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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.02.2021

Judgment Delivered on : 10.03.2021

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1423 of 2019
and
C.M.P.No.9837 of 2019

Dr.P.Dananjayan, S/o Perumal Gounder .. Appellant /Petitioner

Vs.

1. The Principal,
Pondicherry Engineering College,
Puducherry.

2. Union of India,
Rep. by Chief Secretary,
Union Territory of Pondicherry,
Puducherry.

3. Secretary to Government (Education),
cum-Chairman,
Pondicherry Engineering College,
Puducherry. .. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 05.03.2019 passed by the learned Single Judge in W.P.No.16857 of 2018 on the file of this Court.

Prayer in WP 16857 of 2018:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for records relating to the order dated 08.05.2018 made in No.7553/DHTE/Estt/E4/2017-18/139 on the file of the 3rd respondent herein and to quash the same and further direct the respondents herein to correct the Petitioner's date of birth as 21.07.1959 instead of 12.05.1957 in the service and other records maintained by the 1st respondent.



For Appellant : Mr.AL.Somayaji,
Senior Counsel for Mr.T.Dhanyakumar
For Respondents : Mrs.N.Mala,
Govt. Pleader (Puducherry)

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JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed against the order dated 05.03.2019 passed by the learned Single Judge, in W.P.No.16857 of 2018 in dismissing the Writ Petition filed by the appellant herein praying to quash the order dated 08.05.2018 on the file of the third respondent and to direct the respondents to correct the appellant/writ petitioner's date of birth as 21.07.1959 instead of 12.05.1957 in the Service and other records maintained by the first respondent-Principal of Pondicherry Engineering College.

2. The brief facts which are necessary to decide the issue involved in this Writ Appeal are as follows:

(a) The appellant/writ petitioner was appointed initially as Lecturer through direct recruitment in the Pondicherry Engineering College with effect from 02.05.1986; he was subsequently appointed as Assistant Professor with effect from 30.09.1992 on ad-hoc basis by direct recruitment. The petitioner resigned the said post of Assistant Professor, Electronics and Communications Engineering; he participated in the process of selection and got selected to be appointed as Professor by way of direct recruitment on 28.06.1999. He was placed under probation for a period of two years from 28.06.1999 and thereafter, his probation was declared.

(b) At the time of joining the service, he had produced the School Leaving Certificate as proof of his date of birth, in which, his date of birth was mentioned as 12.05.1957. Accordingly, his date of birth was recorded as 12.05.1957 in the service book maintained by the first respondent. But it is the averment of the writ petitioner that his actual date of birth was 21.07.1959. He was born at Tiruoucanour and his birth was registered with Mannadipet Commune Panchayat on 28.07.1959 in Registration No.153. Hence, the writ petitioner made a representation dated 21.06.2004 to the first respondent for correction of his date of birth.

(c) The third respondent, by order dated 08.05.2018, declined to alter the writ petitioner's date of birth entered in the service records as 21.07.1959 instead of 12.05.1957 and rejected his representation, dated 21.06.2004. The third respondent herein had taken into consideration the date of joining as Lecturer in Electronics and Communications Engineering on 02.05.1986 instead of his appointment as Professor in Electronics and Communications Engineering, Pondicherry Engineering College, Puducherry on 28.06.1999.



According to the writ petitioner, if the date 28.06.1999 is taken into consideration, then his representation to correct the date of birth is within the stipulated period of five years. Furthermore, the third respondent has not given any finding about the correctness of his claim for alteration of date of birth.

(d) In fact, before submitting the said representation, dated 21.06.2004, the appellant/writ petitioner filed a civil suit in O.S.No.595 of 2002 before the III Additional District Munsif Court, Pondicherry for a declaration to declare that his date of birth is 21.07.1959 and not 12.05.1957; for mandatory injunction to direct the second defendant therein to carry out the correction regarding the date of birth of the appellant as 21.07.1959 in the place of 12.05.1957 in the SSLC and other relevant records; and for mandatory injunction to direct the fourth defendant therein to carry out the correction regarding the date of birth of the appellant (plaintiff) as 21.07.1959 in the place of 12.05.1957 in the Service Register and other relevant records. The said suit was dismissed on 06.11.2003 mainly on the ground of limitation under Article 58 of the Limitation Act.

