instead of his actual date of birth i.e. 07.06.1964, the petitioner had submitted an application within the prescribed period of five years from the date of joining the service. The second respondent by order dated 14.12.2005, has rejected the claim of the petitioner. Since the petitioner's request was not acceded to, he filed a writ petition in W.P.No.15097 of 2019 seeking a direction to alter the date of birth and the same was dismissed on 30.05.2019. Aggrieved by the said order W.A.No.701 of 2020 was filed and the First Bench of this Court has rejected the Writ Appeal on the ground that the petitioner has not challenged the rejection order dated 14.12.2005 and no relief could be granted by way of a mandamus for review of the earlier exercise undertaken to reject the application and the learned Single Judge's order was perfectly in order. The petitioner once again has approached this Court stating that the rejection order dated 14.12.2005 impugned in the writ petition was served on him during the pendency of the writ petition and hence the petitioner has not challenged the same and after disposal of the appeal he is challenging the rejection order.

3. Rule 49(b) of Tamil Nadu State and Subordinate Services Rules reads as follows:

"49.Alteration of date of birth--(b) After a person has entered service, an application to alter the date of his birth as entered in the official records shall be entertained only if such an application is made within five years of such entry into service. Such an application shall be made to the authority competent to make an appointment to the post held by the applicant at the time of his application and shall be disposed of in accordance with the procedure laid down in sub-rule (a)."

3.1. According to the petitioner, he is entitled to seek for altering the date of birth within a period of five years from the date of joining the service. The order of rejection states that the petitioner would not have completed his schooling, as he would have been less than 14 ½ years, as per the date of birth sought to be corrected. According to the petitioner, the rule cannot be interpreted in such a manner to deprive the benefit. The petitioner had a qualification and he was 36 years old on the date of appointment and had due qualification for joining the post and having joined the service and made an application within five years, it is the mandatory duty on the part of the respondents to consider the request of the petitioner in his favour and rejecting it on technicality, as stated in the impugned order is illusory and needs to be interfered with.

4. The learned Government Advocate appearing for the respondents drew the attention of this Court to the fact that the order dated 14.12.2005 was served much earlier and it was not at all served during the pendency of W.P.No.15097 of 2019, as could be seen from the averment of the petitioner in W.P.No.15097 of 2019, wherein, in paragraph 4, he has stated as follows:

"I have approached the 2nd respondent within the period of 5 years of my joining into service to alter my date of birth from 02.06.1961 to 07.06.1964. But the Chief Educational Officer, Thiruvannamalai, the 2nd respondent has rejected the request of the petitioner by an order dated 14.12.2005 in OM.No.10614/B4/05 in the said order it is stated that on the perusal of the proposal sent by the Headmaster Government Boys Higher Secondary School, Thesur, on calculating the date of birth of 02.06.1961 at the time of writing the Xth Std., examination the petitioner age is 16 years 9 months 28 days on calculating the date of birth of 07.06.1964 at the time of writing the Xth standard examination the age of the petitioner is only about 13 years 9 months 23 days. But there is a rule if a candidate appearing for the xth Std., has to complete 14 ½ years. Further in the application in column 11 for the correction of date of birth if the date of birth is corrected. It will not disqualify the education or employment of the petitioner. Therefore, the 2nd respondent is unable to correct the date of birth of the petitioner and returned the proposal along with all the annexures and the original certificates to the Headmaster Government Boys Higher Secondary School, Thesur,

the 4th respondent herein. However, the petitioner has not challenged the aforesaid order because the application for the correction of date of birth is pending with the 2nd respondent the same is yet not returned to the petitioner."

