



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 26.03.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P. (MD)No.13473 of 2010**

**WEB COPY**

Chellathai

... Petitioner

Vs.

1.The Assistant Provident Fund Commissioner Pension,  
Employees Provident Fund Organization,  
Sub-Regional Office,  
Tirunelveli-627 007.

2.The Assistant Provident Fund Commissioner (Accounts)  
Employees Provident Fund Organization,  
Sub-Regional Office,  
Tirunelveli-627 007.

3.Seyad Home Industries P Ltd.,  
17-A, Puthuamman Koil Street,  
Sindupoondurai,  
Tirunelveli.

...Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in his proceedings No.TN/TNY/A.G.6/20885/2010 dated 23.09.2010 and quash the same and consequently, direct the second respondent to correct the date of the birth of the petitioner as 18.10.1952 instead of 01.04.1964 in all the service records.

For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mr.K.Murali Sankar

1&2

**O R D E R**

This writ petition has been filed challenging the proceedings of the second respondent dated 23.09.2010 and to quash the same and consequently, direct the second respondent to correct the date of the birth of the petitioner as 18.10.1952 instead of 01.04.1964 in all the service records.

2. The case of the petitioner is that she is a Beedi worker and working under the third respondent Industry and the Scheme Certificate was issued to the petitioner under Para 12(8) of the Employees' Pension Scheme, 1955, on 07.08.2007. In the Scheme Certificate, the petitioner's date of birth was wrongly entered as 01.04.1964 instead of 18.10.1952. In all the other records, the respondents officials maintaining the date of birth wrongly as



01.04.1964. Hence, the petitioner has made an application to the second respondent, on 13.09.2010, for correction of the date of birth. However, her request was rejected by the impugned order dated 23.09.2010. Challenging the same, the present writ petition has been filed.

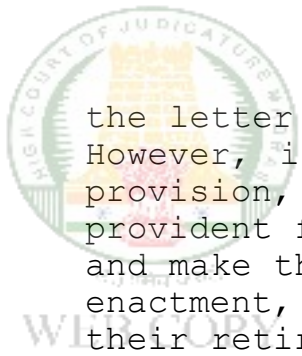
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3. The learned Standing counsel appearing for the respondents 1 and 2 would submit that while joining the Employees' Provident Fund Scheme, 1952, the petitioner had furnished her age as 30 years as on 01.04.1994. Further, in Nomination and Declaration Form II, she had mentioned her date of birth as 01.04.1964. The said Nomination and Declaration Form II was duly countersigned by the third respondent. Further, the petitioner has applied for the Scheme Certificate in the year 2007. In the said application, she had mentioned her age as 30 years as on 01.04.1994. Accordingly, the Scheme Certificate was issued to the petitioner, mentioning her date of birth as 01.04.1964. Hence, her request to change her date of birth was rejected. The petitioner has filed the present writ petition with the prayer to change her date of birth, after leaving service and after obtaining Scheme Certificate under the Employee's Provident Fund Scheme, 1952. Therefore, this writ petition is not maintainable and he prays for dismissal.

4. Heard the learned counsel for the petitioner, learned Standing counsel for the respondents 1 and 2 and perused the materials available on record.

5. The facts in the present case are not in dispute. As per the counter affidavit filed by the respondents 1 and 2, the petitioner Chellathai joined the Employees' Provident Fund Scheme in the year 1952 and she had furnished her age as 30 years as on 01.04.1994. Further, in Nomination and Declaration Form II, she had mentioned her date of birth as 01.04.1964 and she was leaving from service on 30.09.2003. Though the petitioner has rendered more than 10 years of service, the pension is payable only on completion of 58 years of age. Hence, the petitioner has drawn reduced pension. The learned Standing counsel appearing for the respondents 1 and 2 drew the attention of this Court to the Letter of the Additional CPFC, Employee's Provident Fund Organisation, dated 03.04.2020 and submits that there is a provision available for change of date of birth. However, prior to the said communication, there was no scheme available for changing the date of birth. On the short ground, the application of the petitioner was rejected.

6. It is fairly admitted by either side that the petitioner has paid her contribution for more than 10 years and she is eligible to receive full pension and the only disqualification attached to her is that she has not completed 58 years of age, at the time of leaving the service. Admittedly, there is no provision available for change of date of birth at the time when the petitioner left the service. The provision was incorporated only on and from 3.4.20 vide



the letter of the Addl. CPFC, Employees Provident Fund Organisation. However, it is to be pointed out that even in the absence of any provision, if genuine certificate is produced, duty is cast upon the provident fund authority to consider the genuineness of certificate and make the necessary correction. The Provident Fund Act is welfare enactment, which has been enacted to take care of the persons after their retirement by providing them the monetary benefit to eke their livelihood. In the present case, the provident fund authority has not taken any steps, but has mechanically rejected the petitioner's request.

7. In the above backdrop, this Court would now analyse the facts in issue to find out the veracity of the petitioner's representation and the order passed by the respondents rejecting the request of the petitioner. The petitioner has produced the transfer certificate before this Court and a perusal of the same reveals that the date of birth of the petitioner is 18.10.1952. The said transfer certificate was issued by the Headmaster. It is not the case of the respondents that they doubt the authenticity of the transfer certificate. Such being the position, it is incumbent upon the respondents to verify the same and, thereafter, pass orders. However, without verifying the same, the second respondent has mechanically rejected the petitioner's request, which is *per se* impermissible and wholly unsustainable.

8. In such a backdrop of the facts narrated supra, this Court is inclined to accept the transfer certificate produced by the petitioner and on the basis of the same, sets aside the order passed by the second respondent and to direct the respondents to extend the benefit to the petitioner.

9. In the result, this Writ Petition is allowed and the order passed by the second respondent, dated 23.09.2010, is set aside and the second respondent is directed to extend the benefit to the petitioner, as per the Scheme Certificate as if the petitioner's date of birth is 18.10.1952 and to pay the arrears to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

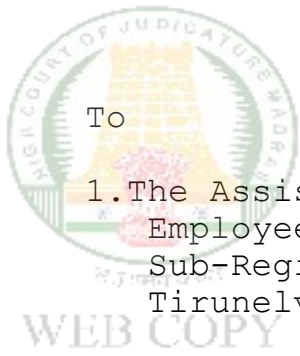
Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)



To

1.The Assistant Provident Fund Commissioner,  
Employees Provident Fund Organization,  
Sub-Regional Office,  
Tirunelveli-627 007.

2.The Assistant Provident Fund Commissioner (Accounts)  
Employees Provident Fund Organization,  
Sub-Regional Office,  
Tirunelveli-627 007.

+1 CC to M/s.K.MURALISANKAR, Advocate ( SR-14173[F] dated 29/03/2021 )

+1 CC to M/s.T.A.EBENEZER, Advocate ( SR-14256[F] dated 29/03/2021 )

W.P. (MD) No.13473 of 2010  
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KB(29.06.2021) 4P 5C