(e) Aggrieved by the judgment and decree in O.S.No.595 of 2002, the appellant/writ petitioner preferred First Appeal in Appeal Suit No.76 of 2005 before the Principal Sub-Court, Pondicherry and the said First Appeal was also dismissed on 27.10.2006.

(f) In the meantime, the appellant had also filed Original Application in O.A.(Diary).No.4199 of 2004 before the Central Administrative Tribunal, Madras Bench, for correction of his date of birth and the said Original Application was also dismissed as not maintainable on 08.02.2005 on the ground that there is no jurisdiction to entertain the said Original Application and the Tribunal directed its Registry to return the typed set of documents to the applicant.

(g) In the meanwhile, since the first respondent refused to correct the date of birth of the appellant/writ petitioner by order (Memorandum), dated 16.07.2004, the appellant filed W.P.No.41333 of 2006 before this Court to quash the Memorandum No.PEC/Estt/E1/PER/2004/No.2999, dated 16.07.2004 of the first respondent and to direct the first respondent to dispose of the writ petitioner's representation, dated 21.06.2004 on merits within a reasonable time. In the said W.P.No.41333 of 2006, by order dated 23.01.2018, this Court directed the first respondent to consider the said representation, in the light of the observations made in that order and pass fresh orders on merits and in accordance with law, within four weeks from the date of receipt of a copy of the order without insisting on technicalities.



(h) Thereafter, the impugned order dated 08.05.2018 was passed by the third respondent, rejecting the said representation, against which the present Writ Petition in W.P.No.16857 of 2018 was filed, which was dismissed by the learned Single Judge on 05.03.2019 on the following reasonings:

"32. The learned Senior Counsel made a submission that the impugned order is running counter to the order passed by this Court in WP.No.41333 of 2006 dated 23.01.2018. The learned Senior Counsel mainly relied upon paragraph No.15 of the judgement which reads as under:-

"Probation connotes a period of trial. On successful completion of the probation an employee is confirmed in the appointment held by him. Obviously, the purpose of putting an employee on probation is to find out his suitability to hold the post substantively or permanently in the sense that he thereafter gets a right to hold the post. The fitness of suitability has to be judged at the time of confirmation and not, unless any specific rule or term of contract of service so provides, as on the date of the original appointment. If the employee is not found suitable either during the period of probation or on completion thereof he is not retained in service and the service is terminated by notice. It would be a contradiction in terms if it is said that an employee is on probation, namely, is on trial for being retained in service and yet during this period he has a right to hold the post to which he has been appointed on probation. In the case on hand, as could be seen from the service book of the petitioner, it is appointment of the on probation, consequent to his resignation, and it is not promotion of the petitioner, it is appointment of the petitioner on probation, consequent to his resignation, and it is not promotion of the petitioner to the post of Professor. Therefore, by no stretch of imagination, the petitioner's appointment could be treated as promotion."



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33. On a perusal of the said portion of the judgement, this Court elaborated the meaning of the word probation and further reiterated that, the probation connotes the period of trial. Therefore, the direct recruitment to the post of Professor alone is to be taken in to account for the purpose of reckoning the limitation period of 5 years.

34. This Court is of the considered opinion that, such a probation period may be relevant for the purpose of assessing the performance of the candidate in the post of Professor and therefore, such a probation cannot be construed as a point for limitation as far as the application seeking alteration of date of birth is concerned. Because, the writ petitioner was already in service in the same college namely, the Pondicherry Engineering College, right from 02.05.1986. Thus, this Court cannot come to the conclusion that the writ petitioner was not aware of the date of birth entered into his service records. Even at the time of submitting application for the direct recruitment to the post of Professor, the writ petitioner accepted the date of birth as 12.05.1957 as per the school records and as per the service records already maintained by the first respondent institutions. Considering the facts and circumstances, this Court has to provide a constructive interpretation for the purpose of entertaining the application seeking the alteration of date of birth and the point of limitation to be reckoned.

35. In the present case, though the appointment to the post of Professor is a direct recruitment, the same cannot be considered as a first appointment as the first appointment of the writ petitioner was made in the post of lecturer on 02.05.1986, in the very same institution namely the Pondicherry Engineering College, Puduchery. Accordingly, the writ petition stands dismissed. No Costs."

Aggrieved by the above order of dismissal, dated 05.03.2019 passed by the learned Single Judge in W.P.No.16857 of 2018, the present Writ Appeal is filed by the writ petitioner.