5. According to the respondents, the petitioner was aware of the rejection order and he could have amended the prayer and sought for quashing the same. Without doing so, he cannot re-agitate the issue already concluded.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

7. I find much force in the contention of the respondents, as the petitioner was aware of the order dated 14.12.2005, when the earlier writ petition in W.P.No.15097 of 2019 was filed and was signed by him in April, 2019. He could have sought for amendment of the prayer, which he has not done. Now, he is trying to re-agitate the issue. Though it appears to be technically correct, substantially, the argument of the petitioner has got to be rejected. The petitioner was aware of the rejection order dated 14.12.2005, as it is stated in the averment of the petitioner that he has not challenged the rejection order because the application for the correction of date of birth is pending with the second respondent. Hence, the petitioner had the copy of the rejection order, which he has not questioned within the time stipulated. Even the judgment relied on is not applicable to the present facts and circumstances of the case. The petitioner having obtained copy of the order impugned in this writ petition duly prior to the pendency of the earlier writ petition, should have sought for amendment of prayer and questioned the same. Without doing so, he cannot be permitted to re-agitate the issue. There should be a finality to the litigation and the Court is not here to open the Pandora's box and make the litigant to open up concluded issues to be agitated again and again.

8. Hence, the writ petition is rejected and the same is dismissed as devoid of merits. Consequently, the connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Director of School Education,
Chennai - 600 006.

2.The Chief Educational Officer,
Thiruvannamalai.

3.The District Educational Officer,
Thiruvannamalai.

4.The Head Master,
Government Boys Higher Secondary School,
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Thiruvannamalai District.

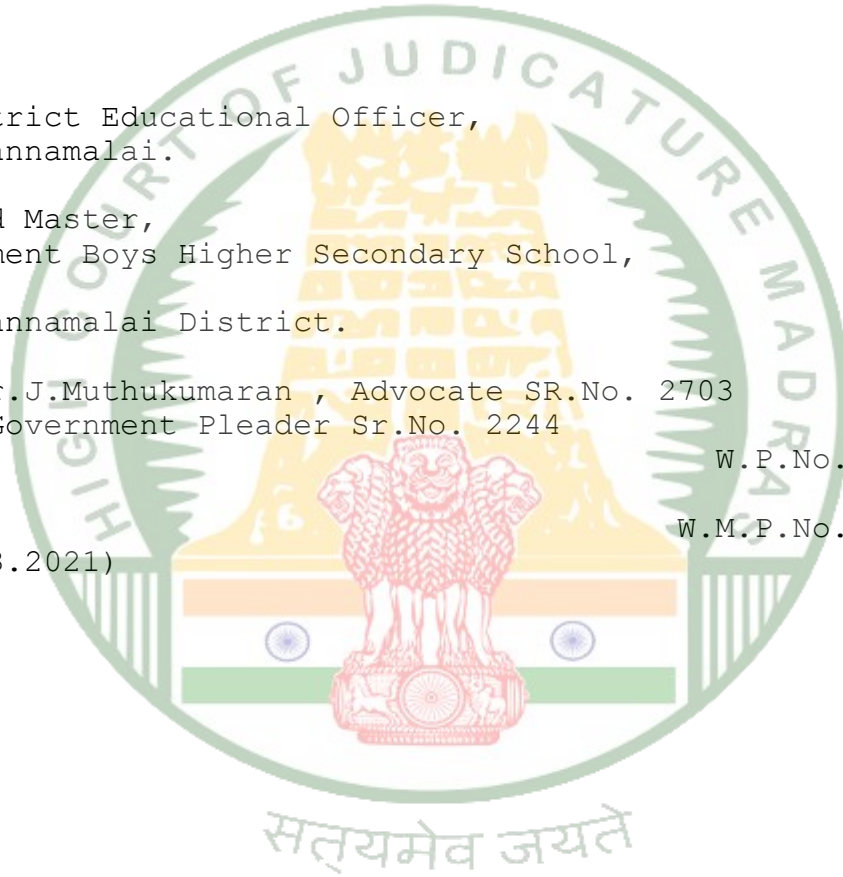
+1cc to Mr.J.Muthukumaran , Advocate SR.No. 2703

+1 cc to Government Pleader Sr.No. 2244

W.P.No.825 of 2021
and

W.M.P.No.890 of 2021

A.SK(22.03.2021)



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