

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No.1433 of 2021

S.Ramya

... Petitioner

Vs.

1.The Director

Directorate of School Education,
No.17 College Road,
Thousand Lights West
Thousand Lights,
Subba Road Avenue
Nungambakkam
Chennai 600 008.

2.The Director of Government Examinations,

DPI Campus,
College Road,
Chennai.

3.The District Educational Officer,

Ponneri
Tiruvallur District.

4.The Commissioner

Corporation of Greater Chennai
Park Town,
Chennai 600 003.

... Respondents

(R4 is impleaded vide
order of this Court dated 10.02.2021
in WMP No.2461/2021 in WP.1433/2021)

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to correct the date of birth of the petitioner regarding the order issued by the 3rd respondent, the District Educational Officer, viz., Na.Ka.No.1946/A4/2020 dated 11.01.2021 to get the court order for correction in respect of correcting the petitioner's date of birth in the marksheet of Secondary School leaving Certificate, Higher Secondary Course Certificate and Transfer Certificate as 07.08.1995.

For Petitioner : Mr.G.Madhanraj

For Respondents: Mr.U.Baranidharan
for Government Advocate R1 to R3

Ms.P.T.Ramadevi for R4 (Standing Counsel)

O R D E R

This writ petition has been filed for the issue of a writ of mandamus directing the respondents 1 to 3 to correct the date of birth of the petitioner from 07.06.1995 to 07.08.1995 in the mark sheet of the Secondary School Leaving Certificate, Higher Secondary Course Certificate and the Transfer Certificate.

2.The case of the petitioner is that she was born on 07.08.1995 and to substantiate the same, the petitioner is relying upon the birth certificate issued by the 4th respondent, which has been registered on 16.08.1995 and it is found that the date of birth of the petitioner is mentioned as 07.08.1995. When the petitioner was admitted in the school, it seems that her date of birth was wrongly given as 07.06.1995 and as a result of the same, all her certificates pertaining to 10th and 12th standard including the Transfer Certificate reflects the date of birth as 07.06.1995.

3.The petitioner underwent a professional course in Russia and she has completed the course and claims to be a qualified Medical Doctor. Even in the certificate that was given by the concerned University, the date of birth of the petitioner was mentioned as 07.08.1995.

4.The petitioner applied for Foreign Medical Graduate Examination (FMGE) conducted by the National Medical Commission and only if the petitioner clears this exam, the petitioner will be given license for practising as a Doctor in India. When the petitioner applied for this exam, the discrepancy in the date of birth was pointed out. The petitioner therefore submitted a representation requesting for the correction of the date of birth in the mark sheets and the transfer certificate. The third respondent, on receipt of the same, has issued a memo dated 11.01.2021 to the effect that the petitioner has to get the date of birth corrected only before the competent Court. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Heard Mr.G.Mathan Raj, learned counsel appearing on behalf of the petitioner, Mr.U.Baranidharan, learned counsel appearing on behalf of the respondents 1 to 3 and Ms.P.T.Ramadevi, learned standing counsel appearing on behalf of the fourth respondent.

6. The third respondent has filed a counter affidavit and a specific stand has been taken in the counter affidavit to the effect that the date of birth provided by the petitioner in the School has only been incorporated in the Marksheets and Transfer Certificate. That apart, the third respondent has also placed reliance upon Rule 5 of the SSLC Scheme, which makes it clear that alteration in the date of birth will not be entertained after a student has completed the course and appeared in the examination. Therefore, the third respondent has taken a stand that the respondent cannot carry out any alteration in the mark sheets or in the transfer certificate pertaining to the date of birth of the petitioner.

7. The date of birth of the petitioner has been mentioned as 07.08.1995 in the birth certificate issued by the 4th respondent. The same date of birth is found in almost all the documents except the mark sheets and the transfer certificate. There is only a variation with regard to the month and the date and the year perfectly tallies with the original birth certificate.

8. The issue involved in the present writ petition is squarely covered by the earlier order passed by this Court in W.P.No.14645/2020 dated 29.10.2020. This Court had relied upon the earlier order passed in W.P.No.9340/2009 in this regard. The relevant portions in the order are extracted hereunder:

"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 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 subrule (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. In view of the above, there shall be a direction to the petitioner to submit a fresh representation to the second respondent along with all the relevant documents. The second respondent, on receipt of the same, shall make the necessary changes in the date of birth as 07.08.1995 in the mark sheet of the Secondary School Leaving Certificate, Higher Secondary Course Certificate and the Transfer Certificate. This process shall be completed by the second respondent within a period of four weeks from the date of receipt of a copy of this order.

10. This writ petition is allowed with the above directions. No costs.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

RR

To

1. The Director

Directorate of School Education,
No.17 College Road,
Thousand Lights West
Thousand Lights,
Subba Road Avenue
Nungambakkam
Chennai 600 008.

2. The Director of Government Examinations,
DPI Campus,
College Road,
Chennai.

3. The District Educational Officer,
Ponneri
Tiruvallur District.

4. The Commissioner
Corporation of Greater Chennai
Park Town,
Chennai 600 003.

- 1 cc to M/s. B. Govindaprabu, Advocate SR.37907
- 1 cc to Government Pleader SR.38034

W.P.No.1433 of 2021

SR-II(CO)

EU 06.08.2021