3. The main submission of the learned Senior Counsel for the appellant/writ petitioner is that originally, the appellant/writ petitioner was appointed as Lecturer by direct recruitment in the Pondicherry Engineering College on 02.05.1986. He was subsequently appointed as Assistant Professor on 30.09.1992 on ad-hoc basis by direct recruitment and thereafter, pursuant to the recruitment Notification for appointment to the post of Professor, he participated in the process of selection and got



selected to be appointed as Professor by direct recruitment on 28.06.1999. Thereafter, on 21.06.2004, he submitted application seeking alteration of his date of birth in the service records as 21.07.1959 from 12.05.1957.

4. It is the assertive submission of the learned Senior Counsel for the appellant/writ petitioner that the appellant's actual date of birth is 21.07.1959 and in his SSLC records, his date of birth was wrongly entered as 12.05.1957, which was verbatim carried out in his service records. In this regard, the learned Senior Counsel appearing for the appellant/writ petitioner submitted that the appellant's birth was registered with Mannadipet Commune Panchayat on 28.07.1959 in Registration No.153. He further submitted that the appellant's representation dated 21.06.2004 was rejected mainly on the ground that his application for change of date of birth is filed beyond five years from the date of his appointment. According to the learned Senior Counsel appearing for the appellant, the said reasoning is totally contrary to the facts. In this context, the learned Senior Counsel appearing for the appellant/writ petitioner proceeded to contend that the appellant/writ petitioner joined as Lecturer in Electronics and Communication Engineering on 02.05.1986 and thereafter, he was promoted as Assistant Professor on 30.09.1992 on ad-hoc basis and subsequently, pursuant to the recruitment Notification for appointment to the post of Professor, he resigned the post of Assistant Professor. Upon his selection in the direct recruitment as Professor, he underwent the probation period, which was also declared. Therefore, according to the learned Senior Counsel appearing for the appellant/writ petitioner, the appellant/writ petitioner's entry into service should be reckoned only from 28.06.1999 and within a period of five years from the date of entry into service, he sent a representation on 21.06.2004 seeking correction of his date of birth.

5. According to the learned Senior Counsel appearing for the appellant/writ petitioner, the alteration of date of birth of a Government servant can be made with the sanction of the Ministry or Department of the Central Government or the Comptroller and Auditor General in regard to persons serving in the Indian Audit and Accounts Department, or an Administrator of a Union Territory under which the Government servant is serving, if: (a) a request in this regard is made within five years of his entry into Government service, (b) it is clearly established that a genuine bona-fide mistake had occurred, and (c) the date of birth so altered would not make him ineligible to appear in any School or University or Union Public Service Commission examination in which he had appeared, or for entry into Government service on the date on which he first appeared at such examination or on the date on which he entered Government service.

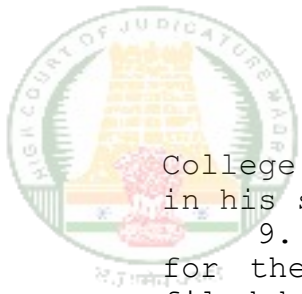
6. In the instant case, according to the learned Senior



Counsel appearing for the appellant/writ petitioner, the representation of the petitioner, dated 21.06.2004 was given to the first respondent within five years from the date of his appointment to the post of Professor in Electronics and Communication Engineering, Pondicherry Engineering College, Puducherry on 28.06.1999. But the respondents computed the period of five years from 02.05.1986, on which date he was initially appointed as Lecturer by direct recruitment in the Pondicherry Engineering College, which was on temporary basis. The learned Senior Counsel appearing for the appellant/writ petitioner further submitted that when once he resigned the post of Assistant Professor and got appointed as Professor on 28.06.1999 through direct recruitment, his entry into service had to be taken into consideration only from 28.06.1999. Instead of doing so, the third respondent had reckoned the period of service from 02.05.1986 and rejected the said representation, dated 21.06.2004 on the above said ground, which is not legally sustainable and the same is liable to be quashed.

7. In the above context, the learned Senior Counsel appearing for the appellant/writ petitioner relied on a decision of this Court reported in 2021 (1) CTC 353 = MANU/TN/7306/2020 (State of Tamil Nadu Vs. M.T.Ganeshmoorthy, IPS) in support of his submission that the representation given within five years from the date of appointment of the appellant as Professor, is valid, inasmuch as the said appointment should be considered as fresh appointment. Thus, the learned Senior Counsel appearing for the appellant/writ petitioner prayed for allowing the Writ Appeal.

8. Countering the above submissions, the learned Government Pleader (Pondicherry) appearing for the respondents submitted that the appellant/writ petitioner joined Government service as early as on 02.05.1986 itself as Lecturer by direct recruitment. At the time of joining service, he had produced his SSLC Certificate, in which his date of birth is mentioned as 12.05.1957. That apart, he has also submitted his family details on 03.03.2004 mentioning his date of birth as 12.05.1957 only and not as 21.07.1959 as claimed by him. The appellant was appointed as Professor by direct recruitment on 28.06.1999, and produced the same details as above indicating his date of birth as 12.05.1957. That being so, he submitted his representation, dated 21.06.2004 for correction of his date of birth as 21.07.1959 instead of 12.05.1957 with regard to his appointment as Professor in the Service Book and other relevant records maintained by the College. This representation was not given within a period of five years from the date of entry into service. He ought to have given the representation within five years from the date of joining his service initially on 02.05.1986, i.e. before 02.05.1991. His date of his entry to the post of Professor on 28.06.1999 will not save the five year period, because, he was continuously working in the same



College. Moreover, he wanted to correct his date of birth entry in his service book which was opened in 1986 itself.

9. The learned Government Pleader (Pondicherry) appearing for the respondents further submitted that, even in the suit filed by the appellant/writ petitioner before the III Additional District Munsif, Pondicherry, he has stated in the plaint that he came to know about the correct date of birth only in the year 1995 itself. But he did not mention the same at the time of his appointment as Professor on direct recruitment on 28.06.1999. But he gave the representation for correction of date of birth only on 21.06.2004. Thus, the appellant/writ petitioner is not entitled for correction of his date of birth on the ground of delay.

10. With regard to the judgment relied on by the learned Senior Counsel appearing for the appellant/writ petitioner, reported in 2021 (1) CTC 353 (cited supra), the learned Government Pleader (Pondicherry) appearing for the respondents submitted that this Court had interpreted Rule 49 (a) and (b) of Part-II under the General Rules of the Tamil Nadu State and Subordinate Service Rules and held that the words "such entry into service" indicated in the said Rule 49(b), are referable to a particular service of a Government servant during which application for alteration of date of birth should be submitted. So far as the appellant/writ petitioner herein is concerned, the respondents are bound by the relevant Rules relating to Pondicherry Government Service, which state that the request for change of date of birth should be made within five years of entry into Government service. Therefore, the interpretation made in the said judgment of this Court cannot be made applicable to the facts of the present case. Thus, the learned Government Pleader (Pondicherry) prayed for dismissal of the Writ Appeal.

11. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record.

12. The appellant herein originally joined as Lecturer in the Pondicherry Engineering College with effect from 02.05.1986. Thereafter, he was appointed as Assistant Professor with effect from 30.09.1992 on ad-hoc basis by direct recruitment. He was subsequently appointed as Professor with effect from 28.06.1999. While so, on 21.06.2004, i.e. within a period of five years from the date of appointment as Professor, he submitted the representation to correct his date of birth as 21.07.1959 instead of 12.05.1957 in the service book and other relevant records maintained by the College based on the Birth Certificate Register pertaining to the year 1959 maintained by the Mannadipet Commune Panchayat. The request for change of date of birth was not acceded to by the College, vide order dated 16.07.2004 passed by the first respondent, on the ground of limitation to seek correction of date of birth in the Service Book which expired even on 01.05.1991 itself, as he joined the



College as early as on 02.05.1986 itself.

13. According to the learned Senior Counsel appearing for the appellant/writ petitioner, since the appellant resigned the post of Assistant Professor and joined the post of Professor only on 28.06.1999, the same has to be construed as entry into service, whereas, according to the learned Government Pleader (Pondicherry) appearing for the respondents, the five year period has to be reckoned only from 1986, i.e. from the date of initial appointment being 02.05.1986 of the appellant/writ petitioner as Lecturer. In this regard, the learned Senior Counsel appearing for the appellant/writ petitioner relied on the judgment of this Court reported in 2021 (1) CTC 353 = MANU/TN/7306/2020 (State of Tamil Nadu Vs. M.T.Ganeshmoorthy, IPS), (supra), wherein, in an identical situation, this Court interpreted Rule 49 of the said Rules and the relevant portion of the said judgment of this Court reads as follows:

"20. On a consideration of Rule 49(b), we are of the view that, words "such entry into service" indicated thereof, are referable to a particular service of a Government servant, during which, application for alteration of date of birth should be submitted. In other words, past services, if any rendered, will not have any application to Rule 49(b) and it can be pressed into service only with reference to cadre of post held by the Government servant in a particular post, during which time application for alteration of date of birth should be submitted. The words "such entry into service", therefore, cannot be taken, to reckon the entry of a candidate in Government Service for the first time and it was not the intention of the Legislature while framing Rule 49(b)"

14. Hence, on a consideration of Rule 49(b) of the said Rules, in that case, this Court has interpreted the words "such entry into service". The facts in that case are that the writ petitioner therein was initially appointed as Junior Assistant in the Directorate of Motor Vehicles Maintenance Department on 28.12.1984 and in such post, he continued till 15.07.1986 and subsequently, he was relieved from the said post and joined the post of Senior Inspector in the Co-operative Societies, Madras, on 16.07.1986, from which post, he was relieved on 24.01.1990. Further, the writ petitioner therein joined as Junior Employment Officer in Anna Nagar, Madras on 25.01.1990 and continued till 15.12.1991. Again, he was relieved from the post of Junior Employment Officer and joined the Police Department on 16.12.1991



as Deputy Superintendent of Police (Category-I) and subsequently, on 21.05.2003, he was given promotion under the Indian Police Service. In that case, the writ petitioner had changed different Departments and finally, he joined the Police Department. Therefore, while interpreting Rule 49(b) of the said Rules, this Court had come to the conclusion that the words "such entry into service" in Rule 49(b) means entry into a particular service. Moreover, in the present case on hand, the appellant/writ petitioner is seeking change of date of birth in the very same service book which was opened in the year 1986 itself. In the instant case, the Rule says that the request for correction of date of birth should be made within five years of the entry into Government service. Hence, interpretation made in the said judgment, is not available in the case on hand. Therefore, the said judgment cannot be made applicable to the facts of the present case.

15. Further, we find, as contended by the learned Government Pleader (Pondicherry) appearing for the respondents that, in the suit filed by the appellant/writ petitioner in O.S.No.595 of 2002 on the file of the III Additional District Munsif, Pondicherry, it is stated in the plaint that he had knowledge of the wrong date of birth only in 1995 and thereafter, he kept quiet for nearly nine years and only on 21.06.2004, he submitted the representation seeking for correction of date of birth to the concerned authority. Therefore, looking from any angle, we find that there is an inordinate delay in seeking correction of date of birth and he ought to have applied for correction/alteration of date of birth within five years from 1986, which he failed to do.

16. Further, the learned Government Pleader (Pondicherry) also relied on a decision of the Supreme Court reported in 2011 (9) SCC 664 (State of Madhya Pradesh Vs. Premlal Shrivastava), wherein the Apex Court observed as follows:

"8. ... Time and again this Court has expressed the view that if a Government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights. (See Union of India Vs. Harnam Singh - 1993 (2) SCC 162 = 1993 SCC (L & S) 375 = 1993 (24) ATC 92)."

17. The above judgment of the Supreme Court is squarely



applicable to the facts of the present case.

18. Furthermore, going by his disclosure of date of birth as 12.05.1957 to his employer at the time of his joining service, he would have retired from service, since he is now 63 years old. Therefore also, the question of extending his service beyond his normal age of retirement, will not arise at this stage.

19. Therefore, for all the reasons stated supra, the appellant/writ petitioner is not entitled for the relief sought for in the present Writ Appeal. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar (CS III)

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Sub-Assistant Registrar

CS

To

1. The Principal,
Pondicherry Engineering College,
Puducherry.
2. Union of India,
Rep. by Chief Secretary,
Union Territory of Pondicherry,
Puducherry.
3. Secretary to Government (Education),
cum-Chairman,
Pondicherry Engineering College,
Puducherry.

+1CC TO MR.T.DHANYAKUMAR, ADVOCATE, SR.NO. 15745

+1CC TO M/S.N.MALA, ADVOCATE, SR.NO. 16073

Writ Appeal No.1423 of 2019

GPL

KKN 20.04.2021